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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In The Matter Of The Application Of)
Cincinnati Bell Telephone Company For)
Approval Of A Retail Pricing Plan Which)
May Result In Future Rate Increases)

Case No. 96-899-TP-ALT

APPLICATION FOR REHEARING OF AT&T
COMMUNICATIONS OF OHIO, INC., CORECOMM
NEWCO, INC. AND MCImetro ACCESS
TRANSMISSION SERVICES, INC.
(PUBLIC VERSION)

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Now comes AT&T Communications of Ohio, Inc. ("AT&T"), CoreComm Newco, Inc. ("CoreComm") and MCImetro Access Transmission Services, Inc. ("MCI") [hereinafter "Joint Interveners"] and pursuant to R.C. §4903.10 hereby request that the Commission grant a rehearing of the Supplemental Opinion and Order ("Order") issued in this proceeding on November 4, 1999. Joint Interveners seek a rehearing for the following reasons:

1. The Commission erred by adopting utilization (fill) factors for copper feeder and distribution which are unsupported by the record in the case.
2. The Commission erred by not adopting consistent fill factors for feeder and SONET electronics.
3. The Commission erred by approving the loop qualification and conditioning charges proposed by Cincinnati Bell Telephone in this case. The application of such charges to NECs is anti-competitive and discriminatory. Furthermore, the level and rate structure of the proposed charges is not in compliance with TELRIC principles and FCC orders.
4. The Commission erred in finding that the rates developed by CBT for cross connects in the W. 7th central office were in compliance with TELRIC principles and with FCC orders.
5. The Commission erred by not requiring CBT to file its compliance runs within a specified period of time and by failing to establish a time frame for interested parties to participate in the development of the final rates and CBT's carrier-to-carrier tariff. The

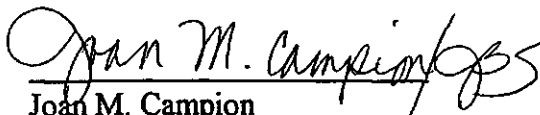
Commission also erred by not specifying that the rates for access to the DA database were effective upon issuance of the order.

A memorandum in support of this application for rehearing is attached hereto and incorporated by reference herein.

Respectfully submitted,

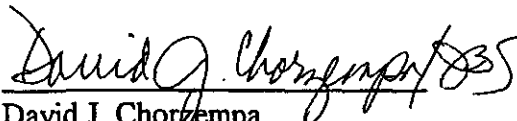


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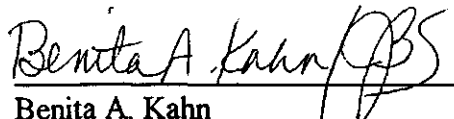


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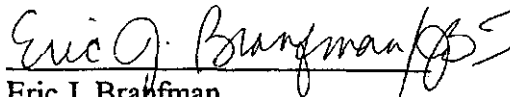
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**MEMORANDUM IN SUPPORT
APPLICATION FOR REHEARING OF AT&T
COMMUNICATIONS OF OHIO, INC., CORECOMM
NEWCO, INC. AND MCImetro ACCESS
TRANSMISSION SERVICES, INC.**

In its November 4, 1999 Order, the Commission made determinations which will dictate final TELRIC prices for unbundled network elements ("UNEs"), transport and termination and interconnection in the Cincinnati Bell Telephone ("CBT") service territory. The Joint Interveners have participated actively in this proceeding, which has lasted well over two years, and have a substantial interest in ensuring that the rates and charges they will have to pay to provide local exchange service in competition with CBT have been established in accordance with §§251 and 252 of the Telecommunications Act of 1996 (Telecom Act) and the TELRIC pricing principles adopted by the FCC and this Commission in its Local Service Guidelines. With this application for rehearing, the Joint Interveners request that the Commission grant a rehearing on certain issues which were not decided in accordance with such standards, and which will adversely impact the ultimate ability of the competitive carriers to provide service in Cincinnati. The final section of this application addresses the Commission's failure to establish a time frame within which CBT must file its compliance studies, final tariff and cost studies which were not examined as part of this proceeding, as well as the availability of rates which are not subject to the compliance runs.

I. UTILIZATION (FILL) FACTORS

A. The Staff's Fill Factor Recommendations For Copper Feeder and Distribution Are Unsupported By the Record And the Commission Should Instead Adopt a "Middle-Ground" Fill Factor For These Facilities That Has Record Support.

In its Order, the Commission addressed three recommendations made by the parties in relation to copper feeder and distribution:

(1) The Commission first rejected CBT's recommendation that copper distribution fill be placed at **%, while its copper feeder fill be set at **%. The Commission properly found that CBT's recommendation was based entirely on historical network engineering and deployment practices that "do not reflect a forward-looking approach for operating an efficient network in a competitive environment." (Order, p. 23.) The Interveners agree with the Commission and do not seek rehearing on this finding.

(2) The Commission also addressed the Joint Interveners' recommendation that copper distribution fill be placed at **%, while copper feeder be set at **%. Such recommendation was based on the Commission's holding in the Ameritech TELRIC case. Given that the cost studies under consideration are TELRIC studies which are based on a theoretical network, the Joint Interveners pointed out that fill factors should be specific to technologies, not companies. Since Ameritech and CBT serve similar areas in terms of density, the Joint Interveners believe that both companies should utilize similar fill factors. The Commission, however, chose not to utilize the Ameritech fill factors in this docket based on its hesitancy to use fill factors generated by a record in a separate case. (Order, p. 24.) Although the Joint Interveners still believe that their recommendations are appropriate and supported by the record in this case, they do not seek rehearing on this finding.

(3) Finally, the Commission adopted Staff's recommendations of a ***% fill factor for copper distribution and a *****% fill factor for copper feeder. Staff's recommendation was based on reference to (i) the mid-point of the recommendations made by the parties; and (ii) fill factors established by other state commissions. The Commission adopted Staff's recommendation based on its belief that "Staff's fill factor recommendations represent a reasonable middle ground estimation of CBT's forward-looking fill factors in an increasingly competitive environment." (Order, p. 24.) Interveners seek rehearing on this third Commission finding because of the simple reason that Staff's recommendations are unsupported by record evidence that demonstrates these fill factors are appropriate for CBT.

Indeed, the Commission chose not to rely on the Ameritech fill factors advocated by the Joint Interveners here because those fills were, in the Commission's view, a product of the specific record in the Ohio Ameritech TELRIC case. Based on this reasoning, the Commission cannot then adopt Staff's proposal, which, like the factors advocated by Joint Interveners, is based on the record of cases other than this one. Indeed, while the Joint Interveners' proposal was based upon the findings of this Commission for construction of an Ohio network, the Staff's proposal is based upon results of TELRIC cases for companies in states outside Ohio, and thus is even less probative of the costs of a most efficient network constructed in CBT territory. The Commission's result is entirely inconsistent. In addition, the fact that Staff's proposal represents the "average" of CBT's and the Joint Interveners' fill recommendations for copper feeder and distribution is simply not record evidence that those fills are appropriate in this case.

If the Commission wishes to adopt a reasonable "middle ground," Joint Interveners believe there is a middle-ground alternative that is in fact supported by the record. As described more fully below, fill factors of ***% for copper distribution and ***% for copper feeder are supported by the record. These fill factors are based on the assumption that in a least-cost, most efficient

network, when copper feeder and distribution plant are replaced, an asset should be used to its maximum usable capacity at the time of its replacement. With this assumption in mind, Joint Interveners believe that Commission could adopt, as a reasonable middle ground, the average fill factor over the life of the asset. This fill factor can be calculated by using the following record evidence (1) CBT's historic demand data and (2) CBT's engineers' view of the maximum usable capacity of copper feeder and distribution in its network. MCIm/AT&T made this alternative recommendation on the record, and in their briefs in this case,¹ but the Commission did not specifically address the point in its Order.

1. Staff's Recommendation is Unsupported By The Record

On the whole, Staff agreed with Joint Interveners that CBT had wholly failed to meet its burden of proving that its proposed fills are forward-looking. As Staff witness Mr. Francis testified, "CBT's fill factor development was based on actual embedded usage and not on the usage that CBT should expect to encounter on a forward-looking basis in a competitive environment." (Staff Ex. 4 [Francis direct], 26.)

Faced with this lack of evidence, quite understandably, Staff felt obligated to provide the Commission with alternatives that comport with the Commission's guidelines. Staff's proposals for loop fill factors were made through the testimony of Mr. Francis. In regard to distribution and copper feeder, Mr. Francis acknowledged that he "did not attempt to develop a specific fill factor assumption for distribution plant or copper feeder."(*id.*) Instead of conducting such an analysis,

¹ (MCIm/AT&T Initial Brief, pp. 69-70; (MCIm Ex. 18, [Ankum direct], 39-48.).

Mr. Francis provided ranges of ***% to ***% for distribution fills and ***% to ***% for copper feeder fills. (*id.*) Mr. Francis generated these ranges by reference to (i) the mid-point of the recommendations made by the parties; and (ii) fill factors established by other state commissions.

Staff's reliance on these sources to establish CBT's forward-looking fills do not amount to the type of record evidence that can support a forward-looking fill factor. First, the fact that Staff's proposal may or may not reflect the "average" of CBT's and other parties' proposals for distribution fill is certainly not evidence that the average represents a forward-looking fill for CBT. Adoption by the Commission of such a methodology for calculating fill factors would reward CBT for recommending outlandishly low fill factors, and correspondingly, would encourage interveners to advocate outlandishly high fill factors.

Second, Staff's reliance on other state's fill factors is also misplaced. Indeed, MICm/AT&T relied upon the findings made by this very Commission in the Ameritech TELRIC case, but the Commission declined to accept that recommendation. The Commission found instead that its decision in that case was based on the specific record in that case, despite the fact that MCIm/AT&T provided testimony supporting the use of those fill factors for CBT. It is inconsistent for the Commission on one hand to reject this proposal, while on the other hand accepting Staff's proposal, which is based on cost records of cost procedures conducted by other states.

Notably, Staff did not even conduct any analysis of whether those states applied the TELRIC methodology in approving those fill factors. Nor did Staff provide testimony explaining why those decisions in other states are applicable to CBT. In fact, when setting TELRIC rates during the period that the FCC rules had been stayed, many states refused to apply TELRIC cost

principles.² In addition, some state failed to properly apply the FCC TELRIC methodology even before the Eighth Circuit stay. Thus, it is improper for this Commission to rely on fill factors from other states without first determining that those states properly applied TELRIC.

2. The Commission Should Adopt the Middle-Ground Alternative Proposal Recommended By Joint Interveners

Joint Interveners certainly share Staff's frustration when faced with CBT's total failure to provide a study of its forward-looking loop fill factors. However, CBT should not be rewarded for this failure by the adoption of fill factors that represent the "average" between CBT's unreasonable position and the reasonable fills proposed by AT&T and MCIIm – fills that have actually been approved by this Commission. Yet that is exactly the result that Staff's proposal would yield. Instead of adopting Staff's unsupported proposal, the Commission should adopt the proposal recommended below, which is grounded in this specific record.

In their briefs and testimony in this case, MCIIm/AT&T provided an alternative fill factor proposal that the Commission did not address in its order.³ That proposal is based on the

² For example, the New Jersey Commission did not specifically apply the TELRIC methodology in setting its distribution fill Case No. TD5120631 December 2, 1997.

³ By providing this alternative proposal, MCIIm/AT&T do not necessarily support the use of demand data in setting fill factors. MCIIm/AT&T's proposal herein in regard to fills is only intended as an alternative reasonable middle-ground, which the Commission appears to be searching for. MCIIm/AT&T believe that maximum usable capacity, as adopted in the Ameritech TELRIC case, is the only appropriate forward-looking fill factors. CBT's entire cost study is based on the assumption that demand is static. For example, CBT's transport and switching studies are based on minutes of use data that reflect current demand, yet CBT did not do any projection of its network usage five years from now. (Tr. XVI, 90-91.) CBT admits it conducted no analysis whether the demand for its network would increase over the five-year study period. Indeed, all of CBT's underlying "costs" are based on its current demand. Consequently, in every other way except for fill, CBT's proposed "costs" are based on demand data that is entirely static. For the sake of consistency, therefore, it makes perfect sense for CBT to utilize maximum usable capacity in regard to fills. Otherwise, NECs would be forced to pay for costs that are based on static demand (e.g. static minutes of use that affect switching and transport costs), while at the same time being forced to pay for spare capacity based on future demand that will never materialize within the life of a five-year study period. (Tr. XVI, 91-92). Put simply, CBT should not be allowed to compute its costs based on current demand, and then divide those per-unit costs by a fill factor that accounts for future demand.

assumption that over the life of a particular loop, the least-cost most efficient manner to utilize that loop is to have the loop functioning at maximum usable capacity when it is replaced.

Importantly, CBT cost witness Mr. Mette admitted that over time fill rates will trend toward maximum usable capacity. (CBT Ex. 7[Mette supplemental September 28, 1998], 19-20.) Thus, for determining the fill factors of future elements, Mr. Mette proposed a formula that accounted for the fact that over the life an asset the fill will grow toward maximum usable capacity. (*id.*) Therefore, for future elements, Mr. Mette generally proposed using an average of the fill of that asset over its life. Thus, it is certainly reasonable to assume that over the life of a particular loop, the least-cost most efficient manner to utilize that loop is to have the loop functioning at maximum usable capacity by the end of its economic life. (MCIm Ex. 18, [Ankum direct], 39-48.).

Based on this assumption, middle-ground fill factors for copper loop and distribution can be arrived at by reliance on record evidence provided in this case. CBT indicated that in the past it had seen a ***% annual growth rate. In addition, CBT indicated that the maximum usable capacity for copper distribution is ***%, while the maximum usable capacity for copper feeder is somewhere above ***%. (Tr. Vol. II, 144; AT&T Ex. 10 [Webber direct], 12.) Putting these facts together, the following conclusions can be made:

- Assuming a 24 year life for copper distribution, as recommended by AT&T, MCIm and Staff, and a ***% growth rate per year, the record indicated that CBT would need to place its copper distribution at an initial fill of ***% in year one for that fill to grow to ***% over the life of the 24-year asset, the maximum usable capacity of that asset. (Tr. Vol. V, 120.) Thus, the average fill of that asset over its life would be ***%.

Although CBT witness Mr. Mette did not agree with the appropriateness of this calculation, he confirmed that, based on these assumptions, the average fill rate of copper distribution would be ***%. (*Id.*) And the initial fill of distribution cable of ***% would actually be consistent with CBT's assumption to place two copper pairs for every living unit. This average fill is conservative since it would be reasonable to have the distribution cable reach its maximum usable capacity a few years before the end of its economic life. (MCIm Ex. 18, [Ankum direct], 39-48.).

- Since CBT plans reinforcement of its copper feeder, on average, every *** years (Tr. Vol. II, 150), assuming a ***% growth rate per year, CBT would need to place its copper feeder at an initial fill of ***%-***% in year one for that fill to grow to ***%-***% over the six-year period, the maximum usable capacity of that asset. Thus, the average fill of that asset over the six years would be ***-***%, with a midpoint of ***%. Again, this fill rate would be conservative since it is would be reasonable to have that feeder cable reach its maximum usable capacity a year or two before it is reinforced.

MCIm witness Dr. Ankum also supported this alternative. Dr. Ankum performed an analysis similar to that described above, and his results not only support the use of these fill factors, but show their bias toward conservatism. Dr. Ankum's analysis showed that the average fill over the economic life of a copper feeder cable is ***%. (MCIm Ex. 18 [Ankum direct], 47-48.) Specifically, Dr. Ankum conservatively estimated that the initial fill of distribution cable is ***% (this again would actually be consistent with CBT's 2 for 1 assumption) and would grow to ***% six years after placement. Assuming that the copper cable fill remains constant at ***% for the life of the asset, Dr. Ankum calculated that the average fill over the economic life of the asset would be ***% -- the exact fill factor approved in the Ameritech TELRIC case for copper

distribution. Dr. Ankum's calculations support the analysis recommended by Interveners and the fact that his analysis resulted in higher fills demonstrates the conservative bias of Interveners' recommendation

In fact, the FCC has endorsed the use of similar fill factors for companies serving density areas similar to CBT. In its NPRM issued May 28, 1999, in its Universal Service Docket,⁴ the FCC established a proposed set of fill factors to be used in forward-looking studies intended to determine universal service support for non-rural LECs like CBT. In doing so, the FCC recommended the following fill factors for companies serving different population densities:

FCC Fill Recommendations

<u>Lines/square mile</u>	<u>Feeder</u>	<u>Distribution</u>
0	77%	50%
5	77.5%	55%
100	80%	55%
200	82.5%	60%
650	82.5%	70%
850	82.5%	75%
2550	82.5%	75%
5000	82.5%	75%
10000	82.5%	75%

The FCC's data also indicated that CBT's serving area falls into the 850 and 2550 density areas, which would yield fill factors of ***% for feeder and ***% for distribution. Interveners' middle-ground recommendation of ***% for feeder and ***% for distribution is almost identical to the

⁴ *In the Matter of Federal-State Joint Board On Universal Service, Forward Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket No. 96-45, 97-160 (Rel. May 28, 1999).

FCC's recommendation and is further evidence that this recommendation is reasonable.

In conclusion, if the Commission is seeking to establish a reasonable set of middle-ground fill factors for copper distribution and feeder, it must do so based on the record in this case. Joint Interveners' alternative proposal is a middle-ground proposal that is supported by the record and is appropriate for CBT. Therefore, Joint Interveners urge the Commission to grant rehearing and adopt fill rates of ***% for copper distribution and ***% for copper feeder, as proposed herein.

B. The Commission Should Utilize Consistent Fill Factors For Feeder and SONET Electronic Equipment

In its Order, the Commission also accepted Staff's recommendations regarding fills for DLC equipment and for SONET equipment. Staff witness Nadia Soliman recommended that the fill factors for the interoffice (I/O) transport facilities and equipment should be ***% for DS-0 facilities, ***% for DS-1 facilities and ***% for DS-3 facilities and equipment. However, for all SONET equipment (OC-n rings), Ms. Soliman recommended that the Commission adopt the ***% fill factor used by CBT because SONET technology is relatively "new" (Staff Ex. 3 [Soliman direct], 25-26).

In addition to the inappropriately low level of these fills, however, in his rebuttal testimony Dr. Ankum noted that the same technologies are used both in the I/O network and in the feeder portion of the loop plant; for example, the DLC system used in the feeder portion of the loop is OC-3 SONET technology (MCImm Ex. 22[Ankum rebuttal], 8). However, the Staff fill factor recommendation for loop electronics is ***% (Staff Ex. 4 [Francis direct], 25).⁵ Dr. Ankum

⁵ Mr. Francis stated: "For loop electronic investments I recommend using the same fill factor that will be applied to the interoffice electronic circuit equipment at the DS-0 level..." (Staff Ex. 4 [Francis direct], 25). On cross-examination, he agreed that SONET technology is used in the feeder portion of the loop (Tr.XIV, 44-45).

testified that one would expect to see a higher level of fill on the I/O network than on the outside plant, rather than the lower level recommended by the Staff (Ankum rebuttal, 8). This conclusion is supported by the testimony of CBT witness Meier, who testified that in the case of outside plant, there are certain circumstances under which DLC equipment cannot be utilized to full capacity (*id.*; Tr. Vol. III, 10). Thus, the fills for SONET equipment used in the I/O network should be at least as high as the fills in the loop plant.

Furthermore, the fact that SONET technology is "new" to CBT's network is irrelevant in a TELRIC proceeding, as Ms. Soliman admitted during cross-examination (Tr. Vol. XII, 57-58). Dr. Ankum explained that in the long run, as required under the TELRIC methodology, fill factors on SONET technologies would have a substantially higher fill than the ***% corresponding to a short run or intermediate run for new technologies (Ankum rebuttal, 11). Thus, while MCI/AT&T initially advocated a fill factor of ***% for all electronic equipment, consistent with the Ameritech TELRIC decision, at a minimum the fill factor for SONET equipment on the I/O network should be the ***% recommended by Mr. Francis for the feeder plant. The Commission should revise its order accordingly.

II. LOOP QUALIFICATION AND CONDITIONING CHARGES

At pages 28-29 of the Order the Commission approved CBT's proposed loop qualification charges and loop conditioning charges. The Commission correctly explained the difference between the two charges: the loop qualification charge was proposed as a non-recurring charge to recover the costs allegedly incurred by CBT to determine whether a particular

customer; and the conditioning charge was then the cost allegedly incurred by CBT to actually condition the loop, including the removal of load coils and bridge taps. However, the Commission erred in approving such charges for the reasons set forth below, and for these reasons the Commission should grant a rehearing on both issues.

When looking at the entire issue of loop qualification and conditioning charges, it is important to remember that the provision of xDSL services, especially ADSL which permits both voice and data to be transmitted over the same line at the same time, is an important consumer benefit which is being made possible by continuous improvements in telecommunications technology and which will eventually be made available to all consumers at reasonable and affordable prices through competition. Many NECs, including the Joint Interveners, are looking forward to a time when all carriers will be able to offer ADSL to customers, including residential customers, in competition with CBT's ADSL offering, "Zoomtown" (see Case No. 98-1456-TP-ATA). In order to facilitate and encourage the provision of digital services not only by ILECs but by NECs as well, the Commission must be very careful to make decisions which will not create a barrier to entry into this market by the NECs. Unfortunately, a barrier to entry will result from the Commission's decision in this case.

A. **The Commission erred in both determining that CBT should be permitted to recover loop qualification charges and by not evaluating an the appropriate level of such charges.**

Before discussing either of these charges, it must be noted that the TELRIC loop cost study performed by CBT is based on the assumption that loop conditioning will not be required because the forward-looking network would not be designed to require load coils, bridge

taps and other impediments to the provision of digital services. This important assumption was admitted by CBT witness Norbert Mette both during his deposition and in his September 28, 1998 Supplemental Direct testimony (pages 25-27), and was discussed in detail by MCIIm witness Michael Starkey (Starkey Direct, 56-59; Starkey Supplemental, 47-49). Because loop conditioning would not be required in the forward-looking network, the TELRIC-based recurring loop charges which the NECs will pay contain the costs of an advanced network which will support the provision of xDSL without special conditioning. From a TELRIC viewpoint, any "qualification" and "conditioning" charges which would be incurred by CBT on a short-run basis has already been included in the monthly recurring charge for the loop. This concept was discussed in detail in the MCIIm/AT&T initial brief at pages 95-99, yet the Commission failed to even consider this inconsistency between the TELRIC loop study and the proposed qualification and conditioning charges, let alone reconcile it.

Indeed, although the Staff expressed its concerns with the qualification charge and recommended that it not be approved (Francis Direct, 18), the Commission overlooked all of the record support for the rejection of such a charge and focused on CBT's argument that an inventory system of its loops currently does not exist, and it would be expensive to create one (Order, 29). There are several problems with this argument, all of which the Commission failed to consider. To begin with, the record revealed that some of the pre-screening loop information necessary for CBT to make a determination as to whether conditioning would be required has already been developed into a database and is available to CBT's retail service representatives (Tr. XVI, 73). Obviously CBT must be able to determine the make-up of its loops to provide ADSL to its own customers, so there simply can be no doubt that CBT will continue to upgrade its data

collection so that a database of information will be available for its own retail use. While it may be true that at this point in time CBT does not have an inventory system, the Commission must remember that the provision of xDSL is rapidly advancing and the industry trend is to facilitate the roll-out of such services. The development of the inventory system is something that CBT will eventually do, because such a system will be necessary for the provision of its own retail xDSL services. The Commission must not focus on a snapshot in time wherein the system has not yet been created, and permit CBT to assess qualification charges to NECs into the indefinite future, while at the same time developing its own system for determining loop make-up which is not recovered directly from its retail customers (see Tr. V., 45-53).

Further, because both the Staff and the Joint Interveners recommended that the qualification charge be eliminated entirely, the appropriate level of the proposed qualification charges was never addressed and CBT has completely failed to meet its burden of proving that such charges are reasonable. If the Commission concludes that qualification charges are necessary as a non-recurring item, a concept with which the Joint Interveners strenuously object, then at the very least the charges must be subject to the same adjustments recommended for all non-recurring charges. Furthermore, specifically with respect to qualification charges, the labor time estimates should be evaluated and revised because once the make-up of a particular loop has been determined and recorded, there will be no labor time at all involved in locating that information the next time an inquiry is made about the same loop. A time and motion study certainly will not be necessary to reach that conclusion. On rehearing the Commission should either substantially reduce the labor time estimates used by CBT to develop its qualification charges, or roll the qualification charge into the monthly recurring charge so that these costs are

evenly recovered from all carriers providing service over the same loop.

B. The Loop Conditioning Charges Proposed by CBT Are Not in Compliance with TELRIC Principles.

As discussed above, there is no question that the loop cost studies conducted by CBT are based on a forward-looking network which would not include load coils and repeaters. Thus, the costs of removing such items are already included in the loop cost studies and the Commission erred in approving CBT's conditioning charges.

In the order at pages 28-29, the Commission relied on the FCC statement at ¶ 382 of the *First Report and Order* that ILECs are required to provide loop conditioning at the request of the NECs, and that the requesting NEC should bear the cost of such conditioning. MCI/ATT&T's arguments that a TELRIC study does assess the NECs this cost of conditioning is not inconsistent with the FCC holding. However, rather than reargue that position on rehearing, the Joint Interveners submit that the FCC's *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, released November 5, 1999 ("Third Report and Order") makes it clear that any conditioning charges which are recovered must be in accordance with forward-looking TELRIC principles. Furthermore, while the FCC maintained its earlier position that the ILECs may recover conditioning charges from requesting NECs, the fact that such charges can be a barrier to entry was also noted:

We recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LECs, and that these costs may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits. We defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules for nonrecurring costs [footnote 369]

(Third Report and Order, Par. 194)

It is significant that, at footnote 369, the FCC referred to 47. C.F.R. §51.507(e), which states:

State commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.

Thus, subsequent to the issuance of the Order in this proceeding, the FCC has clarified its earlier position on conditioning charges and has emphasized that conditioning charges must be based on forward-looking economic cost principles. What is particularly important is that FCC has deferred to the states the duty of assuring that such charges are efficiently allocated among requesting carriers, including the recovery of such charges as part of the monthly recurring charges.⁶

It simply was not sufficient for the Commission to simply cite the FCC's *First Report and Order* and then approve CBT's proposed conditioning charges without further analysis and record support. In light of the FCC's Third Report and Order, the Commission must grant rehearing to both conduct an analysis of the reasonableness of the conditioning charges in order to ascertain that they are in compliance with forward-looking economic principles, and to order CBT to recover such charges as part of the monthly recurring charges. As discussed below, this is the only efficient means by which to allocate such charges among the requesting carriers.

⁶ MCI/AT&T made the recommendation that any conditioning charges be recovered through the monthly recurring charges in its initial brief at pages 99-100.

C. **The Commission's Approval of Loop Qualification and Conditioning Charges Unfairly Discriminates both among NECs and Against NECs in Favor of CBT.**

The Joint Intervenors have a fundamental concern with CBT's recovery of qualification and conditioning charges as approved by the Commission in its Order. Certain loops must be conditioned for the provision of advanced services such as ADSL regardless of the carrier providing the service. If a NEC orders a loop for the provision of an xDSL service, CBT will charge that carrier hundreds of dollars in qualification and conditioning charges. If the NEC's customer then leaves the NEC system and returns to CBT for the same xDSL service, CBT receives the benefit of a loop which has already been conditioned and the costs of conditioning, which CBT would have had to bear to provide service to that customer if the NEC had not made the request in the first place. In that situation, CBT has a windfall.

Similarly, the assessment of qualification and conditioning charges as approved by the Commission can create a windfall for NECs as well. If MCIm first places the order for the loop, MCIm will bear the burden of paying the qualification and conditioning charges. If the customer then switches to CoreComm for the same service, CoreComm realizes a windfall because service can be provided to the customer without incurring the expense of qualification and conditioning. Under both scenarios, the recovery of qualification and conditioning charges discriminates among NECs and between NECs and CBT. This is the very concern raised by the FCC and given to the states for satisfactory resolution. The Commission must not take such a task lightly by rushing to judgment on this issue and failing to consider the broad picture. The Joint Intervenors urge the Commission to grant rehearing for the purposes of re-examining this issue and ordering CBT to

recover whatever charges the Commission finds to be appropriate to be rolled into the monthly recurring charges. Given the importance of the new technologies which will require conditioned loops and the unfairness which will be caused by the charges, as well as the FCC's recent clarification in the Third Report and Order, these charges must be addressed on rehearing.

III. THE COMMISSION ERRED IN FAILING TO FIND THAT CBT IS PROHIBITED FROM CHARGING CROSS-CONNECT CHARGES AT THE WEST 7TH OFFICE WHICH ARE BASED ON AN INEFFICIENT CENTRAL OFFICE CONFIGURATION.

MCIm witness Dr. Gus Ankum testified that CBT's TELRIC study for cross-connect charges contained inappropriately high costs for the West 7th central office which should be excluded from the cross-connect studies (Ankum Direct, 34). Mr. Mette explained that the high costs of cross-connection in this office were due to the fact that the distance between the collocation cages and the main distribution frame exceeded *** feet and that because of this distance, CBT had to put in SONET transmission equipment to carry the signals (Tr. IV, 112-113). In brief, MCIm/AT&T noted that the FCC decision in *In the Matter of Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, FCC 97-208, ¶ 107 (June 13, 1997) ("Second Report and Order on Collocation") was directly on point, and that ILEC were prohibited from charging interconnecting carriers for the costs of DS3 cross-connections which are greater than 450 feet (MCIm/AT&T brief, 150).

At page 63 of the Order, the Commission rejected this argument by stating that the Second Report and Order on Collocation was not applicable because it dealt with whether ILECs

could charge NECs for repeaters in provisioning collocation service. With all due respect to the Commission, this analysis completely misses the point. Repeaters are required when a signal must travel a long distance and a boost is required. Because there is over *** feet between the collocation space and the mainframe, the use of copper facilities to carry the DS1 and DS3 signals would have required repeaters had CBT chosen to use such technology in the West 7th office. Instead, CBT chose to use the much more expensive SONET fiber transmission equipment. The point of the FCC order was the NECs should not be required to pay *extra* expenses, such as for repeaters *or for SONET equipment*, when the distance between the collocation cage and the mainframe exceeds 655 for a DS1 and 450 feet for a DS3 (§117). It is not the particular technology used by the ILEC (such as copper facilities and repeaters) which is the determinative factor here, but instead the fact the ILEC has total control over the location of the collocation cages. The NECs should not be burdened with additional expenses when the ILEC-chosen configuration creates additional expenses.⁷

The Joint Interveners submit that the Commission simply misunderstood the import of the Second Report and Order on Collocation and its application to this case. On rehearing, the Commission should bring its Order into conformity with the FCC directives, and order CBT to remove the cross-connect costs of the West 7th office from its cross-connect studies.

⁷ Nevertheless, in a TELRIC network, the embedded characteristics of CBT's central offices would not be recognized to the extent they are inefficient. The Michigan Commission recognized that the incumbent is permitted to recover only the costs of the most efficient network configuration for providing collocation. As observed by the Michigan Commission, TELRIC "does not require the assumption that the existing buildings, with their current configuration, will be used." *In the Matter, On the Commission's Own Motion, to Consider the Total Service Long Run Incremental Cost for All Access, Toll, and Local Exchange Services Provided by AMERITECH MICHIGAN*, Case No. U- 11831 Michigan PSC November 16, 1999 at 30.

V. TIME FRAMES FOR THE ESTABLISHMENT OF FINAL TELRIC PRICING.

A. The Commission must Clarify the Procedures for CBT to Make its Compliance Filings and for Interested Parties to Challenge CBT's Compliance Filings and Carrier-to-Carrier Tariffs.

The Order requires CBT to make several compliance filings, designed to update its TELRIC studies or provide new TELRIC studies, as well as to provide carrier-to-carrier tariffs once the Commission approves final rates. Order, at 70, 71, 72, 75, 76. While the Order sets a specific deadline for CBT to provide *new* TELRIC studies and the carrier-to-carrier tariffs (*id.*, at 69, 76), the Order is silent as to the deadline for CBT to recalculate its *existing* TELRIC studies. Thus, new entrant carriers could be required to wait an indefinite period of time before they have even an inkling as to the rates they will be required to pay CBT for unbundled network elements and services. Moreover, the Order does not identify the procedures that will govern the rights of interested parties to challenge either the compliance filings or the carrier-to-carrier tariffs. Accordingly, we make the following proposals.

In regard to CBT's filing of re-calculated TELRIC studies, the Commission should issue an expedited ruling on this issue that requires CBT to submit its re-calculated studies within 10 days. To our knowledge, all of CBT's studies are computerized and can be adjusted merely by modifying the input values of these programs. Indeed, during the hearings, CBT re-calculated its study of dedicated interoffice transport in the matter of a few days.⁸ Order, at 45. There is

⁸ During the hearing, MCI and CoreComm advocated the use of least-cost routing in CBT's dedicated interoffice transport studies. Order, at 44. In rebuttal testimony, submitted only days after the hearing,

nothing in the record indicating that CBT's other TELRIC studies could not be re-calculated in a similarly expeditious manner.

Once parties receive CBT's re-calculated studies, the Interveners, CBT and Staff should informally meet in an attempt to resolve all differences of opinion in regard to whether those studies comply with the Commission's order. If they are unable to come to agreement on all issues within 20 days of the submission of the re-calculated studies, the parties then should have 45 days in which to file comments. CBT should have 20 days to file reply comments. The Commission should rule upon the comments in an expedited order.⁹

Once the final prices have been determined, parties with interconnection agreements should immediately be charged such prices. CBT should also promptly file its carrier-to-carrier tariff in this docket (and serve all parties) containing the final prices and interested parties should be provided 60 days from the date of filing to submit comments on the proposed tariff. If no party submits comments or otherwise objects to the tariff provisions, the tariff may automatically go into effect on the 61st day.

For new TELRIC studies, parties should be able to file testimony, instead of comments, setting forth both factual and policy arguments contradicting the assumptions or results of the studies. The Commission should allow CBT to file responsive testimony and should hold a hearing to resolve factual disputes on the record. All parties, including CBT, should have the right to file rebuttal testimony at the conclusion of the hearing, post-hearing briefs no later than

CBT re-calculated these studies to assume the use of least-cost routing. *Id.*, at 45.

⁹ If the comments raise a material factual issue, the Commission should hold expedited hearings (without the need for pre-filed testimony) and, after receiving short post-hearing briefs, should issue an expedited ruling.

ten days after the Commission finishes hearing the rebuttal testimony, and post-hearing reply briefs seven days after initial briefs. The Commission should rule upon CBT's new TELRIC studies as soon as possible following the filing of reply briefs.

New entrant carriers formulating their business plans need some reasonable degree of certainty as to the rates they must pay for unbundled network elements and services they need to purchase from CBT. At the present, they have no indication as to the rates that will result from the Commission's decision. After CBT makes its compliance filing, they will have more certainty, and when the Commission adopts final rates, they will have still more certainty. Adopting the foregoing procedures will ensure that CBT's rates for unbundled network elements and services arising out of this proceeding, as well as the carrier-to-carrier tariffs, are developed in a timely manner and are as accurate as possible.

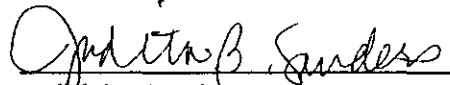
B. The Commission Should Clarify That the Rates for Access to the DA Database Are Final and Immediately Available to NECs for Ordering DA Listings.

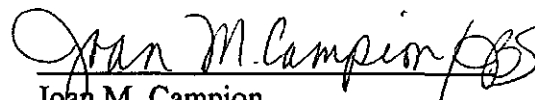
At pages 66-67 of the Order the Commission approved specific rates for access to CBT's DA database: \$0.04 per listing for the initial load and \$0.06 per listing for updates. The Joint Interveners support this recommendation. The only request for rehearing on this issue is that because these rates are not subject to compliance runs, the Commission should clarify that the DA rates are effective immediately and are available to NECs desiring to purchase directory listings, regardless of whether CBT has filed a tariff containing the rates or whether a NEC's interconnection agreement currently has an interim rate for access to the DA database in its price list.

V. CONCLUSION

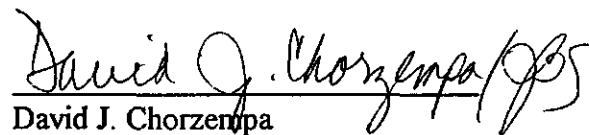
For the reasons stated above, the Commission should grant rehearing in this proceeding and re-consider its November 4, 1999 Order.

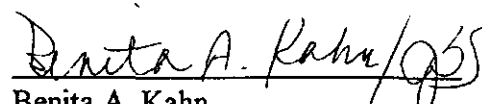
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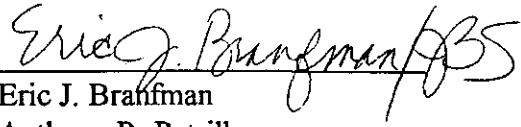
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application for Rehearing has been served upon the following by electronic mail, Federal Express or first class U. S. Mail, postage prepaid, this 6th day of December, 1999.


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