

In the Matter of the Commission's )  
Investigation into Intrastate Carrier Access ) Case No. 10-2387-TP-COI  
Reform Pursuant to S.B. 162. )

Cincinnati Bell Telephone Company LLC (“CBT”) is an interested party in this case in which the Commission is investigating the intrastate access charges of carriers that do not mirror their interstate rates. The Commission has invited comment on a proposal by staff, pursuant to recently-adopted R.C. § 4927.15, that would allow carriers who are required to reduce their intrastate access charges to recover lost revenues from an Access Reform Fund (“ARF”). The proposal would require other carriers, including CBT and other ILECs that already mirror their interstate access rates, to pay a proportion of their intrastate retail telecommunications service revenues into the ARF to subsidize the access charge reductions. CBT moves the Commission to revise the procedural plan in this proceeding, to require the submission of more comprehensive data prior to comments, and to hold a hearing before implementing any proposed ARF, as explained in the accompanying Memorandum in Support.

*/s/ Douglas E. Hart*

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## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION.**

The Commission's November 3, 2010 Entry invited "all stakeholders and other interested parties" who wish to file comments on the plan to do so by December 20, 2010, followed by reply comments by January 19, 2011. CBT is a stakeholder and interested party in this proceeding, as it would be a "contributing carrier" under the proposed plan. CBT intends to file comments and participate in this proceeding.<sup>1</sup> However, CBT agrees with the Office of the Ohio Consumers' Counsel ("OCC") that comments are premature at this stage.

The OCC has moved to intervene on behalf of the residential customers of all of the Ohio carriers (those who may draw from the ARF and those who may contribute to it).<sup>2</sup> The OCC submits that comments alone are insufficient and has requested that the Commission hold a hearing prior to implementing the proposed access reform plan. The OCC has further moved the Commission to require data submissions prior to the filing of comments.

CBT supports those proposals and agrees with the OCC that the Commission should proceed cautiously here where, for the first time in Ohio, the Commission staff has proposed assessing other telephone companies to subsidize telephone companies that are required to reduce their intrastate access charges. The Commission should obtain far more data and information and hold a hearing before such a plan is implemented.

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<sup>1</sup> CBT's affiliates, Cincinnati Bell Wireless, LLC, Cincinnati Bell Extended Territories LLC and Cincinnati Bell Any Distance Inc. are also interested parties who would be required to contribute to the ARF as proposed and will participate in this proceeding.

<sup>2</sup> Motion to Intervene and Motion for Hearing and Other Procedural Orders by the Office of the Ohio Consumers' Counsel, filed Nov. 9, 2010. CBT supports the OCC's Motion. Because the Commission's procedural rules provide for memoranda in opposition to pending motions, but arguably do not authorize memoranda in support of other parties' motions, CBT is filing this independent motion for similar relief to that requested by the OCC.

## **II. THE COMMISSION SHOULD HOLD A HEARING.**

The Commission clearly has the authority to order a hearing in Commission investigations such as this. Indeed, as noted by the OCC, a hearing was held in the original implementation of intrastate access charges.<sup>3</sup> To decide a complaint that access charges are excessive,<sup>4</sup> the Commission would have to hold a hearing.<sup>5</sup> There should be a hearing in this matter before ordering access charge reductions, implementing the proposed plan, or assessing the revenue of other carriers to make up a revenue shortfall.

On previous occasions when the Commission has ordered access charge reductions, it did not specifically replace the lost revenue. While the Commission has allowed carriers to recoup revenues from access charges through other services, never before have other local carriers been assessed for the benefit of carriers who reduce their access charges. Now, pursuant to R.C. § 4927.15(B), Commission staff has proposed the ARF, a revenue replacement mechanism that would supply funding to all eligible carriers that have had their intrastate access charges reduced.

CBT believes that “eligible carriers” should first rebalance their own rates to raise additional revenue from other services before seeking external relief from other Ohio carriers. The plan proposed by Commission staff says nothing about that topic and seems to suggest that the first dollar or revenue replacement would come from the ARF. To the contrary, R.C. § 4927.15(B) anticipates that there will be rate increases necessary to satisfy the “revenue neutral” requirement and permits those rate increases notwithstanding the limits on rate increases in R.C. § 4927.12 that would otherwise apply.

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<sup>3</sup> See *MCI Telecommunications Corp. v. Pub. Util. Comm’n*, 38 Ohio St.3d 266, 269 (1988).

<sup>4</sup> Such as Case No. 07-1100-TP-CSS, the complaint case which appears to have precipitated this proceeding.

<sup>5</sup> R.C. § 4927.21.

In this case, a number of issues should be reviewed at a hearing before implementation of the proposed ARF including, but are not limited to the following:

1. Whether (and how much) the intrastate access charges of the LECs whose current access charges do not mirror their interstate rates should be reduced?
2. What is meant by “on a revenue neutral basis” in R.C. § 4927.15(B)?
3. Should affected carriers be required to increase rates for their other services to generate additional revenues before seeking recoupment from an ARF funded by other carriers and their customers?<sup>6</sup>
4. What must an eligible carrier demonstrate in terms of the inability to raise revenue internally before being permitted to draw from the ARF?
5. If an ARF is implemented, should the Commission include interconnected VoIP carriers as direct contributors based on their retail revenues, rather than seeking contributions from their wholesale partners?
6. What will be the competitive impact on carriers that are required to contribute to the ARF?

To investigate these topics in this proceeding will require more information than would be gathered by the data requests contained in Exhibit B to the November 3, 2010 Entry.

### **III. THE COMMISSION SHOULD REQUIRE THE SUBMISSION OF DATA FROM ALL AFFECTED PARTIES BEFORE REQUIRING COMMENTS ON A PLAN OR HOLDING A HEARING.**

In its November 3, 2010 Entry, the Commission called for comments and reply comments on the Commission staff’s proposal no later than December 20, 2010 and January 19, 2011, respectively. Only after an ARF is implemented, the Commission would require all “eligible ILECs” to submit the data listed in Appendix C and “contributing carriers” to submit the data listed in Appendix D. The data requests appear designed only to calculate the amounts

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<sup>6</sup> R.C. § 4927.15(B) specifically allows increases in basic local exchange service rates in addition to the increases permitted by R.C. 4927.12 in order to achieve revenue neutrality. Other ILEC rates are not subject to price cap limitations pursuant to R.C. 4927.03(D), so revenue neutrality could be achieved internally by each LEC through rate rebalancing without implementing an ARF.

eligible carriers may withdraw from and that contributing carriers must pay into the ARF, not to determine whether an ARF is necessary or appropriate. CBT submits that the proposed procedure is backwards and that the data requests to “eligible carriers” are insufficient.

At this point, no one knows the degree to which eligible carriers will be required to reduce access charges, the amount of the revenue shortfall any carrier will need to make up, or the degree to which revenue may be generated by raising rates for other services. These important matters should be considered at a hearing prior to implementing an ARF or assessing other carriers to contribute to the ARF. CBT agrees with the OCC that the data should be gathered first and then used to determine if an ARF is appropriate and, if so, how it should be implemented and funded.

In addition to the data that would be required by Appendices C and D, the Commission should require the submission of additional data from all Ohio LECs to assist in these determinations.<sup>7</sup> Specifically, the Commission should require at a minimum:

1. A list of all rates for every type of local switched service offered, including BLES and any bundles that include BLES, whether the rates are set by tariff, contract or otherwise;
2. The number of lines in service for each such category of local switched service, both business and residential;
3. The billed revenue for each such category of local switched service;
4. The amount of any interstate or intrastate SLC charged for each such category of local switched service.

CBT believes that a threshold inquiry needs to occur before the Commission implements an ARF. Namely, eligible carriers should have to demonstrate in detail what their revenue shortfalls would be through reducing intrastate access charges and to demonstrate that they have

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<sup>7</sup> To be consistent with the data responsive to Appendix C, this date should also be as of 2009.

exhausted reasonable opportunities to raise such revenues from other services. For example, if an eligible ILEC is charging a low monthly rate for local service, it would seem inappropriate for that company to automatically draw support from an ARF funded by other companies that already charge higher rates for local service. The eligible ILEC should first raise its own rates to at least the level of the contributing carriers.

While traditional rate cases have gone by the wayside with S.B. 162, nothing prevents the Commission from engaging in a similar revenue requirements-type determination for any eligible carrier who seeks to have its business subsidized by other unrelated carriers. Essentially, the carriers reducing their access charges are claiming a particular revenue requirement. In a traditional rate case, if a carrier is not generating its revenue requirement, that carrier would raise the rates on some or all of its services to generate the necessary additional revenues. A similar process should take place here. The Commission should obtain as much data as necessary to determine that an eligible carrier has exhausted internal revenue opportunities before assessing other carriers to provide that revenue. All participants in this proceeding should have access to the data (subject to a reasonable protective order as necessary) in order to independently test assertions that more revenue is necessary.

The Commission and the participating parties should have this information before a decision is made whether to adopt the plan. As presently proposed, the financial data would only be used in a formulaic manner to determine the amount that each eligible carrier may receive and the amount each contributing carrier must pay. There does not appear to be any process whereby any contributing carrier may review or challenge the data submitted by the eligible carriers or to verify that it is an accurate reflection of their company revenues and that all eligible carriers are submitting data on a consistent basis.

The time allowed by the present schedule is inadequate for this task and should be expanded. The Commission should revise the procedural schedule to call for the submission of data first, followed by a reasonable period of time for interested parties to digest the data and formulate their positions. Then, the Commission should hold a formal hearing where evidence is presented as to whether the ARF is necessary or appropriate and, if so, how it should be structured.

#### **IV. CONCLUSION.**

The Commission should hold a Hearing in this proceeding and only act on evidence. The Commission should revise the procedural schedule to be followed and require all Ohio carriers to file more comprehensive data regarding their intrastate service rates and revenues *before* comments are filed or a hearing is held.

Respectfully submitted,

/s/ Douglas E. Hart

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene and Motion for Hearing and Other Procedural Rulings by Cincinnati Bell Telephone Company LLC was served by electronic mail to the persons listed below, on this 12th day of November 2010.

/s/ Douglas E. Hart

Douglas E. Hart

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Summary: Motion of Cincinnati Bell Telephone Company LLC for Hearing and Other  
Procedural Changes electronically filed by Mr. Douglas E. Hart on behalf of CINCINNATI BELL  
TELEPHONE COMPANY, LLC