

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules for the)	
Telecommunications Relay Service Assessment)	Case No. 08-815-TP-ORD
Pursuant to Section 4905.84 Revised Code, as)	
Enacted by House Bill 562)	

**MOTION OF CINCINNATI BELL WIRELESS, LLC FOR REFUND OF THE 2015
ASSESSMENT FOR TELECOMMUNICATIONS RELAY SERVICE**

Pursuant to Ohio Revised Code § 4905.84, Cincinnati Bell Wireless, LLC (“CBW”) requests that the Commission refund its previous payment of the 2015 Telecommunications Relay Service Assessment (the “TRS 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

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MEMORANDUM IN SUPPORT

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.

CBW received an Invoice from the Commission, dated May 1, 2015, requiring CBW to pay a TRS Assessment of \$14,304.05 for Fiscal 2016, which runs from July 1, 2015 through June 30, 2016 (attached as Exhibit 1). CBW doubted the propriety of the TRS Assessment because it had already gone out of business, but was unable to confer with Commission Staff on

the issue before the July 1, 2015 payment 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).

The annual assessment to pay for Telecommunications Relay Service (“TRS”) was established by Revised Code § 4905.84. Revised Code § 4905.84(F) authorized the Commission to adopt such rules as it found necessary to carry out the section. The Commission commenced a proceeding in this docket to establish the rules and procedures for TRS assessments. The TRS assessment rules are now mainly codified in Commission Rule § 4901:1-6-36. Rule 4901:1-6-36(B) provides, in pertinent part, that funding of TRS is to be done by collecting an assessment “from each service provider that is required under federal law to provide its customers access to TRS, including . . . wireless service providers” The Commission uses FCC Form 477 as the primary basis for assessing providers. Rule 4901:1-6-36(D). Form 477 reports the number of access lines that were in service on December 31 of the previous calendar year.

Rule 4901:1-6-36 does not specifically address the timing of TRS assessments, but in its August 27, 2008 Order in this docket, the Commission determined that the TRS assessment period should correspond with Ohio’s fiscal year, July 1 through June 30. , and that the TRS assessment would be processed as the Commission had been processing the assessment for the Commission’s operating budget.

CBW was a wireless provider in 2014, so it filed a 2014 Form 477 that reported 69,530 access lines as of that time. 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. It is no longer a wireless service provider and is no longer required by federal law to provide access to TRS. It was not so

required at the time of the May 1, 2015 notice, nor will it be during any part of the 2016 fiscal year, which commenced on July 1, 2015.

Because CBW was not a service provider on May 1, 2015 when the Commission issued its TRS assessment notice, it should not have been assessed for Fiscal 2016. In comparable situations involving the Commission's regulatory assessment, pursuant to Revised Code § 4905.10, the Commission has excused companies that stopped doing business in Ohio from paying future regulatory assessments, even though they had done business in the prior calendar year. For example, the Commission issued a Finding and Order in Case No. 14-01-AU-RPT on August 20, 2014 to address public utilities that had failed to pay their regulatory assessments for the next fiscal year. In paragraph (11), 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), the Commission also 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.

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 at the end of calendar year 2014 and for a small part of calendar year 2015, the relevant time frame for assessments is the fiscal year, which does not commence until July 1. CBW ceased doing business and was no longer a service provider on the May 1, 2015 TRS Assessment

notice date and will not be a service provider during any part of Fiscal Year 2016, which is the applicable time period for which the latest TRS assessments were made. The Commission's practice of 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 before the beginning of the fiscal year on July 1. Neither set of companies should be assessed for the next fiscal year.

To be consistent with its treatment of those companies excluded from the Commission's regulatory assessment by the Finding and Order in Case No. 14-01-AU-RPT, the Commission should also exclude CBW from the TRS 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. In the context of Rule 4901:1-6-36, CBW is no longer a "service provider that is required under federal law to provide its customers access to TRS" so it was not subject to assessment on May 1, 2015. The relevant time frame for determining whether an entity has ceased to be a service provider required to offer TRS should not be the end of the previous calendar year, but the beginning of the fiscal year, or at the very latest the date the TRS assessment notice is sent, in this case May 1. 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 before the beginning of the next fiscal year. Nevertheless, CBW was not a service provider required to provide TRS on May 1, 2015, when the notice was sent, or on July 1, 2015, when Fiscal Year 2016 commenced. Therefore, it should

not have been subject to a TRS Assessment for Fiscal Year 2016 and should receive a full refund of the \$14,304.05 that it paid pursuant to the notice.

For the foregoing reasons, CBW requests that the Commission determine that CBW should not have been issued a TRS assessment for Fiscal Year 2016 and that the Commission issue CBW a full refund of the \$14,304.05 it paid pursuant to the May 1, 2015 notice.

Respectfully submitted,

/s/ Douglas E. Hart
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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

****OHIO TRS INVOICE****

Cincinnati Bell Wireless, LLC
Julie Richardson
221 East Fourth Street, RM 103-1170
Cincinnati OH 45202

July 1, 2015 through June 30, 2016 Telecommunication Relay Service Assessment

May 1, 2015

In accordance with Section 4905.84, Ohio Revised Code, the full 2015/2016 (July through June) Telecommunication Relay Service assessment due from Cincinnati Bell Wireless, LLC, based on reported access lines/equivalents, is

\$ 14304.05

DUE DATE: July 1, 2015

Please make check payable to: **Ohio Treasurer of State**

Mail to: Treasurer State of Ohio
L-3603
Columbus, OH 43260-3603

Questions regarding this assessment should be addressed to Shawn Smith at 614-644-8950.

2015 TRS Invoice

Please detach and return with payment

Cincinnati Bell Wireless, LLC
221 East Fourth Street, RM 103-1170
Cincinnati OH 45202

AMOUNT DUE... **\$ 14304.05**
CHECK NUMBER _____

Payment ID	BU	Fund	Account	ALI	Department	Program	Agency Use	ISTV	Xref
	PUC01	5Q50	425075	N/A	PUC100100	N/A	N/A		N/A

Exhibit 2

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER - THERMOCHROMIC INK ON BACK

PNC Bank, National Association
Jeanette, PA

Cincinnati Bell Wireless
PO Box 2301
Cincinnati, OH 45202

6/25/2015 No. 152659

PAY ONLY 14304.05

FOURTEEN THOUSAND THREE HUNDRED FOUR DOLLARS AND FIVE CENTS *****

PAY TO THE ORDER OF PUBLIC UTILITIES COMMISSION-OH
ATTENTION: FISCAL OFFICE
180 EAST BROAD STREET
COLUMBUS OH 43215-3793

VOID AFTER 180 DAYS

88

Security Features: Details on Back

ENDORSE HERE

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

834385-PUCO LBX 3603-162
HNB Endorse Guaranteed
>0441151264

Let us be sure all the money you need is on this document when you need it. PNC Bank, National Association

Security Features: Details on Back

Posted : 07/13/2015
Bank : 00000001
Account :
Check : 152659
Amount : 14304.05
DIN :

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in

Case No(s). 08-0815-TP-ORD

Summary: Motion for Refund of the 2015 Assessment for Telecommunications Relay Service electronically filed by Mr. Douglas E. Hart on behalf of Cincinnati Bell Wireless, LLC