

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules) Case No. 10-1010-TP-ORD
Implement Substitute Senate Bill 162)

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC

Cincinnati Bell Telephone Company LLC (“CBT”), on behalf of itself and, where relevant, its affiliates Cincinnati Bell Extended Territories LLC and Cincinnati Bell Any Distance Inc., hereby submits these comments in response to the Commission’s Entry of July 29, 2010, regarding the adoption of rules to implement Substitute Senate Bill 162.

Introduction

CBT has reviewed the proposed rules and appreciates Staff’s efforts to implement rules in keeping with Substitute Senate Bill 162 and today’s competitive telecommunications market. CBT further appreciates Staff’s efforts to consolidate all of the retail telecommunications service rules into one section and to issue the proposed rules soon after passage of Substitute Senate Bill 162. In general, CBT believes that the proposed rules appropriately reflect today’s marketplace and the role competition plays in driving the market. However, in some cases, the rules are unclear, and CBT requests clarification. In other cases, CBT asserts that the proposed rules must be deleted as they overstep the regulatory authority allowed by Substitute Senate Bill 162.

While CBT generally concurs with the comments filed by the Ohio Telecom Association in this proceeding, Cincinnati Bell provides separate comments to address issues that are of special importance to CBT and to address situations that may be unique to CBT. Specific issues are addressed within this document in the order in which they appear in the proposed rules.

Recommended additions to the text of certain rules are indicated by an underline with italics; recommended deletions are shown by a strike-through.

For the reasons set forth below, CBT asserts that the following clarifications and changes are needed to the proposed rules.

Comments

4901:1-6-07 Content of Customer Notice

The phrase “any material change in the rates, terms, and conditions” in part (A) of this section could have the unintended consequence of requiring advance notice of price decreases. Current rule 4901:1-6-05 (G)(5) requires fifteen day advance notice of “rate increases, changes in terms and conditions, and discontinuance of existing detariffed nonresidential tier 2 services and toll services.” Similarly, (E)(2) of the same section of the current rules requires advance customer notice of rate increases for tariffed tier 2 services. Advance notice of price decreases is not required under the existing rules and should not be required under the proposed rules. Requiring advance notice of a price decrease can only delay the time until customers receive the benefits of the decrease.

Additionally, part (A) requires that all notices, both residential and business, be sent to OCC. Notices sent to the OCC should be limited to residential notices in keeping with the OCC’s role to represent residential utility customers.

For these reasons, CBT recommends that part (A) be reworded as follows:

... a telephone company shall provide at least fifteen days advance notice to its affected customers; and the commission, and the office of consumers’ counsel (~~OCC~~) of any rate increase, any material change in the ~~rates~~, terms, and conditions of a service, and any change in the company’s operations that are not transparent to customers and may impact service. Notices sent to residential customers shall be provided to the office of consumers’ counsel under the same fifteen day advance notice provision.

4901:1-6-12 Service Requirements for BLES

Part (C) of this section establishes standards for the provision of BLES, and the text within part (C) is generally explicit that the requirements are for BLES. However, CBT believes part (C)(5) could be interpreted to require the specified outage credits for all customers, not just BLES customers, contrary to Substitute Senate Bill 162. To clarify that the outage credits specified in part (C)(5) are only required for BLES customers, CBT recommends modifying part (C)(5) as follows: "... the LEC shall credit every affected BLES customer"

Furthermore, CBT recommends clarifying part (C)(10) regarding the amount due to retain BLES. Part (C)(8) states that BLES may be disconnected "for non-payment of any amount past due on a billed account." However, the first paragraph of (C)(10) uses language from existing rules that could be considered inconsistent with (C)(8) and may cause confusion regarding the amount that must be paid to restore BLES. Specifically, the last sentence of (C)(10) refers to the "minimum" amount that must be paid to retain BLES. Under the proposed rules, and consistent with Substitute Senate Bill 162, the amount that must be paid to retain BLES is all past due charges owed to the company. The word "minimum" could imply that some lesser amount is due. Thus, CBT recommends deleting the word "minimum" in the first paragraph of (C)(10) to avoid confusion regarding the amount due to retain BLES.

4901:1-6-14 BLES Pricing Parameters

CBT seeks to clarify that part (B)(3) does not preclude price increases for mandatory measured rate Extended Area Service (EAS), which the Commission frequently ordered in the 1990s.¹ The definition of BLES for residential customers is "flat-rate telephone exchange service." (See 4927.01 (A)(1)(b)(ii), Substitute Senate Bill 162.) Measured rate EAS is not flat

¹ Community Connection Service is CBT's name for measured rate EAS. See Section 3, part G of CBT's Exchange Services Tariff, PUCO No. 1.

rate service and thus should not be considered BLES. Furthermore, Substitute Senate Bill 162 does not address measured rate EAS much less set a cap on measured rate EAS pricing. Finally, while measured rate EAS calls are local calls, these calls are at the customer's discretion and alternatives are available. In fact, the Commission repealed its EAS rules because competition, e.g. cell phones and changing market conditions, effectively eliminated the need for EAS cases. Clearly, market forces are working. Thus, CBT believes regulated price constraints are unwarranted and inappropriate for measured rate EAS. To the extent the Commission believes regulatory oversight of measured rate EAS is needed, CBT recommends that the Commission apply a standard of reasonableness similar to part (I) of this section.

Parts (C)(1) and (G)(3) of this section, like 4901:1-6-7 part (A), would require business notices to be sent to the OCC. For the reasons noted previously, notices sent to the OCC should be limited to residential services. CBT recommends changing (C)(1) as follows: “... the office of consumers' counsel (OCC) for notices addressing residential services, and to affected customers...” Similarly, part (G)(3) should read “... customers and to the OCC if the notice addresses residential services.”

Part (J) of this section would preclude price increases for the installation and reconnection of BLES. However, Section 4927.12 of Substitute Senate Bill 162, which addresses pricing of BLES, does not directly address installation and reconnection charges nor does it explicitly prohibit price increases for these services. Nonetheless, proposed rule (J) would cap BLES installation and reconnection rates indefinitely. Such a cap is contrary to the policy of primarily relying on market forces to maintain reasonable rates and fails to recognize that CBT's competitors do not have similar price constraints.

To the extent oversight of BLES installation and reconnection charges is required, a standard of reasonableness should apply. CBT recommends part (J) be replaced with the following:

Changes in BLES installation and reconnection fees may be introduced or increased through a thirty day ATA filing. A standard of reasonableness will be applied, including but not limited to, a comparison of similar charges previously approved by the commission and similar charges assessed by nonregulated providers.

4901:1-6-15 Directory Information

Substitute Senate Bill 162 requires that BLES include “provision of a telephone directory in any reasonable format for no additional charge.” (4927.01 (A)(1)(b)(vi)) The legislation does not require companies to continue to provide printed directories nor require companies to include information other than listings in the directory. Thus, the second sentence of (A) should be removed as it goes beyond legislative authority in establishing additional information required to be in directories. Part (B), which provides BLES customers with the option of a printed directory, also oversteps the bounds of the legislation and should be removed from the proposed rules. With these changes, proposed part (C) would be re-labeled as (B) and (A) would read as follows:

A local exchange carrier (LEC) providing basic local exchange service (BLES) shall make available to its BLES customers at no additional charge a telephone directory in any reasonable format, ~~including but not limited to a printed directory, an electronic directory accessible on the internet or available on a computer disc, or free directory assistance. The telephone directory shall include all published telephone numbers in current use within the ILEC local calling area, including numbers for an emergency such as 9-1-1, the local police, the state highway patrol, the county sheriff and fire departments, the Ohio relay service, operator service, and directory assistance.~~

To the extent the Commission believes rules are needed to clarify the listings that are to be included in directories, the phrase “the ILEC local calling area” in part (A) is not in the

definitions section of the proposed rules. CBT seeks clarification that this phrase is not intended to expand directory listing requirements beyond the current requirements. Under the current rules, CBT generally does not include listings for numbers outside its serving area in its directories, even if those numbers are local calls for some CBT customers. Rather, CBT will provide a copy of the appropriate ILEC directory, if published, to CBT customers who request a directory for local calling areas where CBT is not the ILEC. As such, “the ILEC local calling area” should be limited to and defined as local calls within the ILEC’s service area.

4901:1-6-16 Unfair or Deceptive Acts and Practices

Section 4927.06 of Substitute Senate Bill 162 contains provisions for the Commission to determine when nondisclosure does not result in an unfair or deceptive act or practice because disclosure is not practical. However, 4901:1-6-16 of the proposed rules does not address nor include this provision of the legislation. The proposed rules should limit such disclosures to those that are practicable in a given communication. Most of the information listed in (B)(1)(a) is not practical to disclose in all forms of written and verbal customer communications including, but not limited to, television, radio, print, billboard, and banner advertisements. Requiring this information in all such communications not only goes beyond the current regulations, but it goes beyond the requirements of Section 4927.06 (A) of Substitute Senate Bill 162.² Further, requiring the information identified in (B)(1)(b) to be in close proximity to the operative words in *verbal* solicitations or offers (e.g., radio or television advertising) goes beyond the

² Furthermore, some taxes and government mandated surcharges are outside the Commission’s jurisdiction and requiring estimates of these charges to be disclosed in “any communication” goes beyond the authority granted in Substitute Senate Bill 162.

requirements of the Consumer Sales Practices Act.³ Thus, both Part (B)(1)(a) and (b) should be modified by adding “*where practicable*” at the end of each sentence.

Furthermore, part (B) could be interpreted to apply to any services offered by a telephone company rather than being limited to telecommunications services as clearly stated in Section 4927.06(A) of Substitute Senate Bill 162. Thus, CBT recommends clarifying part (B) as follows:

A failure to comply with any of the following requirements *with respect to telecommunications services under the commission’s jurisdiction* shall constitute an unfair or deceptive act ...

Third, CBT seeks to clarify that “any reasonable format” in part (D) is not intended to allow the customer to request a format that is not readily available or that would be unduly burdensome for the carrier to produce for a single customer. For that reason, CBT recommends that “any reasonable format” be changed to “an alternative format or alternate mode” in keeping with the Federal Communications Commission’s rules related to making end-user documentation accessible.⁴

4901:16-19 Lifeline Requirements (which should read 4901:1-6-19)

Proposed rule (D) does not establish a limit on the number of times a Lifeline customer may establish payment arrangements. Under the proposed rule, a customer could repeatedly pay \$25 to establish Lifeline service, never pay for such service, and re-establish service for \$25. CBT has established an informal policy with its Lifeline support organizations that limits Lifeline payment arrangements to once per year at the same address. This policy keeps people from amassing larger amounts of debt because most customers will incur more than \$25 of

³ See O.R.C. §109:4-3-02(B).

⁴ See 47 U.S.C. § 255 and 47 C.F.R. §§ 6.1-6.23.

current charges before service is disconnected for non-payment.⁵ This policy also helps prevent potential fraud and is in keeping with the requirement to waive the service establishment charge for Lifeline not more than once per year for a customer at the same address. (Proposed part (B)(2) of this section.) CBT urges the Commission to adopt the same standard for Lifeline nonrecurring charge waivers and payment arrangements. Specifically, CBT recommends that part (D) be modified as follows:

Not more than once per customer at a single address in a twelve-month period,
the ILEC ETC ~~also~~ shall offer special payment arrangements to lifeline service customers ...

CBT is also concerned that part (S), which requires ILECs to provide “information regarding customer subscription to and disconnection of lifeline service,” could expand Lifeline data reporting requirements beyond what is reported today and beyond the scope of Substitute Senate Bill 162. Currently, CBT provides little Lifeline data beyond basic monthly enrollment statistics to Staff, and this information is generally provided as part of the information that CBT shares with organizations that support CBT’s Lifeline outreach efforts. In particular, CBT is concerned about providing Lifeline disconnection data. While the Commission has granted a waiver under the current rules to allow ILECs to sell additional features to Lifeline customers without requiring a health and/or safety certification, CBT has never availed itself of this waiver because CBT considers the accompanying data reporting requirements to be too onerous and too costly. Requiring reports that increase an ILEC’s costs clearly is not the intent of substitute Senate Bill 162. In fact, the only Lifeline data reporting requirement in the bill is addressed in

⁵ \$25 is two to two and one-half months of Lifeline charges for most CBT customers, if the customers do not have any additional services.

the first sentence of part (S).⁶ Thus, the second sentence of part (S) is beyond the scope of the bill and the current reporting requirements and should be deleted.

4901:1-6-20 Discounts for Persons with Communications Disabilities

CBT believes this section should be deleted in its entirety because these proposed rules are either beyond the authority granted to the Commission under Substitute Senate Bill 162 or are inappropriate in a competitive market. Substitute Senate Bill 162 generally allows for Commission regulation of BLES. While BLES includes access to directory assistance, Substitute Senate Bill 162 does not provide for Commission regulation of directory assistance pricing. Furthermore, the regulations contemplated in this section are not needed because the market provides many options for customers wanting to obtain long distance and/or directory assistance services.

People can use a variety of wireless services and internet services, as well as traditional telephone services, to place long distance calls and to obtain directory assistance information. In many cases, this competition has made the old pricing structures obsolete. Customers may purchase plans that provide “buckets” of long distance minutes for a fixed price. Wireless plans typically treat a minute as a minute and do not distinguish between local and long distance. Free directory assistance is available through internet searches. Hearing impaired customers can communicate via webcam using services such as Skype. Moreover, none of these alternatives is required to provide the discounts contemplated in this section. To the extent reasonable accommodations may be necessary, they can be addressed by the FCC pursuant to Section 255 of the Telecommunications Act of 1996 and apply equally to all providers.⁷ Unique regulation of

⁶ ILECs are required to provide the number of Lifeline customers as part of their annual reports.

⁷ See 47 U.S.C. § 255 and 47 C.F.R. §§ 6.1-6.23.

telephone companies by this Commission is unwarranted and not required by Substitute Senate Bill 162. Therefore, this section should be deleted in its entirety.

To the extent any regulations in this section are retained, they should not impose new costs on the providers of these services. As noted previously, customers have many alternatives to these services and imposing rules or costs that impact only some providers is unfair and inappropriate in a competitive market. Nonetheless, proposed rule (A)(1) arbitrarily changes the required toll discounts. This would unfairly impose costs on providers who use one of the two other discount options allowed under current rule 4901:1-6 (G). Thus, all three options in the current rule should be retained if the toll discount requirement is retained.

4901:1-6-23 Pay Telephone Access Lines

Part (A) would require pay telephone access lines to be provided “upon request.” This phrase could be interpreted to mean that service must be established on the day that the customer requests service. CBT suspects this was not the intent of this rule and recommends that “upon request” be deleted. CBT does not believe that an installation standard should be established for payphones. If the Commission intended to create such an installation standard, the time frame should be no more stringent than the five business day standard for the installation of BLES.

4901:1-6-25 Withdrawal of Telecommunications Services

Part (B) does not appear to contemplate that a CLEC withdrawing BLES in an exchange may continue to offer other services within the exchange and that the CLEC’s BLES customers may switch to these other services. To address this possibility, part (B)(1) should be modified as follows: “... to its customers *who do not convert to another service with the CLEC* no later than ninety days ...” Additionally, part (B)(3) should be deleted because this provision is only

relevant if the CLEC withdraws all services. Withdrawal of all services is already addressed by part (A)(2) of this section, so (B)(3) is duplicative and should be deleted.

4901:1-6-33 Excess Construction Charges Applicable to Certain Line Extensions for the Furnishing of Local Exchange Telephone Service

The one-half mile standard for excess construction costs in part (B) is an arbitrary standard and is not in response to any demonstrated problem or issue. CBT has long had a 1000 foot standard in its tariffs. CBT is not aware of any cases where this standard was an issue or that supported increasing the distance limitation to one-half mile. Regardless, whether construction costs may be considered excessive depends on more than distance. For example, the terrain, the type of construction, the number of customers to be served, and the specific materials required all impact the construction costs. In other words, the excessiveness of construction costs must be examined on an individual case basis. Given that excess construction charges must be tariffed per part (C) of this section, the tariff can address the various factors impacting costs. Arbitrary distance standards are not needed within the rules. CBT, therefore, recommends changing part (B) as follows:

... the ILEC may require the applicant to pay excess construction charges ~~in excess of the cost of one half mile of standard pole line in place~~ in accordance with its tariff. A credit against ...

CBT expects that the last sentence of (B) is intended to apportion any excess costs equally over the applicants for service. As such, the cost should be “divided” not “multiplied” by the number of applicants.

Conclusion

CBT believes the proposed rules generally are in keeping with Substitute Senate Bill 162 and the current telecommunications market. However, as set forth herein, CBT urges the commission to make the requested clarifications and eliminate the proposed rules that are not supported nor authorized by Substitute Senate Bill 162.

Respectfully submitted,

By: /s/ Jouett K. Brenzel
Jouett K. Brenzel (0073508)
221 E. Fourth Street, 103-1280
Cincinnati, OH 45202
(513) 397-7260

Attorney for Cincinnati Bell Telephone
Company LLC, Cincinnati Bell Extended
Territories LLC, and Cincinnati Bell Any
Distance Inc.

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Summary: Comments Cincinnati Bell comments. electronically filed by Kathleen M Campbell
on behalf of CINCINNATI BELL TELEPHONE COMPANY, LLC