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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)

**CINCINNATI BELL TELEPHONE COMPANY'S
MEMORANDUM IN OPPOSITION TO
APPLICATION FOR REHEARING OF
AT&T COMMUNICATIONS OF OHIO, INC.,
CORECOMM NEWCO, INC. AND MCI metro
ACCESS TRANSMISSION SERVICES, INC.**

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MEMORANDUM IN OPPOSITION TO INTERVENORS'
APPLICATION FOR REHEARING

INTRODUCTION

Cincinnati Bell Telephone Company ("CBT") opposes the Application for Rehearing filed jointly by AT&T Communications of Ohio, Inc., CoreComm Newco, Inc. and MCI Metro Access Transmission Services, Inc. ("Intervenors"). Intervenors sought rehearing on five issues, two of which were also raised by CBT in its Application for Rehearing, but for opposite reasons. On Intervenor issue 1, CBT agrees that the Commission's conclusions on loop fill factors were not supported by the record. However, the record does not support Intervenors' position on loop fill factors either and only supports the fill factors advocated by CBT. Contrary to Intervenors' claim in their second issue, the Commission did adopt consistent fill factors for loop feeder and SONET electronics, but it should not have done so. In its application for rehearing, CBT explained why the fill factor for loop electronics was too high. On Intervenor issue 3, CBT is clearly entitled to charge for its loop qualification and conditioning costs and no Intervenor has provided any reason why these non-recurring charges are not calculated correctly. On Intervenor issue 4, the Commission correctly established cross-connect rates for CBT's West Seventh Street central office. Intervenors are misusing a factual finding from an earlier unrelated FCC proceeding in support of their argument. Finally, on Intervenor issue 5, the Commission has established a procedure for dealing with CBT's compliance runs, new cost studies, and carrier to carrier tariff filings. Intervenors' proposed schedule is both unreasonable and unnecessary.

I. Intervenor's Positions on Fill Factors Are Unreasonable And Not Supported By the Evidence.

A. Intervenor's Do Not Provide An Adequate Basis For Increasing Loop Fill Factors In CBT's Cost Studies.

The parties at least appear to have some common ground, as they agree that the Staff's "middle ground" position is not supported by the evidence. However, there is no competent evidence in the record to support the fills advocated by Intervenor's in their Application for Rehearing. It is important to note at the outset that Intervenor's do not seek rehearing of the Commission's rejection of their proposed fill factors as not supported by the record. Thus, Intervenor's have legally abandoned their arguments that those fill factors are appropriate for CBT's loops. They now advocate an entirely different set of fill factors that are not supported by the evidence.

CBT agrees with Intervenor's that the Staff's middle ground proposal "would encourage interveners [sic] to advocate outlandishly high fill factors" as that is exactly what Intervenor's have done. The high fill factors originally advocated by Intervenor's are really used as points when cables are evaluated for possible reinforcement. There is no expectation that any given cable will reach that level of utilization. If it does, action is taken to make sure that facilities do not exhaust. This concept of a reinforcement point is confirmed by Mr. Gose's testimony, in which he acknowledged that the BOC Notes on the Network discussed 85% fill as a reinforcement point for distribution cable. (Mar. 18, p. 132). There was no competent testimony that such a fill was desirable or should be expected on every distribution cable.

The record does not support Intervenor's newly advocated fill factors for copper distribution and copper feeder either. Those numbers are merely the product of simplistic calculations done by Intervenor's counsel, without the benefit of any foundation in the record that

the basis for those "calculations" would represent any realistic network. There is no basis for assuming that the initial fill on a cable would be 50%.¹ Nor is there any basis for assuming that all copper distribution plant will be 100% in use at the end of its economic life. Besides requiring perfect knowledge of all future demand on CBT's part to make this happen, this could only occur if CBT could buy and install cables the exact same size as the required demand. This assumption cannot be true and cannot be the basis for proper fill calculations.

The practicalities of placing distribution plant are that it is more efficient to place larger cables than the immediate demand in order to save on the costs of reinforcement and rearranging available pairs. Intervenors' simplistic averaging of an initial 50% fill and a 100% maximum fill (neither of which is supported in the record and neither of which exists in real networks), results in a 75% figure that bears no relationship to any real network and does nothing to assure that the fill factor will result in appropriate cost recovery. Besides using unrealistic beginning and end points, this "calculation" assumes that the arithmetic mid-point between those two figures represents the sustainable fill during the study period.

The testimony on copper distribution plant was that only rarely would all of the usable pairs in a cable be in use. Mr. Meier did not testify that all cables will achieve 100% fill. To the contrary, he stated that he had only experienced a small number of distribution cables that actually reached 100% utilization. While Mr. Meier had occasionally encountered distribution cables with no available pairs, this generally occurs in rural areas where small cables are found and there is little expected change in demand. (Mar. 2, pp. 142-43). Rather than base their fill calculations on what is reasonably expected to occur in the network as a whole, Intervenors have

¹ While Intervenors claim this would be consistent with a two-pair per household design, they fail to give any consideration to "breakage" (the mismatch between the required cable size and the available cable sizes). Implicitly, however, by making this claim, Intervenors have ratified CBT's distribution plant design.

assumed the absolute worst (and impossible) case, that every pair in every cable will be used.

Even if every pair in a cable is used, Mr. Meier testified that he would never have 100% fill in the sense in which CBT's cost studies use fill factors. (Mar. 3, p. 40-41). Because cables are not tapered at every drop terminal to take out pairs as they are used, there is inherently a certain amount of copper in the cable that can never be utilized. CBT's cost studies are structured in a way that a 100% fill factor could never result in full cost recovery, even if every single pair in every cable was in use. CBT's cost studies develop the cost of the copper pair from the central office to the customer location, but do not include the cost of cable extending past the customer drop, which is accounted for in the fill factor. (CBT Exh. 22, p. 8). No Intervenor has ever addressed this simple fact.

Intervenors completely ignore how CBT's cost studies work in their advocacy of high fill factors. 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. Even though a loop "terminates" at an individual customer location, the cable pair usually does not stop there. There can be 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 length, 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).

Intervenors criticize the Commission's use of results from other states as not complying with TELRIC methodology, but provide no specific support for this statement. This is a curious criticism when most of the other state decisions were actually introduced by CoreComm in support of points it wished to make. The only state for which Intervenors provide any specific criticism is New Jersey. However, no support is given for the statement that New Jersey's decision was not consistent with TELRIC. The New Jersey Board acted at a time when the FCC's pricing rules had been overturned by the Eighth Circuit, but it adopted the same principles anyway:

However, as the parties to this phase of this proceeding agree the proper basis for setting rates for interconnection and unbundled elements contemplates the use of a long-run incremental cost methodology like that proposed by the FCC, while not specifically adopting the FCC's TELRIC (Total Element Long Run Incremental Cost) methodology as the appropriate means for determining rates for interconnection and unbundled elements, the Board **HEREBY ADOPTS** the principles upon which the FCC's TELRIC model is based.

(Citation omitted; emphasis original). Intervenors have not identified what they believe the New Jersey Commission did that was not compliant with TELRIC. The New Jersey Commission took into account the actual regulatory environment in which the incumbent LEC would have to operate in deciding how a forward-looking network would be designed. Intervenors' utopian ideas on plant design, which have no grounding in sound engineering principles, do not take into account any realistic requirements of operating a local telephone business.

Intervenors continue to advocate a standard of "maximum usable capacity" as the basis for determining fill factors, which is completely contrary to both the FCC rules and the Commission's Guidelines, which call for an estimate of the usage that will be expected during the study period. 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) (emphasis added). Section V.B.4.b.8. of the Commission's Guidelines states 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). No one expects CBT's network to reach maximum usable capacity and it should not be used as the basis for any cost study.

Intervenors have distorted Mr. Mette's testimony about fills trending "toward" maximum usable capacity. Mr. Mette stated in his testimony that this methodology would be used for equipment or facilities that do not exist today. (CBT Exh. 7, p. 19). The methodology only works for elements that are expected to reach their administrative fill and require reinforcement. For this methodology to be applied to loop distribution would first require a determination of what the expected end fill would be, and it certainly would not be 100%. Unlike other UNEs, which are more easily reinforced and installed in modular fashion, the most efficient manner of installing loop distribution cable will likely never result in maximum use. CBT designs loop distribution so as not to require expensive reinforcement. Even if maximum usage is achieved in a few cables, it will not occur in very many locations. No one can predict with precision exactly when or where this will occur. Intervenors' proposals are based on the unreasonable assumption that every cable will reach maximum usable capacity during its useful life.

Intervenors acknowledge that Mr. Mette did not agree with the appropriateness of their approach to calculating fill. To cite his agreement with the mathematical answer to an assumed calculation as evidence to support their proposed fill, when he expressly disagreed with the

assumptions used in the calculation and its applicability to loop distribution fills, is meaningless. For example, anyone would agree that two plus two equals four mathematically, but that does not mean the number two is a relevant number to use solving a given problem or that addition is the appropriate operation to use in a formula. Intervenor's "calculations" with respect to copper feeder are flawed for the same reasons.

Intervenor's claim Dr. Ankum's "analysis" of loop fills supports their newly adopted fills. Reliance on Dr. Ankum's "analysis" may be the best proof of the lack of evidence to support these fill factors. All Dr. Ankum did was provide an example of how to calculate the average fill factor in a cable over time, given certain assumptions.² Dr. Ankum never attempted to substantiate the assumptions he used in the example in order to convert the illustrative example into evidence of an actual expected fill factor. He never claimed to determine how a network would be designed, never gave an opinion of what an actual initial fill would be, never gave an opinion as to what the growth rate would be, and never gave an opinion of what the ultimate usage would be. All he did was say, if you assume a certain starting fill, growth rate and useful life, the average fill over that entire life would be a certain number. His example necessarily implies an enormous growth rate, several times larger than the expected growth rate in access lines, which should have been a clear indication to Intervenor that this was a made-up example. Furthermore, the assumption that fill would remain constant from year six to the end of the useful life of a given cable fails to account for how the growth after that point would be accommodated. Clearly, if growth of that magnitude was being experienced, additional cables would have to be placed after year six to accommodate it, such that the overall fill in the network would not be the same as the fill on the individual cable. Bringing additional cables on line can

² In any event, a trending analysis should not use the "average" fill over the life of an asset. (Mar. 5, p. 121). It should use a present value factor, a point that is completely ignored by Intervenor. (Mar. 5, p. 132).

only reduce the overall fill in the network, such that the fill analysis on a single cable is inappropriate for determining the fill in the network as a whole.

Intervenors' "calculation" that a certain growth rate in lines will take cable fills from an initial value to 100% utilization rate at the end of the useful life assumes that all growth will occur in existing plant. Any growth that takes place in new areas and requires new construction would not be taken into account. As CBT demonstrated, new construction tends to offset overall growth in line usage, so that overall network fills change much slower than growth in an individual cable.

Intervenors next contend that their newly proposed fill factors are reasonable because they match the currently recommended inputs to the FCC's high cost model for universal service. CBT already addressed this issue at the hearing, but Intervenors have totally ignored all of the arguments against using these numbers as fill factors in CBT's cost studies. Mr. Mette testified that the term "fill factor" is often used to refer to cable sizing factors. Proxy models such as the HAI model, use inputs labeled as fill factors to select the size of cables used to serve a given quantity of demand. This is apparent in the FCC's own order:

We note that the actual fill factor may be lower than the fill factor used to design the network (sometimes referred to as administrative fill), because cable and fiber are available only in certain sizes. For example, assume a neighborhood with 100 households has a current demand of 120 telephones. Dividing the 120 pair demand by an 80 percent administrative fill factor establishes a need for 150 pairs. However, cable is not sold in 150 pair units. The company will purchase the smallest cable that is sufficient to provide 150 pairs, which is a 200 pair cable. The fill factor that occurs and is measurable, known as the effective fill, will be the number of pairs needed to meet demand, 120 pairs, divided by the number of pairs installed, 200 pair, or 60 percent.

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, CC Docket No. 97-160, Further Notice Of Proposed Rulemaking, adopted May 27, 1999, n. 185.

Mr. Mette testified that the HAI model calculates fill factors that are much lower than the model's inputs, which have erroneously been called "fill factors." (CBT Exh. 6, Attachment 5). For example, if the "fill factors" now advocated by Intervenor were used in the HAI model as cable sizing factors, the actual calculated fills would be approximately 70-72% for feeder (not 82.5%) and only about 45-48% for distribution (not 75%). CBT's cost studies do not use fill factor inputs as cable sizing factors; they use them as effective fill factors. To use the inputs to the HAI model as if they were the effective fill factor outputs would dramatically distort the cost results downward.

Apparently the Intervenor paid no attention whatsoever to Mr. Mette's testimony on this point or to the FCC's cost model itself. The documentation of the internal formulae in the FCC's cost model, available for download on the FCC's web site,³ clearly show that these inputs are used in the design of the network, not for cost calculations. The inputs are used solely for the selection of cable sizes that would be used to serve the given demand in specific distribution areas. The model generates a separate set of numbers called effective fill factors that are used in the cost calculations. The use of cable sizing factors as inputs in the HAI model does not correspond to the mechanics of CBT's cost studies. To use these inputs as fill factors in CBT's loop cost studies would be entirely inappropriate.

B. The Commission Should Not Use the Same Fill Factor for Loop Feeder Electronics and SONET Equipment; CBT's Proposed Fill Factor Should Be Used For Loop Electronics.

Staff witness Francis recommended that the fill factor for DLC electronic equipment should be the same fill factor as interoffice DS0 electronic circuit equipment. CBT agrees with

³ The cost model is available for download at www.fcc.gov/ceb/apd/hcpm/. The equations showing how the "fill factor" is used as a cable sizing factor, not a cost adjustment factor, can be viewed in the documentation file called 6a_HM50a_ModDes_AppE_DistEqn.doc.

Intervenors that his suggestion should not be adopted. However, CBT disagrees that the interoffice fill should be increased. Rather, the loop feeder fill should be decreased. While CBT agrees that interoffice facilities will have higher usage than loop feeder, CBT believes that the Commission adopted too high of a fill factor for loop feeder electronics. There is no basis for increasing the interoffice fill factors; rather, the loop feeder factors should be lowered to be more consistent with actual usage of these facilities.

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.

Intervenors' argument comparing the technology used in OC-n rings to that used in loop feeder has no bearing on the appropriate fill factor.⁴ While loop feeder may operate using OC-3 technology, the fill on loop electronics is not a function of the fact that an OC-3 system is used; it is a function of the number of derived channels within the OC-3 system that are used for loops. Electronics fill is measured in terms of DS0 capacity within the OC-3's available bandwidth. By way of contrast, very few interoffice circuits are provisioned using OC-3 bandwidth SONET rings. Most rings are OC-12 or OC-48 capacity, reflecting the economies of scale due to concentration in the interoffice network.

⁴ Intervenors did not object to the Commission's conclusion that fill factors for interoffice facilities and for cross-connections should not be the same because the demand for these elements is determined by different considerations.

Intervenors' argument that interoffice fills should be increased assumes that the fill on loop electronics was properly established. They ignore the fact that the Commission selected the loop electronics fill to be the same as the DS0 fill in the interoffice network. As CBT has demonstrated, that loop fill should not be the same as the interoffice fills. It is undisputed that the loop fill ought to be lower than the interoffice fill. Intervenors' argument in favor of increasing the interoffice fill would incorrectly reverse the process. Because there was no basis for establishing the loop fill the same as the interoffice fill in the first place, it cannot be used as a "baseline" from which to increase the interoffice fill. Rather, it should be the other way around. The loop fill should be decreased by an appropriate amount to reflect the fact that it cannot be used as efficiently as an interoffice circuit that accumulates traffic from different locations and concentrates it.

C. CBT's Request For Rehearing Should Be Granted Instead of Intervenors'

CBT also sought rehearing of the fill factors ordered by the Commission for loop distribution cable and loop electronics as too high. CBT did not fail to provide forward-looking fill factors. The only competent evidence of appropriate fill factors was provided by CBT's witnesses. CBT fully explained the engineering and economic basis for its proposed fill factors. Mr. Meier drew from his knowledge of engineering practices and the known fills in CBT's 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. (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.

There is no evidentiary basis for the fills established by the Commission or those advocated by Intervenors. CBT's proposed fill factors are based on uncontradicted design

criteria,⁵ 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. No witness found CBT's design practices to be unreasonable, nor did they identify any reasonable alternative engineering design criteria. No other party has provided any reasonable engineering basis for how they arrived at their loop fill factors. No other party has advocated a fill factor designed to be compatible with the mechanics of CBT's cost studies. The Commission should deny Intervenor's application for rehearing on this issue and grant CBT's.

II. CBT's Loop Qualification and Conditioning Charges Are Compliant With TELRIC

Intervenor's take an inconsistent position on loop qualification and conditioning charges. While they concede that the FCC has authorized incumbent LECs to recover these costs, at the same time they claim that theoretically there could not be any such costs. No one could logically draw such a conclusion from the FCC's rulings on this subject. It is highly unlikely the FCC intended to play word games with the industry in order to deny cost recovery. No Intervenor has demonstrated that CBT will not incur costs to qualify and condition loops in CBT's network. If the loop requires conditioning for use with advanced services, that cannot be done without CBT performing additional work, for which it would not be compensated without additional charges.

Intervenor's illogically argue that, because CBT's cost studies do not include load coils and other impediments to xDSL services in the loop design, that CBT will not incur conditioning costs when it actually has to provision loops to carry those services. Intervenor's are arguing a theoretical point that has already been lost before the FCC. The FCC has stated directly on at least two occasions that, while incumbent LECs are obligated to condition loops for their

⁵ Intervenor's did not challenge CBT's two pair per household design, but, in fact, argue that their fill factors are consistent with that design.

competitors, the competitors are responsible for compensating the incumbent for its cost of doing so.

Intervenors continue to pretend that the cost of CBT's loops already includes conditioning. They imply they will pay more for the loops in the cost study in order for them not to contain load coils. This is not true. The forward looking cost developed by CBT in its TELRIC cost studies is less than the cost for a loop design based on copper cable with load coils. There are no costs included in CBT's basic loop studies for load coil removal or any other form of conditioning. If CBT is asked to perform these tasks it will incur a cost, that it would not have incurred but for the request to condition the loop. That cost is recoverable from the party who requests conditioning. Furthermore, loop conditioning is not limited to the removal of load coils or other devices that may interfere with digital signals. CBT's conditioning charges also include the cost of equipment such as Brite cards for providing ISDN capable loops and the MFT for improved loss loops. Certainly none of these costs are accounted for in CBT's basic loop cost studies.

It is amazing that Intervenors can continue to deny that they are responsible for loop conditioning costs in the face of ¶ 382 of the First Report and Order and the FCC's recent Third Report and Order, which Intervenors even cite. The FCC was specifically requested to prohibit conditioning charges, but refused to do so:

192. In the *Local Competition First Report and Order*, the Commission also stated that requesting carriers would compensate the incumbent LECs for the cost of conditioning the loop.³⁶⁶ Covad and Rhythms argue that, because loops under 18,000 feet generally should not require devices to enhance voice-transmission, the requesting party should not be required to compensate the incumbent for removing such devices on lines of that length or shorter.³⁶⁶

193. We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter.³⁶⁷ Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in

removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.³⁰

The FCC would not have required CLECs to "compensate" incumbent LECs, or have authorized incumbent LECs to "charge" for conditioning, if it did not intend for CLECs to actually pay for conditioning. The FCC's statements about forward-looking costs refer only to the way costs are to be determined, not whether they must be paid. In other words, incumbent LECs should use cost inputs and data reflecting what costs they expect to incur in the future in order to provide these services, rather than historical costs.

With respect to loop qualification, the Commission correctly determined that CBT does not have a database containing detailed parameters of each of its loops, nor should it be responsible for having one, as it is not cost-effective to create. To the extent CBT has pre-screening information on loops that it uses to determine whether conditioning is likely to be necessary for retail services, CBT indicated that that data would be available to competitors. (Mar. 8, pp. 126-27). CBT is only proposing to charge CLECs a qualification charge when a CLEC asks CBT to determine the specific performance characteristics of a particular loop and CBT does not have that information readily available. There is no reason why the CLEC should not compensate CBT for its qualification costs that the CLEC has caused it to incur.

There are also potential differences between the qualification that CLECs will ask CBT to perform and the qualification that CBT would conduct for itself prior to attempting installation of xDSL services. CBT may be willing to take a greater chance whether xDSL service will function on a given loop without further loop qualification or conditioning, whereas, a CLEC may want assurance that the technology will work before attempting an installation. (Mar. 5, p. 48). To the extent the CLECs' desire more certainty than what CBT does for itself, they should appropriately incur a higher cost for loop qualification than what CBT does for itself.

If CBT upgrades its information capabilities in the future, there is no reason that CLECs should not share in the cost of doing that. The fact that CBT may implement improvements for its retail business does not entitle Intervenor to use those improvements without bearing part of the cost. Intervenor continues to confuse cost with retail rates. There is no doubt that CBT incurs a cost when it is asked to qualify and/or condition a loop, whether for itself or for a competitor. How CBT recovers that cost from its retail customers is not relevant to whether the cost exists. CLECs will have their own business decisions to make as to how they recover qualification and conditioning costs from their retail customers. That decision has no bearing on CBT's entitlement to recover from CLECs that cause CBT to incur costs.

Intervenor contends that it would be discriminatory to charge them for loop conditioning because they may not be able to recover them from their customers. CBT shares the same risk when it performs this work for itself. CBT could condition a loop for its own customer and then have a CLEC take that customer away. Since the loop would already be conditioned, CBT would not charge the CLEC to perform that work again. If Intervenor's proposal to fold non-recurring costs into the recurring loop rate was adopted, CBT would be forced to assume a risk that CLECs would never experience. That is the risk that the customer discontinues the advanced service altogether. In that case, the CLEC could simply cancel the loop and have no further obligation. CBT, on the other hand, would be stuck with the cost that it incurred to provision the loop, with no one from whom to recover the cost.

CLECs can diminish the risk of recovering conditioning charges by passing the charge on to their customers or by requiring long-term contracts for advanced services so as to guarantee cost recovery over the term of the agreement. CLECs also have other means of retaining customers long enough to recover their initial investment. If CBT had to recover the cost of

loop conditioning through recurring charges, CLECs could place all of the market risk that the customer cancels the advanced service on CBT. If CLECs cause loop conditioning to take place, they should bear its cost.

The FCC has not mandated that nonrecurring charges be recovered as part of the monthly recurring charges. It has merely offered that as an option to state commissions, where it would be reasonable to do so. To include nonrecurring loop conditioning costs in the monthly charges would be an unreasonable administrative burden. This would require different monthly rates on individual loops depending upon whether CBT had conditioned that individual loop and what type of conditioning it had performed. If a different carrier wins the customer, but does not use the loop in a manner that would have required conditioning, that carrier could object to paying the higher rate. The simplest way to handle conditioning costs is to recover them through a non-recurring charge at the time the costs are incurred.

Lastly, Intervenor contend that the Commission should adjust the amount of CBT's qualification and conditioning charges because they focused their energies only on whether such charges should be allowed, not their amount. It is not CBT's fault that Intervenor failed to address the level of the qualification and conditioning charges. CBT's cost studies were available for review, Mr. Mette supported them with testimony, and he was available for cross-examination. Intervenor chose to concentrate on trying to avoid these charges altogether rather than addressing their magnitude. CBT properly supported its costs and there is no basis to change them now. Intervenor had a full opportunity to address these issues at the hearing and have shown no proper basis for reopening that issue.

There is no reason for any further review of CBT's qualification and conditioning charges. No Intervenor has identified any reason why CBT's conditioning charges do not

comply with the Commission's rules. Intervenor cannot just demand that the Commission reopen the case and study these rates again. The Intervenor had a duty to identify why they believe the rates did not comply with the rules. Having failed to do so at the hearing, and having failed to do so in their application for rehearing, there is no reason for the Commission to revisit this subject.

III. The Commission Properly Approved CBT's Cross-Connect Charges At West Seventh Street.

Intervenor continues to cite an FCC Expanded Interconnection order on the issue of cross-connect charges. That order has no bearing on this case and Intervenor misstates what the FCC actually held in that case. The order was the result of an investigation into the physical collocation tariffs applicable to services ordered by interexchange carriers. A number of incumbent LECs had included the cost of repeaters in their cross-connection rates. CBT was not one of those carriers. The repeaters were not included because of distance issues, but because certain LECs insisted that a certain type of POT bay be used for interconnection. The FCC found that type of POT bay to be unnecessary, so it disallowed the cost of repeaters that were only necessary when the POT bays were used.

The FCC determined that, based on the state of the record in that case, no LEC had proven that the repeaters were necessary because of the distance between the collocators' space and the cross-connect frame. However, the FCC did expressly acknowledge that in order to carry DS1 and DS3 signals farther than 655 and 450 feet respectively, repeaters would be necessary. The FCC did not say that collocators did not have to pay for repeaters if the distance between the collocation cage and the mainframe had exceeded the relevant distance; it merely stated that no LEC had demonstrated that such distances would be encountered. Nor did the FCC address the propriety of using SONET systems for cross-connects when there was a

significant distance between the collocation cages and the transmission area. The Expanded Interconnection order should be ignored for what it is, a decision on a different issue, based on a particular factual record that is different from the record in this case.

Contrary to Intervenor's assertion, collocators do take incumbent central offices as they find them. If there is no space for collocation, incumbent LECs are not obligated to add on to the building to create such space. At West Seventh Street, the record established that there was no space for physical collocation within close enough proximity to the transport area that cross-connects could be provisioning on copper facilities. The Commission's approval of the cross-connect charge should not be disturbed.

IV. The Commission Did Establish A Procedure For Completing Compliance Runs And Intervenor's Suggestions Are Unreasonable.

A. The Commission Should Not Change Its Procedure Now.

The Order stated that CBT was to provide new TELRIC studies three months after entry of the Order. (Order, p. 52; 69; 71; 72). Even if it did not state so expressly, the Order surely implied that the compliance runs on existing studies would be filed at the same time. Order, p. 69 ("The TELRIC studies for these services should be submitted by CBT no later than three months from the date of this order, in conjunction with the company's overall compliance filings."). NECs will not have to wait indefinitely for cost studies as CBT has been ordered to file its compliance runs and new cost studies within three months of the Commission's Order, which would be February 6, 2000.

There is no basis for the Commission to require CBT to submitted its cost studies within 10 days. Such a feat would be impossible. While parts of the studies are computerized, CBT's cost studies involve many inputs that must be recalculated separately, based on the Commission's Order or due to changes in prices or other causes, before they can be inserted into the cost

studies. There are numerous cost studies to be updated, rerun, verified and copied before they can be filed with the Commission. CBT is required to provide a narrative description of all the changes it made to the various cost studies. The Commission's Order only allowed CBT three months in which to perform all of this work. CBT's cost analysis group has been working diligently on the various cost studies and does not expect to be able to complete all of this work until very near the deadline. Any faster pace would be unreasonable and unjustified.

Intervenors' comment on how quickly CBT "recalculated" its dedicated interoffice transport study is off the mark. Intervenors apparently do not understand what CBT did in that regard or how simple it was to demonstrate the insignificant impact of the "least-cost" routing argument. This was not a recalculation of the entire cost study, but merely the insertion of a few logical formulas into one of the spreadsheets within the study that calculates the transmission equipment investments. The formulas simply picked the lower of two alternate investment figures instead of averaging them. Dr. Ankum could have done this work himself in a few minutes had he wanted to do so, but he never made the effort. (Mar. 16, pp. 24-25). In contrast, the compliance runs for these same studies require detailed examination of a variety of inputs and documentation of any changes made, followed by recalculation of the entire study and verification of the results. The work CBT did for its rebuttal testimony involved only one small portion of the interoffice transport study, which is only one of many cost studies on many different subjects that must be revised to comply with the Commission's Order.

The post-submission procedure proposed by Intervenors is contrary to what the Commission ordered. It also contradicts Intervenors' stated goal of having final TELRIC rates in place as soon as possible. The Order clearly states that CBT's studies are to be resubmitted "for verification by the Commission's staff." Once the Staff is satisfied with the revised studies, the

Commission indicated that it will issue a final compliance order. Thereafter, CBT would have 30 days in which to submit carrier-to-carrier tariffs incorporating the approved rates. The Commission did not provide for a notice and comment period for Intervenor for good reason. Such a process does nothing but increase the cost and delay for all parties before the Commission can establish rates for CBT's unbundled network elements. Intervenor's proposed schedule would insert many more months of delay before CBT's rates would become final, which time would be consumed by further litigation, briefing, testimony and hearings. The Commission should reject that proposal and stay on the established course. CBT will submit its compliance runs, the Staff will determine whether the studies comply with the Commission's Order, and the Commission will issue an Order. Thirty days thereafter, CBT will file its carrier-to-carrier tariff, at which point the normal tariff approval procedures would apply. There is no reason to generate several more rounds of comments, testimony, hearings and orders.

B. CBT Should Not Be Required To Implement The Directory Assistance Database Rates At This Time.


CBT has sought rehearing on the Commission's decision to apply the FCC's proxy rate for subscriber listing information to CBT's directory assistance database. The Commission should grant CBT rehearing on that issue and establish rates based upon CBT's real costs. It is important that the Commission determine what portion of CBT's joint database maintenance costs are to be allocated to the DA database, as the balance of these joint costs must be recovered in the rate for subscriber listing information sold to independent publishers. Intervenor should not be allowed to purchase the database at rates that do not reflect CBT's costs. Nor should CBT be placed in the position where it cannot recover its total costs through a combination of the DA database and subscriber listing rates. In the event the Commission does require CBT to sell its

DA database at the \$0.04 and \$0.06 rates now, such rates must be treated as interim rates subject to true up at such time as CBT's final rates are established, including any court appeals.

CONCLUSION

For the foregoing reasons, intervenors' requests for rehearing should be denied. The Commission should grant rehearing on the issues raised by CBT in its separate Application for Rehearing.

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