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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of The Application of)
Cincinnati Bell Telephone Company) Case No. 96-899 TP-ALT
for Approval of a Retail Pricing)
Plan Which May Result in Future Rate Increases)

APPLICATION FOR REHEARING
OF CINCINNATI BELL
TELEPHONE COMPANY

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SUMMARY OF REHEARING REQUESTS

Cincinnati Bell Telephone Company seeks rehearing of the Commission's Supplemental Opinion and Order, issued November 4, 1999, on the basis that the conclusions reached in the Supplemental Opinion and Order were unlawful and/or unreasonable with respect to the following issues:

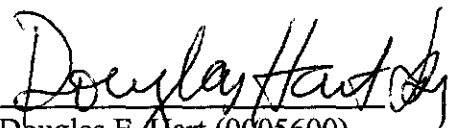
1. The cost of capital ordered by the Commission is unreasonable because it does not comply with the directive of the Commission's Local Service Guidelines ("Guidelines") and the FCC's First Report and Order to start with the authorized rate of return, because of mathematical errors contained in Mr. Chaney's underlying calculations and because of methodological errors in the cost of capital analysis that do not comply with TELRIC principles. Furthermore, to be reasonable, the cost of capital should be updated to reflect current market conditions.
2. The utilization or "fill" factors adopted by the Commission for loop distribution and loop electronics are unlawful and unreasonable because they are not supported by competent evidence and do not allow CBT to recover its costs of providing unbundled loops to competitors.
3. The Commission unreasonably rejected CBT's non-recurring rate for line connection charges by failing to allow CBT to recover the cost of the additional work necessary to provide competitors with access to local loops on which live telephone service is being provided.
4. The Commission unreasonably required CBT to conduct time and motion studies to justify the work times used in CBT's non-recurring cost studies.
5. The Commission unlawfully and unreasonably required CBT to weight its loop sample data using 80% business line characteristics and 20% residence line characteristics,

which fails to reflect the total output of loop elements as required by the Commission's Local Service Guidelines and the TELRIC methodology, and which unreasonably skews the average cost of providing unbundled loops downward.

6. The Commission unlawfully and unreasonably ignored evidence provided by CBT in support of its "miscellaneous" investment in loops.

7. The Commission unlawfully and unreasonably rejected CBT's cost study for the directory assistance ("DA") listing database and adopted inapplicable FCC proxy rates for subscriber listing information.

Respectfully submitted,


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MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

I. The Cost of Capital Adopted By The Commission Is Unreasonably Low.

The Commission rejected CBT witness Dr. Vander Weide's recommendations on cost of capital and adopted the cost of capital recommendations of Staff witness Chaney. While CBT does not agree with the Commission's rejection of Dr. Vander Weide's analysis for a number of reasons, it seeks rehearing of the cost of capital conclusions for only the following four reasons:

1) CBT should be allowed to recover at least its most recent authorized rate of return; 2) Mr. Chaney's calculations contained mathematical errors that understated the cost of capital; 3) Mr. Chaney's approach to capital structure and flotation costs does not conform to TELRIC principles; and 4) capital market conditions have changed since Mr. Chaney's analysis was performed such that it would be unreasonable to adopt his method for determining the cost of capital without updating the calculations to reflect current conditions.

A. CBT Should Be Allowed A Rate of Return of at Least 11.25%

Local Service Guideline V.B.4.b.3 states:

The TELRIC of an element shall be calculated using the forward-looking cost of capital (debt and equity), which includes a reasonable level of profit. The currently Commission-authorized rate of return shall be a starting point for the TELRIC calculation. The ILEC shall have the burden of proof, to the Commission's satisfaction, that the business risks that the ILEC faces in providing such elements would justify the proposed risk-adjusted cost of capital. The risk-adjusted cost of capital for an ILEC shall be uniform for all elements and in all locations. (Emphasis added).

While CBT's most recent alternative regulation plan (Case No. 96-899-TP-ALT) does not have an explicit rate of return, its next most recent plan (Case No. 93-432-TP-ALT) used a rate of return of 11.18%. The FCC has also endorsed use of the currently authorized rate of return at the state or federal level as a beginning point in TELRIC studies. (First Report and Order, ¶ 702).

CBT's most recent authorized rate of return is 11.25% for federal purposes.

The Commission decided that CBT had not proven that the business risks associated with providing UNEs justified adoption of the cost of capital recommendation made by Dr. Vander Weide. (Order, p. 12). However, the Commission did not find that CBT's risks of doing business had decreased in any fashion, such that the most recent authorized rate of return would no longer be appropriate. While CBT disagrees with the Commission's conclusion that CBT had not provided justification for an upward adjustment to the authorized rate of return, certainly no one introduced evidence that CBT's business risk going forward is any less than it has been in the past. It is obvious from the level of interest shown by competitors in CBT's service territory, including the installation of several competitive switches, that CBT faces the risk of losing substantial portions of its business. Even MCI witness Dr. Ankum cited the potential SBC/Ameritech entry into Cincinnati as a force that would drive up CBT's cost of capital. (Apr. 15, p. 18).¹ On November 5, 1999, Ameritech Communications Services, Inc. submitted a request to CBT to negotiate an interconnection agreement. The same day, Ameritech Communications Services, Inc. filed an application for a certificate of public convenience and necessity in CBT's service area. Case No. 99-1451-TP-ACE. Hence, CBT should be allowed at least the 11.25% federally authorized rate of return for TELRIC purposes.

The Commission adopted inconsistent sets of competitive assumptions by accepting Mr. Chaney's assumption that CBT was a monopoly provider but, with respect to fill factors, concluding that competition would result in higher than historic fills. CBT would have to use low cost inputs because of competition, and simultaneously have to use a low cost of capital because of the absence of competition. By not allowing CBT to build assumptions of competition into its TELRIC cost of capital, the Commission will cause the resulting rates to be

¹ Citations in the form of a date and page number are references to the corresponding date and page of the hearing transcript.

inherently biased downward and will not send correct economic signals to others whether they should purchase UNEs or build their own facilities. The Massachusetts Department of Public Utilities concisely stated this proposition:

We agree with Dr. Vander Weide that it would be inconsistent to use forward-looking competitive assumptions in the investment and expense components of a TELRIC study, but historical accounting-based capital structures in the cost of capital component. As in the case of the cost of equity determination, the S&P 400 offers a good proxy for the 'firm' providing competitive unbundled network elements under the conditions set forth in the Act and the Local Competition Order.²

To replicate the costs a firm would experience to enter the market, the cost of capital should reflect what the firm would experience if it were going to build a network. (Mar. 18, pp. 31-32). TELRIC theory is intended to calculate prices that would exist under competitive conditions and to mimic those results. (Mar. 22, p. 93). TELRIC presumes the existence of competition. If competition were not presumed to exist, there would be no economic justification for its use. (Mar. 1, p. 17). If TELRIC studies assume that CBT must use the most efficient network technologies and cost inputs because of competitive pressures, those same competitive assumptions must be used in determining the appropriate risks for establishing the cost of capital. If one assumes there is competition when determining inputs such as fill factors and other elements in the TELRIC cost study, but that there is no competition when estimating the cost of capital, one certainly will not replicate prices in the competitive market. (Apr. 21, p. 102).

For these reasons, CBT should have been allowed at least the 11.25% federally authorized rate of return, pursuant to the Guidelines and the First Report and Order.

² Re New England Telephone and Telegraph Company dba NYNEX, D.P.U. 96-73/74, D.P.U. 96-75, 96-80/81, D.P.U. 96-83, 96-94-Phase 4, at 26, 27 (Dec. 4, 1996).

B. Staff Witness Chaney's DCF Calculations Contained Mathematical Errors That Understated the Resulting Cost of Capital.

One component of Mr. Chaney's cost of equity analysis was a discounted cash flow ("DCF") calculation. Mr. Chaney performed DCF calculations on seven telecommunications companies, using a three-stage approach. Mr. Chaney assumed that the projected growth rate for each company would remain the same for five years, then would decline over twenty years to the growth rate of the economy, where it would remain thereafter. Schedules 3.1 through 3.7 to Staff Exhibit 8 show the results of each of these calculations. The intent of the calculation was to grow the dividend annually by the corresponding growth rate for that year.

In attempting to update Mr. Chaney's calculations with current data, CBT discovered a non-obvious, but fundamental, mistake in the original calculations. While this error appears to be unintentional, it has an adverse impact on nearly all of CBT's cost studies. In Years 6 through 24, the years where the growth rate is assumed to decline, Mr. Chaney's calculations did not use the correct growth rate to increase the dividend. While the printed figures on the exhibits show the correct growth rates according to Mr. Chaney's theory, the dividend results in the right hand column cannot be derived from these growth rates. For example, on Schedule 3.1, the Ameritech DCF calculation, applying the Year 7 growth rate of 0.0916 to the Year 6 dividend would result in 2.2829, not 2.2796 as shown on the exhibit. Dividing the Year 7 dividend by the year 6 dividend shows that a growth rate of .0900 was actually used for that year, however this is the growth rate applicable to year 8. As one moves down the page, the error increases. The year 8 dividend is calculated using the year 10 growth rate, the year 9 dividend is based on the year 12 growth rate, the year 10 dividend is based on the year 14 growth rate, etc. Mr. Chaney appears to have used a formula that decreases the growth rate twice as fast as it should. For years 16 through 24, the growth rate used to calculate the dividends is actually lower than the long-term

growth rate of the economy. Naturally, there is a compounding effect from this error as it is continued from year to year. Even though the correct growth rates are shown on the schedules, there must be a mistake in Mr. Chaney's formula that causes it not to use the correct growth rates to calculate the dividends.

CBT has reworked the DCF calculations using the correct growth rates. The result of each calculation increases the DCF result for each company as follows: Ameritech from 9.40% to 9.92%; Alltel from 10.32% to 11.69%; Bell Atlantic from 10.17% to 10.62%; BellSouth from 9.09% to 9.85%; GTE from 10.91% to 11.90%; SBC from 9.33% to 10.14%; and U S West from 10.68% to 10.79%. This, in turn, raises the average cost of equity calculated on Schedule 3 from 11.22% to 11.58%, changing Mr. Chaney's range of plus or minus 50 basis points to 11.08% to 12.08%. Applying his 1.01404 issuance cost adjustment yields a range of 11.23% to 12.25%. When blended with the cost of debt, the resulting overall cost of capital range increases from a range of 9.22% to 9.81% to a range of 9.47% to 10.06%. Finally, the mid-point of this range increases from 9.56%, as ordered by the Commission, to 9.77%. Thus, without any changes in methodology or data, CBT's allowable cost of capital for TELRIC studies should be increased automatically to 9.77% to reflect this calculation error.

C. Staff Witness Chaney Used Cost of Capital Assumptions That Are Inconsistent With TELRIC Methodology.

The Commission was not limited to choosing one of the three recommended costs of capital. The Commission could have determined an appropriate methodology for determining the cost of capital and instructed CBT to follow that methodology to calculate a new cost of capital, using current data. This approach would result in a much more accurate cost of capital. Even if the Commission found Mr. Chaney's approach more reasonable than Dr. Vander Weide's, there were several areas where Mr. Chaney's analysis was not correct. The

Commission should not have accepted a cost of capital that incorporated these errors at the expense of determining a more accurate cost of capital. The Commission should have determined that certain aspects of Mr. Chaney's analysis were unreasonable, and specified the methodology that should be used to determine the cost of capital. CBT could then run new calculations based on that methodology using the most recently available data to determine the cost of capital as close in time to the study period as possible.

1. Weighted Average Cost of Capital

The weighted average cost of capital is a weighted average of the market cost of debt and market cost of equity. To determine the weighted average cost of capital a debt/equity capital structure must be established. The Commission noted that it has used a book capital structure in traditional rate cases to determine the weighted average cost of capital, pursuant to the requirements of R.C. § 4909.15. However, the Commission also acknowledged that the TELRIC objective is to establish a forward-looking cost of capital. Nevertheless, it found that the Staff's book capital structure should be adopted for purposes of determining the cost of capital. It did this without addressing any of CBT's economic arguments why an embedded book capital structure is inappropriate in TELRIC.

A market value capital structure is appropriate because the forward-looking economic cost is based on market values. (Mar. 1, p. 102; CBT Exh. 1, p. 11). Investors measure the risk and return on their investment portfolios using market value weights because market value weights are the best measure of the amounts the investors currently have invested. From the investor's point of view, the historical cost or book value of an investment is irrelevant to the current risk and return.

Dr. Vander Weide testified that a forward-looking capital structure for CBT would consist of 22.45% debt and 77.55% equity on a market value basis. (CBT Exh. 1). Dr. Vander Weide determined that this structure was very similar to the five-year average market-based capital structure of the Regional Bell Holding Companies and GTE ending in 1997 of 22.77% debt and 77.23%. While MCI/AT&T witness John Hirshleifer advocated using an average of the book and market weights, amounting to 38.5% debt and 61.5% equity, he used market weights of 20% debt and 80% equity to determine his averages. Mr. Chaney alone used CBT's embedded book capital structure and did not attempt to determine the market weights of debt and equity. His weights were 42.24% debt and 57.76% equity, much more weighted towards debt than any of the market value measures. As a result, the weighted average was unreasonably skewed downward towards the cost of debt. The use of the book value equity weight instead of the market weight by itself caused Mr. Chaney to underestimate CBT's cost of capital by approximately 85 basis points.

The Commission should not have adopted the capital structure recommended by Mr. Chaney for purposes of determining the TELRIC cost of capital to CBT. Regardless of whether the risk of providing UNEs is commensurate with a monopoly service, TELRIC methodology requires forward-looking costs and an embedded book capital structure is not forward-looking. A market value capital structure should be employed to produce a forward-looking cost of capital. Mr. Chaney's use of an embedded capital structure produced a rate of return which understates the weighted average cost of capital and is lower than the Staff Report recommendation for establishing retail rates.

2. Flotation Costs

The Commission agreed with Mr. Chaney that it is appropriate to include an allowance for stock issuance costs in determining CBT's cost of capital. (Order, p. 15). The decision to allow issuance costs was correct, however, Mr. Chaney erred by applying issuance costs only to the common equity balance less retained earnings. TELRIC studies must be "long run" when it comes to cost of capital, just like all other aspects of cost studies. Under a long-run TELRIC analysis, all equity would be externally generated. By limiting the application of issuance costs to only the externally generated equity on CBT's historical books, Mr. Chaney diluted his estimated issuance cost of 3.5% down to 1.404%. (Mar. 26, p. 31). If Mr. Chaney's analysis is to be used, the adjustment for flotation costs should apply to all equity. The Commission should permit CBT to recalculate the cost of capital to account for flotation costs as part of the cost of all equity capital.

D. The Cost of Capital Should Be Updated With More Current Data.

One of the reasons the Commission gave for adopting Mr. Chaney's capital structure over that recommended by Mr. Hirshleifer was that Mr. Chaney's data was more current. Mr. Chaney generally used year end 1998 data as opposed to 1997 data used by Mr. Hirshleifer. Since the capital markets have changed in the last year, even Mr. Chaney's data is not current and a more current cost of capital would more accurately establish prices for a future period.

Mr. Chaney's DCF analysis relied upon stock prices, dividend rates and growth projections for other large local telephone companies. Since Mr. Chaney's calculations were done last spring, the capital markets have changed. The data Mr. Chaney used is now out of date. In addition, SBC and Ameritech have since consummated their merger and Ameritech

stock is no longer publicly traded. The Commission should allow CBT to update the calculation using the most current data available.

Mr. Chaney estimated the risk-free rate component in his CAPM analysis by taking a weighted average of the yield to maturity on 10-year and 30-year Treasury bonds over the last 13, 26, 39, and 52 weeks, obtaining an average of 5.12 percent. Interest rates increased above 6% during 1999, such that the data used by Mr. Chaney is no longer current. Finally, while CBT does not agree with the book capital structure approach, if a book capital structure is to be used, CBT's capital structure as of September 30, 1999 was 41.18% debt and 58.82% equity. This updated capital structure is more heavily weighted towards equity and would increase the weighted average cost of capital by approximately 12 basis points. Thus, if Mr. Chaney's approach must be followed, CBT should be allowed to recalculate the cost of capital using current data.

II. The Commission Adopted Fill Factors for Loop Distribution Cable and Loop Electronics That Are Unreasonably High.

CBT seeks rehearing of two of the fill factors ordered by the Commission: loop distribution cable and loop electronics. The only competent evidence of appropriate fill factors was provided by CBT's witnesses. There is no evidentiary basis for the fills established by the Commission. CBT requests that its proposed fills be adopted instead of those proposed by Staff.

The FCC's TELRIC methodology requires the use of reasonably accurate fill factors (estimates of the proportion of a facility that will be "filled" with network usage). Per-unit costs are derived "by dividing the total cost associated with an element by a reasonable projection of the actual total usage of the element" (First Report and Order, ¶ 682). Section V.B.4.b.8. of the Commission's Guidelines also state that investments shall be "... adjusted to reflect reasonably accurate 'fill factors.' Fill factors are the proportion of a facility that will be filled with network

usage.” (emphasis added).

A. CBT's Proposed Fills Are Based Upon Its Economically Efficient Design Criteria For Outside Plant.

In support of CBT's position on fill factors, CBT presented the testimony of Messrs. Mette and Meier (CBT Exhs. 4-7). Mr. Meier drew from his knowledge of CBT's engineering practices and the known fills in CBT's current network, to develop a set of forward-looking fill factors to use in cost studies. Mr. Meier explained in detail the design criteria CBT uses to design outside plant and testified that CBT does not expect to change its current design criteria going forward. (CBT Exh. 4). CBT designed its network and determined the TELRIC costs on a going-forward basis on the assumption that its engineering practices are appropriate for the future design of the network. Mr. Meier testified that CBT's approach in administering the network is the most efficient way to administer that network. (Mar. 3, p. 151). No witness found CBT's design practices to be unreasonable, nor did they identify any reasonable alternative engineering design criteria. No witness, other than Mr. Meier, claimed engineering credentials that qualified them as an expert witness on the design parameters for a network.

The Commission has never suggested in the past that CBT's fill factors were inappropriate. Staff witness Allen Francis acknowledged that CBT could use its current or actual fill factor data as a starting point to determine forward-looking fills. (Staff Exh. 4). However, Mr. Francis opined that the forward-looking capacity that CBT will utilize in a competitive environment should fall somewhere between the capacity that CBT experienced historically and maximum usable capacity. Logically, this would require that, for the forward-looking fills to be different from the existing fills, the network would have to be designed and constructed using different criteria than it is today. However, Mr. Francis did not identify or propose a different method of designing and constructing CBT's network.

Mr. Francis' conclusion that CBT's fills would be increased by competition is not supported by either the real life impact of competition or the theory behind network design. If CBT has a near monopoly, its cost studies must assume a network that is capable of serving the entire customer demand in its service area. If competitors draw customers away from CBT to other facilities, the usage of CBT's facilities would necessarily decline. Mr. Mette testified that if NECs install alternative networks to compete with CBT, CBT's facilities would have lower utilization. It is only if CBT built facilities to serve less than all demand that its usage would not decline with competition. However, no one explained how CBT could serve the entire customer base without having sufficient facilities to do so. As the carrier of last resort, CBT would continue to need spare facilities on hand to serve customers who request service or who choose to return to CBT from a NEC. Mr. Francis conceded that facilities-based NECs could cause CBT's loop utilization to decrease. (Staff Exh. 4).

The Staff's belief that fill factors should be driven closer to ultimate capacity because of competition is also contrary to the position it took with respect to the cost of capital, i.e., that CBT is not subject to significant facilities-based competition. It is inconsistent to conclude for purposes of the cost of capital that CBT is a monopoly provider not subject to competitive pressures, but for purposes of fill factors to contend that future fills would be driven upwards because of competition. If CBT were to operate its network at the excessively high fill factors proposed by Staff, its service intervals, quality and costs would be adversely affected.

B. CBT's Proposed Fill Factors Should Be Used For Distribution Cable.

CBT uses industry guidelines to plan for two pairs to serve every household in the area.³

³ This is even more conservative than the practice of BA-NJ to install "two to three" pairs per household which was approved by the New Jersey Board of Public Utilities in developing a 30% distribution cable fill factor. In the Matter of the Investigation Regarding Local Exchange Competition For Telecommunications Services, Docket No. TX95120631 (Dec. 2, 1997) at 80. The Arizona and New Mexico Commissions approved a design of 3 pairs

This efficient practice minimizes costs by allowing CBT to avoid repeated visits to supplement or rearrange facilities to provide quality customer service. For business customers, facilities are based on the number, size and types of businesses expected in the area. In each case, CBT's design provides for future growth and development in the area. CBT's design criteria provide for the ultimate number of residence and business lines expected in the area because that approach minimizes overall costs by avoiding subsequent cable reinforcement. Since the cost of reinforcing distribution cable is extremely high, the most economic design seeks to place sufficient facilities to meet ultimate customer demand. This distribution design is also needed to meet the Commission's minimum service standards.

The Staff did not provide evidence to contradict CBT's engineering design of installing sufficient distribution cable to meet the ultimate demand. CBT's approach is supported by the order of the Texas Commission cited by Mr. Francis. In that order, the Texas Commission explicitly recognized and ordered Southwestern Bell Telephone Company to conduct its TELRIC studies using this exact assumption. SBC was instructed to place its cable for the ultimate service requirements, the same criteria used by CBT.

CBT's distribution design minimizes the total overall costs of providing local service by avoiding the need to incur the significant costs of reinforcing distribution plant. This criterion is well documented as an industry standard in the AT&T Outside Plant Manual. Intervenors and Staff provided no engineering or economic justification for designing a telephone plant in any other way for the provisioning of local service. There was no evidence that the two distribution

per household. In the Matter of the Petition of American Communications Services, Inc. and American Communications Services of Pima County, Inc. for Arbitration With U S West Communications, Inc. of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, et al., Arizona Corporation Commission, Docket No. U-3021-96-448, et al. (Jan. 30, 1998) at 17; In the Matter of the Consideration of the Adoption of a Rule Concerning Costing Methodologies, New Mexico Corporation Commission, Docket No. 97-310-TC (July 15, 1998) at 19.

pairs per living unit design criteria should or would change in the future. Distribution plant must extend to every potential geographic location served by CBT, and since CBT cannot know exactly where second line demand will materialize, the two pair standard represents the best forward looking approach to deploying distribution plant. The additional cost to accommodate maximum demand is nominal compared to the cost of reinforcing and continually rearranging distribution cable. Intervenor witnesses acknowledged that it is more expensive to reinforce distribution facilities than it is to install additional capacity initially.

Since CBT's current design practices are appropriate for future expansion of the network, the fill factor that has resulted from past construction represents a good estimate of the fill factor that would result from new construction. In 1992, CBT conducted a study showing the average distribution cable fill over CBT's entire operating area. A more recent study, conducted in 1998, showed that even with a significant increase in the number of working lines, due to ongoing expansion of the network as a whole, the fill factor for distribution cables did not change. CBT's forward-looking network design is based on the same prudent engineering assumptions that have provided one of the most reliable networks in the nation, certainly within Ohio. CBT expects to use these same prudent engineering practices for the foreseeable future, so there is no reason to believe that future network usage would vary materially from the current experience.

CBT has provided a well-supported analysis of why its distribution fills is reasonable, why it is economically efficient, and how it is compatible with CBT's loop cost studies. Mr. Francis did not attempt to discredit CBT's methodology, nor did he develop a specific fill factor for distribution plant based on any design criteria or calculations. Mr. Francis simply recommended a distribution fill at the middle point of what he believes is a reasonable range. This range was developed by using results from other states out of context, with no explicit

consideration given to how the fill was measured, why that state found the fill was appropriate, or how the fill would be used in cost studies. The use of these numbers was not supported by any direct engineering testimony as to why any given figure would be appropriate for CBT. CBT, on the other hand, provided a detailed explanation of how it determined the appropriate distribution fill for its network.

Mr. Francis' proposal also reflected the average of CBT's and the intervenors' proposals for distribution fills. This "splitting the difference" approach is inherently unreasonable given the lack of support in the record for the Intervenor's proposals. Adopting the average of CBT's and Intervenor's proposals for distribution fill would reward the Intervenor's unreasonably high fill recommendations.

On the other hand, CBT's approach to distribution fill is supported by decisions in other states. The New Jersey Board of Public Utilities approved a 30% distribution fill for Bell Atlantic. Case No. TX95120631 (Dec. 2, 1997). The New Jersey Board considered what Bell Atlantic had to do to meet its regulatory obligations to fulfill service requests. The New Jersey Board determined that a 30% fill was an appropriate balance of the economic tradeoff between installing additional capacity at the outset and the cost to reinforce in the future. Id. at p. 80. CBT is subject to similar requirements under the Commission's Minimum Telephone Service Standards, which have a substantial impact on network design. In order to be in a position to turn up service on short notice, CBT must have available facilities in place. The New Jersey decision is persuasive because the explanation of how its number was determined is comparable to how CBT projected its own fills. For the same reasons, CBT's proposed fill was appropriate and should have been approved.

Mr. Francis also cited a Missouri decision using a 40% fill factor for distribution cable. In other orders cited by CoreComm for other purposes, Florida approved a fill of 42.7% for BellSouth and South Carolina approved a fill of 50%. CoreComm witness Mr. Gose also cited decisions approving distribution fills of 50% New York and 48% in Georgia. (CoreComm Exh. 2, p. 38). These decisions are all more reasonable outcomes than the Commission's decision.

The "most efficient" network design must take into consideration the public policy requirements imposed on the provider. The Commission's minimum telephone service standards ("MTSS") are part of the forward-looking competitive landscape and CBT must stand ready to meet these standards. To the extent competitors need facilities to provide timely service, they expect that CBT will provide them in the same time frame that CBT provides them to its retail customers. The Commission's MTSS require service to be provisioned upon request within very short time intervals, intervals that could not be met without having facilities in place, ready to turn up. With the advent of local competition, the Commission has extended the reach of the MTSS, by imposing indemnity obligations on ILECs who supply UNEs and resold services to competitors if those competitors are unable to meet the MTSS. Given this environment, CBT must continue to design and construct network facilities to meet this demand. It would be inappropriate and unreasonable for the Commission to hold CBT to the MTSS and its indemnity requirements, but not allow it to recover the costs necessary to make these facilities available.

C. Fill Factors Must Not Be Used Out of Context.

The Commission must be cautious when considering fill factor results from other cases. The term "fill factor" is not used consistently and could result in comparisons of numbers that either are not truly fill factors or are not expressed in the same terms. Mr. Mette testified that the term "fill factor" is used by some parties to refer to cable sizing factors. For example, proxy

models such as the HAI model, use inputs labeled as fill factors that actually act as cable sizing factors to determine the size of cable needed to serve a given quantity of demand. A cable sizing factor is not the same as a fill factor . Mr. Mette demonstrated that the HAI model calculates a set of distribution and feeder fill factors that result from that model's inputs, which are much lower than what has been reported as the "fill factor." (CBT Exh. 6, Attachment 5). For example, if the fill factor advocated by Mr. Francis was used in the HAI model as a cable sizing factor, the actual calculated distribution fill would be 37.7% to 37.89%. However, since CBT does not use the HAI model, using Mr. Francis' proposed fill in CBT's cost studies would dramatically distort the cost results downward.

Particularly in the case of distribution cable, it is important to understand how CBT's cost studies work before establishing a fill factor. Because distribution cable does not go from point to point, but connects numerous geographically diverse customer locations, the fill in a given distribution cable will be different depending upon where within the cable it is measured. CBT's fill was measured at a point 600 feet from the serving area interface ("SAI"). This measurement location was chosen to provide a better overall picture of the fill in a distribution area. Near the SAI, the fill is higher, but as customers drop off at various points, the fill decreases along the cable until one gets to the end, where the fill is very low. (Mar. 3, p. 37-38). Even though a loop "terminates" at an individual customer location, the cable pair usually does not stop there. There are a substantial amount of pair feet in the cable downstream from the customer drop that cannot be utilized, but CBT still has to recover its cost. (Mar. 3, p. 40).

CBT's loop cost studies developed unit costs on a per pair foot basis which were then applied to an "average" loop, the distance of which was measured only to the customer premise. (Mar. 18, pp. 126-131). A proper cost study must account for the cost of the copper pairs that

continue in that cable past the customer premises, but which have not been counted in the length of the "average" loop. Otherwise, the cost study will not recover the full investment. (Mar. 18, pp. 131-32; Mar. 24, pp. 141-46). A fill measured near the SAI will overstate the pair feet of cable that are actually in use between the SAI and the customer.

As an example of how different approaches to fill factor definitions affect the outcome of cost studies, assume a 100 pair distribution cable, 1000 feet in length. Under CBT's design criteria, this cable would serve approximately 50 households, which if 20% of them took second lines, would require 60 active pairs. The erroneous manner in which intervenors would calculate this fill, based on a pair count, would result in a 60% fill which would not fully recover the cost of the cable in CBT's cost studies. If customers are evenly distributed along the cable, the average length to a customer would be 500 feet, meaning that only 30,000 pair feet (60 pairs x 500 feet per pair) out of 100,000 available pair feet (100 pairs x 1000 feet per pair) would be in use, or an effective fill of 30%. Using a fill factor based on a head end pair count to recover costs in CBT's study that is based on pair feet of cable, would result in an under-recovery of the total investment. Mr. Francis' proposed distribution fill factor is unrealistically high and would not fully compensate CBT for the cost of its loops. Only CBT has provided a credible distribution fill that has a rational connection to how its cost studies are actually structured.

D. CBT's Proposed Fill Factor Should Be Used For Loop Electronics.

Staff witness Mr. Francis recommended that the fill factor for DLC electronic equipment should be the same fill factor as interoffice DS0 electronic circuit equipment. His suggestion should not be adopted. Mr. Francis did not provide any engineering basis for his recommendation on DLC electronic equipment fills. Because there is no direct relationship between DLC and interoffice equipment, it is unreasonable to assume that utilization would be

the same. Identical equipment can have different utilization rates depending upon its function. Using the same technologies in both the interoffice network and the feeder portion of the loop plant does not translate into the same fills. In fact, given the different uses and the fact that DLC equipment is not identical with interoffice equipment, it would be very surprising if they were the same. The technology does not determine the fill, the localized demand for that technology does.

The Commission acknowledged this distinction with respect to cross-connects when it approved different fills for DS1/DS3 cross-connects and DS1/DS3 interoffice facilities. The Commission specifically noted that the demand characteristics were different for the two items. (Order, p. 63). The same analysis holds true for loop electronics and interoffice electronics. The Commission should recognize the same distinction and approve CBT's proposed fills for loop electronics.

It is reasonable to expect that interoffice facilities will generate higher fills than loop plant. Even MCI witness Dr. Ankum agreed that one would expect to see a lower level of fill on the outside loop plant than on the interoffice network. (Apr. 15, p. 25) (MCI Exh. 22, p. 8). Loop facilities serve distinct geographic areas and are entirely dependent upon the demand in that localized area. On the other hand, interoffice facilities work on larger economies of scale and can aggregate large amounts of traffic more efficiently. (Mar. 24, pp. 134-36).

Mr. Meier testified regarding the placement of loop electronics where DLC is used for feeder. Prudent engineering practice for DLC electronics is to install all plug-in equipment and activate a complete 96-channel DLC system all at one time. Activating a complete system at a time reduces return visits and provides for greater flexibility for CBT's personnel meeting service on demand. Installing one card at a time would result in higher electronics fills,

however, it is inefficient to make daily field visits to install plugs at any given site. (Mar. 3, p. 14). Mr. Meier provided a forward-looking fill factor that would be reasonable based upon CBT's network configuration and his engineering experience. (CBT Exh. 4). CBT's proposed fill should be adopted.

E. CBT's Fill Factors Are Supported by the Record and Should Be Adopted By The Commission.

CBT's proposed fill factors are based on uncontradicted design criteria, an objective measurement standard, and are used in a manner that is consistent with its cost studies. These fills satisfy the TELRIC standard because they represent a reasonable estimate of the fills that CBT can expect to achieve in its network. Splitting the difference between Intervenor's unsubstantiated numbers and CBT's numbers results in artificially low rates that foreclose a reasonable opportunity for cost recovery.

III. CBT's Line Connection Charge Was Improperly Reduced.

The Commission's decision to reduce CBT's line connection charge on the basis of Mr. Francis' recommendations is not supported by the evidence and is unreasonable. CBT's proposed line connection charge included the cost of the tasks required to physically move an existing loop from CBT's network to a NEC's network. The specific steps include the assignment of a cable and line pair, the forwarding of the order to the provisioning center, coordinating the loop cut-over with the NEC, and running a jumper to connect the loop to the NEC's facilities. The Staff recommended that CBT's estimated labor time included in the line connection charge be reduced to the same estimated labor time used in the development of the new loop establishment nonrecurring charge. (Staff Exh. 4).

On rebuttal, Mr. Mette explained that the difference between the two time estimates results from the fact that the work requirements are different for the two functions. In order to

connect an existing customer's unbundled loop to a NEC's facilities, service technicians for both companies must coordinate their actions (CBT Exh. 22, at 47). For a new unbundled loop, however, no service coordination is required because there is not a live customer whose service would be interrupted. For a loop migrating from CBT to a NEC, there is live service on the loop and the top priority is to ensure that the migrating customer is not out of service for an extended period of time. This coordination activity is not necessary in the case of a new loop, so the work time included in the line connection charge for existing loops was greater than that used for new loops.

The Commission's decision on this issue is based solely on Staff witness Francis' testimony that the estimated labor time for migrating operational loops should be the same time as that for new loops. (Order, p. 27). The Commission expressed concern that the work time is greater than that required to connect new loops. The fact is that there is additional technician time required to coordinate the transfer of a working loop to a NEC. This is appropriate to protect the customer's service. CBT should be allowed to recover for this additional work effort. Mr. Mette documented the work times in his nonrecurring cost study. His testimony was not contradicted. The Commission should find that the additional work time is justified and the rate should be adjusted appropriately.

IV. Time and Motion Studies Represent An Unnecessary And Costly Regulatory Burden On The Development of Cost Studies.

The Commission agreed with the Staff's recommendation to require time and motion studies for the specific tasks involved in processing and filling UNE orders. Mr. Francis recommended that CBT be required to update its non-recurring cost studies to incorporate the results of a time and motion study and that the study be provided to the Staff for review prior to the end of its alternative regulation plan. CBT opposes such studies as being overly intrusive

and costly to perform. The process may require CBT to engage special consultants or add personnel solely for the purpose of measuring and recording activities. This is especially the case for many of the high capacity services such as DS3 and OC-n dedicated transport as these services are typically installed only during the night to minimize the chance of interrupting the customer's other services.

CBT's non-recurring work times are a matter of record in this case and no party has suggested alternative work times for any of the defined tasks. The only evidence presented in this case on the subject came from CBT. CBT's subject matter experts are experienced in their areas and have provided reasonable time estimates for completion of nonrecurring activities associated with unbundled services. CBT may have actually underestimated times because of all the complexities that occur in practice that were not reflected in the initial time estimates. (Mar. 5, pp. 14-17).

No witness has presented testimony that the provisioning times proposed by CBT were incorrect. Although very experienced in TELRIC cases, the Intervenors chose not to submit testimony on any alternative provisioning times, nor did they cite decisions in any other case or jurisdiction to refute CBT's estimates. No one provided any reason why CBT's time estimates were not reliable for determining the cost of non-recurring activities. Under similar circumstances, the Commission did not require Ameritech to perform time and motion studies. See Case No. 96-922-TP-UNC, Order on Rehearing, (Sept. 17, 1997).

Requiring CBT to perform time and motion studies is an unwarranted intrusion on CBT's business practices. Rather than concentrate on providing excellent service to its customers, whether retail or wholesale, the Commission's order would require CBT to focus on recording the time that it takes to perform various tasks. CBT believes that performing a time and motion

study would be cost prohibitive and time consuming. CBT does not have idle personnel available to conduct such studies. (CBT Exh. 22, p. 50). Nor was the cost of doing time and motion studies considered or included in CBT's TELRIC studies. The Commission should reverse its finding that time and motion studies are required and should allow CBT to use the judgment of its subject matter experts, just as it does for all other cost studies. If not, the costs of such studies should be included in the TELRIC studies.

V. 10% Miscellaneous Loop Investment

CBT developed its unit cable investments by adding up the costs of the specific components required to install the cable. This approach explicitly identified each component of cost included in the unit investments. Time and resource constraints limit the level of detail that can be reasonably included in a cost analysis. It is practically impossible to identify every single item of cost on such an itemized basis. Some costs are simply too small to identify individually or do not occur on every installation. CBT used a 10% factor to capture the miscellaneous costs that were not itemized on a unit basis. CBT's 10% assumption was derived from discussions with CBT's engineers. (CBT Exh. 6, pp. 24-25; Mar. 4, p. 69-70). There were numerous types of costs contemplated in the loading factor, such as shipping and warehousing costs, cutting custom cable lengths, unanticipated job interruptions due to emergencies or changes in the weather, easement costs, and garage time costs. Although it is difficult to itemize the amount or frequency of these costs for each job, they represent real costs and are properly included in the unit cable investments.

The Staff Report had recommended that miscellaneous conduit material costs and the markup for miscellaneous costs be removed from CBT's cost studies. Mr. Francis stated that the Staff had requested additional support from CBT for these costs but the Staff was not satisfied

with the explanation or supporting documentation provided by CBT (Staff Exh. 4, at 41). However, Mr. Mette did provide support on the record for these costs that Mr. Francis did not consider in his testimony. Mr. Mette provided specific cost calculations supporting 5.2% of the markup just for easements and warehousing costs. (CBT Exh. 6, Attachment 3, Part 1). The remainder of the 10% markup represented intangibles, including such things as bad weather allowances. Mr. Mette also performed a separate reasonableness check on the 10% loading. (CBT Exh. 6, Attachment 3, Parts 2 and 3). He compared the unit investments used in CBT's cost studies with its actual 1996 investment data. CBT Exhibit 6 showed that, with the exception of aerial fiber optic cable, the study unit investments were all less than the actual costs incurred by CBT. If the 10% loading factor was not appropriate, the cost study unit investments should be larger than the actual unit investment that CBT experienced.

Mr. Francis acknowledged that he had not even considered Mr. Mette's analysis in reaching his opinion. (Mar. 24, p. 182-83, 186-87). The Staff's brief even acknowledged that Mr. Mette had provided documentation for approximately 5% of the 10% additional miscellaneous cost mark-up in his supplemental testimony and conceded that this documentation was not considered in its analysis. (Staff Brief at p. 20). It is unclear how Staff could recommend total elimination of the 10% markup if it never even considered the supporting information. There is no indication in the Commission's decision that it considered this evidence either. The decision adopts Mr. Francis' recommendation in spite of the fact that he admittedly ignored the direct, undisputed evidence on this issue. The Commission should reconsider the information submitted by CBT and should allow the 10% loading factor to be used in developing the unit investments.

The Commission also rejected the inclusion of "miscellaneous conduit material" in CBT's loop studies. As Mr. Mette stated in his rebuttal testimony, this item represents conduit that runs above ground on a pole to an SAI and the concrete pad for the SAI. (CBT Exh. 22, p. 29). No contradictory testimony was presented on this point. If this item is excluded from CBT's cost study, CBT would be denied the opportunity to recover the cost of items that are physically necessary to build outside loop plant. Omission of these costs is unjustified and unreasonable.

Finally, the Commission concluded that CBT had not provided a sufficient explanation why miscellaneous expenses associated with transportation, garage time, and taxes would not be recovered through the maintenance and tax components of its annual charge factors ("ACFs"), or through its common cost or administrative factors. CBT did explain why these miscellaneous construction costs are not recovered in its ACFs or through its common cost factor. ACFs and common cost factors recover annual expenses, not capital investments. The costs represented by the 10% factor are not expenses. These costs are part of the investment associated with construction and are only recovered if they are included in the outside plant investment accounts. By excluding these investments from CBT's loop cost studies, CBT is denied the opportunity to recover these investments even though they are necessary to provision service.

While exclusion of these costs would undercompensate CBT for use of its loops, there is another less obvious effect on CBT's ACFs from excluding these investments. CBT developed its ACFs in part by comparing expenses to investments in different types of outside plant. All of the investments in loops, including those reflected in the 10% factor and the miscellaneous conduit costs discussed above, are contained in CBT's capital account investments. Thus, the ACFs were influenced downwards in Intervenor's favor because these capital costs were included in the denominator of the ACF calculations. However, on a forward-looking basis, if the

Commission excludes these costs from the capital investment calculations, application of the ACFs would under recover CBT's maintenance and direct administrative expenses.⁴ CBT should be allowed to include the 10% factor in its loop studies.

VI. Average Loop Costs Should Be Based On the Total Population of Business and Residence Loops

CBT's average loop costs were developed separately for each band based on a sampling of the characteristics of loops used to serve business and residence customers. CBT's cost studies originally proposed to weight loops by using 80% of the characteristics of business loops and 20% of the characteristics of residential loops. This weighting was based on an estimated demand for business and residential loops that CBT expected to provide as unbundled elements. CBT later determined that this approach was contrary to the TELRIC methodology. CBT revised its methodology to develop an average loop cost by rate band using the total universe of loops in that rate band. (CBT Exh. 7, at 37). Mr. Mette proposed this revised methodology, basing costs according to the actual quantities of each type of loop in its network, to be consistent with TELRIC and the Commission's Guidelines.

The increment that forms the basis for a TELRIC study must be the entire quantity of the network element, not just the portion of the element that competitors are expected to use.⁵ (Mar. 4, p. 10). CBT proposed to change its loop studies to weight business and residential loop characteristics according to the total quantities of each type of loop in each rate band within its network. (CBT Exh. 7, p. 37). CBT's loop cost would then be based on the total population of loops, which is completely consistent with and required by the Commission's Guidelines, § V.B.4.b.11. ("[T]he total number of units of that element that the ILEC is likely to provide to

⁴ While CBT does not agree that the 10% miscellaneous costs should be excluded, if the Commission so orders, it should also allow CBT to reduce the denominator of the calculations it used to determine its ACFs by 10%, so that the ACFs and capital accounts are projected on the same basis going forward.

requesting telecommunications carriers and the total number of units of that element that the ILEC itself is likely to use in offering its own services") (emphasis added).

No party presented any evidence why the total population of loops should not be used. In fact, the testimony was that the calculation should be done separately for each rate band using the actual loop weighting because the mix of business and residence loops is different in each band. CoreComm witness Gose used actual weights himself in his efforts to analyze CBT's loop studies. MCI witness Starkey also agreed that all loops should be considered in the loop study. (Mar. 17, p. 165).

Staff witness Francis, however, inexplicably would only agree to use actual loop populations if the West 7th central office became a separate rate band. If the Commission adopted CBT's three rate band proposal, the Staff supported keeping the 80/20 mix of business to residential loops. There is no connection between the number of rate bands and whether the correct weighting of loop characteristics should be used. Regardless of how many bands are defined or where they are, a correct application of TELRIC methodology includes all loops. Mr. Francis testified that CBT's three rate band proposal was compliant with the rules and would be a reasonable way to establish rates. There is no lawful basis for requiring CBT to use an improper method of establishing its loop costs in order for it to be allowed to use its lawfully established local rate bands.

The Commission agreed with the Staff's recommendation with respect to weighting of business and residential loops, apparently based solely on the fact that changing the original weighting to reflect the actual loop population would increase the loop cost. (Order, p. 32). This results-driven decision is inappropriate in a TELRIC proceeding. There are numerous parameters in CBT's cost studies that will have to be changed in order to implement the

⁵ The "TE" in "TRILIC" stands for "Total Element."

Commission's decision, almost all of which will cause downward pressure on the ultimate rates. The fact that a change in one parameter (which change is required by the Commission's own rules) would cause an increase in rates is not a valid reason to use incorrect weights.

The Commission acknowledged that the original 80/20 mix proposed by CBT was based on a demand forecast of only those loops that might be unbundled to competitors, but erroneously concluded that this is consistent with TELRIC methodology. The Guidelines require the inclusion of both the loops that will be unbundled and the loops CBT will use to serve its own customers. TELRIC stands for "total element long run incremental cost." A study does not consider the "total element" if it does not count all loops, both those that will be unbundled for competitors and those that will be used for retail local service.

VII. Directory Assistance Database

CBT presented a cost study to calculate its costs to provide its directory assistance database to NECs. (CBT Exh. 7, Attachment 2). Mr. Mette described how he conducted the directory assistance listing study. (CBT Exh. 7, p. 12). The projected costs and demand data were developed by CBT's Operator and Directory Services group, the organization that maintains the database. Because the group that maintains the database also has responsibility for functions associated with publishing the white pages, CBT removed closing costs, which are costs associated solely with its printed directories. (Mar. 5, pp. 60-64). The remaining costs of database maintenance were evenly divided as joint costs between the directory assistance database and the system used to produce listings for printed directories. (Mar. 5, p. 75). CBT added the costs of two computer tasks unique to the directory assistance database, one to convert the listings into an industry standard F20 listing format, and the other to add zip code information. (Mar. 5, p. 76). CBT projected the number of listing updates that it expects to

handle annually and the number of carriers it expects to purchase the database. This information was used to develop a rate per listing for both an initial load of the entire database and the subsequent daily updates for listings that change from day to day.

The Commission's decision recited a number of criticisms of the study by MCI witness Starkey and ultimately discarded CBT's cost study in favor of the FCC's recent proxy rates for directory publishing information. CBT did not have any opportunity to address the propriety of applying those rates in this context, as the FCC's order came out months after the conclusion of the hearing and briefing in this case.

While the Commission's order is not clear, it appears to have accepted Mr. Starkey's criticism of the allocation of expenses between directory production and DA database maintenance. (Order, p. 66). Mr. Starkey faulted Mr. Mette's allocation of the expenses remaining after removal of directory closing costs on a 50-50 basis between listing maintenance and DA updating. Mr. Starkey arbitrarily assigned only 10% of CBT's labor costs instead of Mr. Mette's more informed 50%. Mr. Starkey based his opinion on a mere review of outdated job descriptions, which provided no information on the actual time spent on various job functions. (Mar. 17, pp. 108-09, 113). Mr. Starkey apparently assumed that any task on the job descriptions that mentioned publishing should be omitted, without consideration to whether it had already been removed as part of the 34% that was directory closing costs and without regard to the amount of time devoted to the task. Mr. Starkey's approach was clearly arbitrary and results-driven and should have been given no weight. Mr. Starkey acknowledged that CBT's own supervisors had a much better understanding of how CBT employees spent their time. (Mar. 17, p. 112). Rather than discard CBT's cost study altogether, the Commission should have specified what percentage of joint database costs CBT should attribute to DA database maintenance and

what portion should be assigned to directory publishing activities.⁶

Staff witness Ms. McCarter agreed with CBT that Mr. Starkey's allocation of labor costs lacked support. She found no quantitative basis to adjust CBT's proposed labor allocation. She felt that MCI's proposal was results-oriented, as it manipulated CBT's cost study until it resulted in a rate that was closer to what MCI was willing to pay, rather than a rate that reflected CBT's real costs.

In addition, Mr. Starkey arbitrarily assumed that five carriers would be sharing the database. He presented no objective evidence that this would occur. Staff witness Ms. McCarter found CBT's cost study to be reasonable in its entirety, with the exception that she recommended that CBT's demand assumption of three carriers be increased to four. CBT still disagrees with this recommendation because, to date, it has still only received one carrier request for the database, meaning the current demand is really only two.⁷ The Commission should determine how many carriers are likely to actually request a copy of CBT's DA database. At worst, the Commission should accept Ms. McCarter's review of the cost study and increase the demand to four. Doing so would reduce the rate, but would not result in a rate as low as the FCC's proxy rate for subscriber list information. There was no evidentiary basis for the Commission to adopt that inapplicable subscriber listing proxy rate for the DA database.

Mr. Starkey also relied on rates for DA listings being charged by SBC in Texas, Bell Atlantic-NYNEX in New York and Ameritech in Ohio as examples of directory listing costs that are significantly less than the rates proposed by CBT (MCI Exh. 23, at 17). Final price results

⁶ The balance of the joint database costs not assigned to the DA database must be attributable to subscriber list information used in directory publishing and, to be recovered, those costs will have to be included by CBT in its § 222(e) cost study provided to the FCC to support CBT's rates to directory publishers.

⁷ CBT's demand forecast of three carriers included the "dipping platform" that no carrier has elected to use and which CBT intends to discontinue. Hence, this should no longer be included in the demand forecast.

from other jurisdictions have no bearing on the cost methodology employed by CBT. The purpose of this proceeding is to determine CBT's costs, not Bell Atlantic or SBC or Ameritech's. No details about how those rates were calculated were introduced into evidence or even made available to CBT. (Mar. 17, pp. 104-08). All that was known about the results from other jurisdictions was the final price. The reasonableness of CBT's cost studies cannot be determined by a comparison of other carriers' rates without knowing how the other rates were determined and the cost structure of those companies. (Order, p. 36). There was no evidence of the process those other companies used to create and maintain their databases or whether the significant size difference between CBT and those companies impacted the cost studies. MCI failed to provide any cost information from these other ILECs that could be used to determine how their prices were set so that the Commission could make a meaningful comparison to the cost structures of these companies. There was no evidence in the record of what costs went into the studies, how many listings were involved, how many carriers were sharing the database, or even the basic structure and theory of the cost studies. MCI's argument was simply a results-oriented complaint about the resulting database price, not the manner in which it was calculated. The Commission could not determine the reasons for any price differences from the limited information MCI made available.

The Commission's decision on this issue appears to be a results-oriented conclusion that a price that reflects CBT's real costs is "too high" when compared to other carriers' prices. This sort of conclusion is directly counter to the TELRIC methodology. CBT is entitled to recover its actual costs, not simply charge a price that others are willing to pay. The Commission should identify specific parameters and CBT should have the opportunity to resubmit its cost study for the DA database and not be forced to rely on a non-compensatory proxy rate.

The Commission's conclusion that CBT's small size is not a major factor in this cost disparity is purely speculative. There was no evidence regarding the other companies' costs comparable to the information contained in CBT's cost study that would have allowed the Commission to make any reasoned judgment on which costs were dependent on size and which were not. MCI's criticism of CBT's assumption of an increase in the number of employees required to provide directory services, if believed, should have been addressed by directing CBT to assume a different number of employees in a revised study, rather than simply discarding the cost study. Even if the Commission rejected these additional employee costs as unreasonable, the correct result should not be to discard the cost study in its entirety, but only to have CBT redo the study without these additional costs. Such a revised study would provide a more accurate assessment of CBT's costs than the blanket adoption of proxy rates that were never intended to apply to the DA database.

The Commission's decision is unclear, but indicates that it may have accepted Mr. Starkey's argument that DA listing "creation costs" do not qualify as incremental costs. (Order, p. 65). Mr. Starkey did not dispute that CBT incurs costs in creating a directory listing database and formatting the database for availability to requesting carriers. Staff witness Ms. McCarter recognized the validity of CBT's cost study. Ms. McCarter recognized that MCI was simply trying to avoid sharing in the cost recovery for the labor needed to create and edit the raw data. She understood that the activities included in CBT's study did not include the customer representatives who take local service orders. Directory listing activities occur after customer representatives take local service orders. Even if the directory listing activities costs are not purely "incremental" to the creation of the database in the sense that they are shared with directory production, the TELRIC methodology and the Commission's Guidelines allow for a

reasonable allocation of joint costs to elements that share the same costs. § V.B.4.c.3.i. The total cost of maintaining listing databases must be recovered from users of each of the two databases or CBT would not be able to recover its costs from anyone.

The Commission's conclusion that the costs incurred by CBT for providing listings to directory publishers should be similar to those for providing DA information to competitive carriers ignores the reasoning behind its decision to reject Mr. Mette's 50/50 allocation of joint costs. Either the costs of directory publishing listings and DA listings are similar or they are not. They cannot be both at the same time. If the Commission accepted the basis for Mr. Starkey's criticism of the joint cost allocation in CBT's cost study, the "presumptively reasonable" rates established by the FCC for directory publishing information cannot be used to establish the costs to provide DA database information. Adoption of rates that the FCC established for directory publishing listings would establish the DA database rate based on the costs that are attributable to directory publishing functions. This runs expressly counter to the criticism that led the Commission to adopt the FCC proxy rates in the first place. It is inconsistent to criticize a study as containing directory publishing costs and then to adopt a rate that itself was based on directory publishing activities.

The Commission's decision leaves CBT in jeopardy of not being able to recover all of its joint costs of providing DA database listings and subscriber listings to publishers. Even though the FCC has established proxy rates for subscriber listings sold to publishers, CBT has the opportunity to establish higher rates by presenting cost studies to the FCC. To whatever extent the FCC determines CBT is able to recover its joint database costs from publishers, the balance will need to be recovered from carriers who receive DA database listings. CBT should not have

any costs go unrecovered because the FCC and this Commission make inconsistent decisions on the allocation of joint costs.

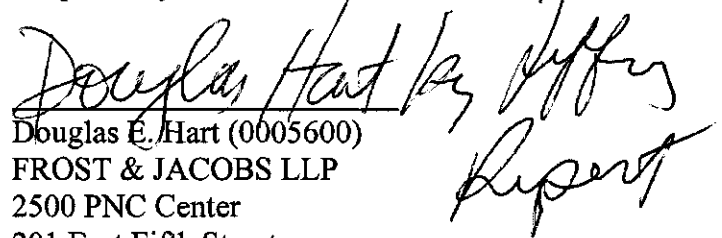
The “presumptively reasonable” rates established by the FCC for subscriber list information sold to directory publishers were not intended to apply to the DA database. The FCC established those presumptive rates for purposes of pricing subscriber list information used by directory publishers, not for DA databases used by competing carriers to provision DA services. More importantly, those rates are only presumptive; the FCC specifically allows carriers to demonstrate that their own costs are actually higher. It is not clear from the decision which, if any, aspect of CBT's cost study the Commission believes was done incorrectly. To the extent the Commission believes that CBT's cost study was not done appropriately, it should have indicated specifically how the study should be altered. To simply adopt a proxy rate, which was intended for another purpose, deprives CBT of an opportunity to recover its actual costs.

Rather than simply reject CBT's cost study outright, the Commission should identify specific errors in the study and state what parameters CBT should use. This approach would more accurately determine CBT's actual costs.

CONCLUSION

For the foregoing reasons, CBT seeks rehearing on the seven issues discussed herein. In addition, CBT requests that the Commission extend the time for CBT to submit its revised cost studies to a date three months after the issuance of the Commission's order on rehearing, so that CBT may have sufficient time to incorporate the effects of its decision on rehearing in its revised cost studies.

Respectfully submitted,


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