

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing of Annual Reports)	
For Calendar Year 2014 by all Regulated Entities)	Case No. 15-01-AU-RPT
)	

**MOTION OF CINCINNATI BELL WIRELESS, LLC FOR REFUND OF THE 2015
ASSESSMENT FOR MAINTENANCE OF THE PUBLIC UTILITIES COMMISSION**

Pursuant to Ohio Revised Code § 4905.10, Cincinnati Bell Wireless, LLC (“CBW”) requests that the Commission refund its previous payment towards the 2015 Assessment for the Maintenance of the Public Utilities Commission of Ohio (the “Assessment”) based on CBW’s withdrawal from the market on March 31, 2015. The grounds for this Motion are explained in the attached Memorandum in Support.

Respectfully submitted,

/s/ Douglas E. Hart
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Attorney for Cincinnati Bell Wireless, LLC

In the Matter of the Filing of Annual Reports)
For Calendar Year 2014 by all Regulated Entities) Case No. 15-01-AU-RPT
)

CBW operated as a commercial mobile radio service provider in Ohio beginning in 1998. On April 7, 2014, CBW publicly announced that it had entered into an agreement to sell its wireless spectrum license and certain related assets to Verizon Wireless. CBW's plan called for it to continue providing service to its existing customers after the sale until early 2015. CBW notified its customers that they could continue to use CBW's facilities-based service until February 28, 2015, but would have to transfer to another wireless carrier of their choice no later than that date. The FCC approved the transaction in September 2014 and CBW closed the sale of its wireless spectrum to Verizon Wireless on September 30, 2014. Following the sale, CBW leased back portions of the spectrum it had sold from Verizon Wireless in order to continue providing wireless service to its customers until they transitioned to a different wireless provider. CBW turned off the network and served its last customer on February 28, 2015 and completely ceased operations on March 31, 2015. On April 1, 2015, CBW filed an application with the Commission, Case No. 15-0646-TP-RCC, to relinquish its Wireless Certificate, PUCO Certificate No. 90-5357, to be effective April 1, 2015.

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CBT to pay \$52,552.27. CBW doubted the propriety of the 2015 Assessment because it had already gone out of business, but was unable to confer with Commission Staff on the issue before the May 29, 2015 deadline. CBW paid the noticed amount in order to avoid any contention that it had violated an order of the Commission. (Check attached as Exhibit 2).

Ohio Revised Code § 4905.10(B) provides in relevant part:

Beginning in calendar year 2006, on or before the fifteenth day of May in each year, the commission shall notify each railroad and public utility that had a sum assessed against it for the current fiscal year of more than one thousand dollars that fifty per cent of that amount shall be paid to the commission by the twentieth day of June of that year as an initial payment of the assessment against the company for the next fiscal year. On or before the first day of October in each year, the commission shall make a final determination of the sum of the assessment against each railroad and public utility and shall notify each railroad and public utility of the sum assessed against it. The commission shall deduct from the assessment for each railroad or public utility any initial payment received.

CBW was a public utility that had a sum assessed against it in 2014¹ for the current fiscal year of more than one thousand dollars, but it was no longer a public utility at the time of the May 1, 2015 notice, nor will it be a public utility during any part of the next fiscal year, commencing July 1, 2015.

For purposes of Chapter 4905 of the Ohio Revised Code, a “public utility” includes those entities defined in § 4905.03 of the Revised Code, with certain exceptions not relevant here. Revised Code § 4905.03(A) defines an entity as a “telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state.” CBW was a

¹ CBW refers to the past Assessment for the current fiscal year as the “2014 Assessment,” because that is the terminology used by the Commission. Even though the Assessment was paid in calendar year 2014, it was for current Fiscal Year 2015, which runs from July 1, 2015 to June 30, 2016. *See* Revised Code § 9.34 (“The fiscal year of the state . . . shall begin on the first day of July of each calendar year and end at the close of the thirtieth day of June of the succeeding calendar year.”). The May 1, 2015 payment notice was an estimated payment towards the 2015 Assessment which is for next fiscal year, Fiscal Year 2016, which runs from July 1, 2015 to June 30, 2016.

“telephone company” and, hence, a “public utility” in the State of Ohio during such time that it was transmitting telephonic messages. However, CBW ceased to transmit any telephone messages on February 28, 2015 and ceased all business in Ohio on March 31, 2015. On April 1, 2015, CBW filed an application to voluntarily relinquish its Ohio certificate.

Because CBW was not a public utility on May 1, 2015 when the Commission issued its assessment notice for 50% of the 2014 regulatory assessment, it should not have been assessed for the next fiscal year. The Commission has recognized this in prior years by excusing companies that stopped doing business in Ohio from paying future regulatory assessments, even though they had done business in and paid regulatory assessments for the current fiscal year. In Case No. 14-01-AU-RPT, the 2014 equivalent of this docket, the Commission issued a Finding and Order on August 20, 2014, to address public utilities that had failed to file annual reports and those that had filed annual reports for the past year, but which had failed to pay their regulatory assessments for the next fiscal year. In paragraph (11) of that Finding and Order, the Commission identified several companies that had failed to pay their assessment, but which were no longer in business or had ceased conducting jurisdictional operations in Ohio. The Commission determined that those certificates should be removed from the roll of active certificates and excluded from the calculation of any future assessments. In paragraph (12) of the Finding and Order, the Commission stated that it had begun publishing a list of certificates that had expired or been canceled during the prior calendar year. The Commission determined that those entities would also be excluded from the calculation of any future assessments. While it did not expressly state as such, the Commission must have determined that future assessments to those company would be improper because they were no longer public utilities in Ohio.

CBW presents the same situation but for the timing of its withdrawal from doing business in Ohio. The entities discussed in the Finding and Order in Case No. 14-01-AU-RPT had ceased doing business during the preceding calendar year. While CBW was still in business in Ohio for a small part of calendar year 2015, the relevant time frame for regulatory assessments in Ohio is the fiscal year, which does not commence until July 1. Thus, CBW ceased doing business during Fiscal Year 2015 and was no longer a public utility on the May 1, 2015 notice date and will not be a public utility during any part of Fiscal Year 2016, which is the applicable time period for which the current assessments are being made. The Commission's practice of only excluding from the assessment list those entities that ceased doing business during the preceding *calendar* year does not take into account those companies that ceased doing business after the end of the calendar year but during the current *fiscal* year. Neither set of companies should be assessed for the next fiscal year.

To be consistent with its treatment of those companies excluded from assessment by the Finding and Order in Case No. 14-01-AU-RPT, the Commission must also exclude CBW from the 2015 Assessment for Fiscal Year 2016. The Commission did not explicitly state its logic for excluding those other entities in Case No. 14-01-AU-RPT, but it logically had to be because they were no longer "public utilities" at the time of the assessment notices. But the relevant time frame for determining whether an entity has ceased to be a public utility should not be the end of the previous calendar year, but the end of the current fiscal year, or at the very least the date the current assessment notice is sent. Understandably, the Commission's process of excluding from assessment those companies on the annual list of those that ceased doing business during a calendar year would not identify companies like CBW who ceased doing business after the end of the calendar year, but during the same fiscal year. Nevertheless, CBW was not a public utility

on May 1, 2015 when the notice was sent and will not be a public utility on July 1, 2015, when Fiscal Year 2016 commences. Therefore, it is not subject to any 2015 Assessment for Fiscal Year 2016 and should receive a full refund of the \$52,552.27 that it paid pursuant to the notice.

Revised Code 4905.10(B) calls for the Commission is to make a final determination of the amount to be assessed to each public utility by October 1, 2015. Those assessments are to be based on the 2014 annual reports that have been and will be filed by all Ohio public utilities (other than those who are no longer doing business, who are automatically excluded). The Commission's final 2015 Assessments to those entities that are still public utilities would have to be recalculated without the inclusion of any company that ceased to be a public utility during fiscal 2015. CBW's final assessment would be \$0, so it should receive a full credit of the \$52,552.27 that it has already paid and, hence, a refund in that amount.

For the foregoing reasons, CBW requests that the Commission determine that CBW should not be assessed at all for Fiscal Year 2016 and issue it a full refund of the \$52,552.27 it has paid pursuant to the May 1, 2015 notice.

Respectfully submitted,

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Exhibit 1



Public Utilities Commission

John R. Kasich, Governor
Andre T. Porter, Chairman

Commissioners

Asim Z. Haque
Lynn Slaby
M. Beth Trombold
Thomas W. Johnson

May 01, 2015

Cincinnati Bell Wireless LLC
Julie Barlow, Managing Director - Corporate Tax
221 E Fourth St, Rm 103-1170
Cincinnati, OH 45202

House Bill 300 added the following language to Section 4905.10 (B) "Beginning in calendar year 2006, on or before the fifteenth day of May in each year, the commission shall notify each railroad and public utility that had a sum assessed against it for the PUCO assessment of more than one thousand dollars that fifty percent of that amount shall be paid to the commission as an initial payment of the assessment against the company for the next fiscal year."

Cincinnati Bell Wireless LLC 2014 Assessment for the Maintenance of the Public Utilities Commission of Ohio PUCO File #7 was \$105,104.54.

Fifty percent of that amount is \$52,552.27, due May 29th and will be credited as an initial payment of the assessment for 2015 for your company.

Please make checks payable to: PUBLIC UTILITIES COMMISSION OF OHIO

And mail to: **Treasurer State of Ohio**
L-3603
Columbus, Ohio 43260-3603

Questions concerning this assessment should be addressed to the Fiscal Division at the address below or you may call Tina Watkins at (614) 387-1010.

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Cincinnati Bell Wireless LLC
221 E Fourth St, Rm 103-1170
Cincinnati, OH 45202
File #7

AMOUNT DUE - \$52,552.27
Check Number _____

Speed Code	Deposit Unit	GL Unit	Fund	Account	ALI	Department	Program	Agency Use	ISTV Xref
PUC ASSESS	PUC01	STATE	5F60	425035	N/A	PUC100100	N/A	N/A	N/A

Exhibit 2

Transaction Type: Checks/Debits
Seq/Ref#: 77532429
Check #: 152588

X
 TREASURER STATE OF OHIO
 FOR DEPOSIT ONLY
 PUCD - AFIS
 ACCT. 014511007050
 DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
 RESERVED FOR FINANCIAL INSTITUTION USE

Retrieved: Thursday, June 11, 2015 9:43:20 AM
Image On-Demand

**CBERT**

(Cincinnati Bell Expense Reporting Tool)

[Link to Corporate Purchasing](#)[Link to Accounts Payable](#)

Expense Listing > Template > Expense Sent to SMART

[Home](#) | [Create](#) | [Search](#) | [Approval Queue](#) | [Forms/Reports](#)

Company: Cincinnati Bell Wireless

Report #: sfit87900000253 Voucher #: Status: Sent

1. Header**2. Lines/Receipts****3. Airfare****4. Approvals**

Entry Date: 5/22/2015 8:49:00 AM

Originator: SEAN FITZGERALD

Report Type: Vendor Payment

Approval
Type:

Other Expenses

RCO:

09000000

Phone:

7-6692

Special
Processing:

Check will be picked up by employee

Vendor
#:

publ02

Vendor PUBLIC UTILITIES
Name: COMMISSION-OHInvoice
Date:

5/22/2015

Invoice
#:

May 2015 CBW As

Due
Date:

5/22/2015

Line
Total: \$52,552.27Grand
Total: \$52,552.27

Description: (Due 5/29/2015) 2015 CBW Assessment for Maintenanc

Attachments: File Uploaded
1 [Fee Notice.pdf](#) 5/22/2015 8:48 AM

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Case No(s). 15-0001-AU-RPT

Summary: Motion for Refund of the 2015 Assessment for Maintenance of the Public Utilities Commission electronically filed by Mr. Douglas E. Hart on behalf of Cincinnati Bell Wireless, LLC