

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE ANNUAL  
REPORTS FOR THE FISCAL ASSESSMENT  
OF ALL REGULATED ENTITIES FOR  
CALENDAR YEAR 2014.

CASE No. 15-01-AU-RPT

IN THE MATTER OF THE ADOPTION OF  
RULES FOR THE TELECOMMUNICATIONS  
RELAY SERVICE ASSESSMENT PURSUANT  
TO R.C. 4905.84.

CASE No. 08-815-TP-ORD

### FOURTH FINDING AND ORDER

Entered in the Journal on January 3, 2018

#### I. SUMMARY

{¶ 1} The Commission denies the motions of Cincinnati Bell Wireless, LLC for refunds of its payment of the first half of its 2015 regulatory assessment in Case No. 15-01-AU-RPT, and its payment of the 2015 telecommunications relay service annual assessment in Case No. 08-815-TP-ORD.

#### II. APPLICABLE LAW

{¶ 2} To maintain the operations of this Commission, R.C. 4905.10(A) requires each railroad and public utility to pay an annual assessment based upon its intrastate gross earnings (IGR) for the previous calendar year. Specifically, R.C. 4905.10(A) states:

For the sole purpose of maintaining and administering the public utilities commission \* \* \* an amount equivalent to the appropriation from the public utilities fund created under division (B) of this section to the public utilities commission for railroad and public utilities regulation in each fiscal year shall be apportioned among and assessed against each railroad and public utility within this state by the commission by first computing an assessment as though it were to be made in proportion to the intrastate gross earnings or receipts, excluding earnings or receipts from sales to other public utilities for resale, of the railroad or public utility for the calendar year next preceding that in which the assessment is made.

R.C. 4905.10(A) (Emphasis added).

{¶ 3} In order to calculate the assessment, R.C. 4905.14 requires each public utility to file an annual report, which mainly contains information regarding its IGR for the previous calendar year, with the Commission. R.C. 4905.10(A) sets a minimum assessment of \$100 per company, regardless of the company's IGR or receipts in the reporting year.

{¶ 4} R.C. 4905.10(B) requires the Commission to notify, by May 15th of each year, each railroad and public utility that had been assessed for the current fiscal year more than \$1,000, that 50 percent of such assessment shall be paid to the Commission by June 20th of that year as an "initial payment" of the assessment against the company for the next fiscal year. The statute further directs the Commission, by October 1st of each year, to make a "final determination" of the assessment against each railroad and public utility and notify each railroad and public utility of the sum assessed against it, deducting any initial payment received.

{¶ 5} Importantly, while R.C. 4905.10(A) references fiscal years, it is only as reference to the Commission's own fiscal operations and not with regard to the assessments owed by public utilities. R.C. 9.34(A) mandates that the state's fiscal year begins on the July 1st of each calendar year and closes on June 30th of the succeeding calendar year.

{¶ 6} R.C. 4905.84 provides that the Commission shall collect from each service provider that is required under federal law to provide its customers access to telecommunications relay service (TRS) an annual assessment to pay for the costs incurred by the TRS provider for providing TRS in Ohio. R.C. 4905.84(F) provides that the Commission shall adopt rules under R.C. 111.15 to establish the assessment amounts and procedures.

{¶ 7} The TRS assessment rules, codified in Ohio Adm.Code 4901:1-6-36, provide, 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. Ohio Adm.Code 4901:1-6-36(D) requires that the most

recent Federal Communications Commission (FCC) Form 477 information, regarding the number of access lines that were in service on December 31st of the previous calendar year, be submitted by each service provider to Staff for the purpose of determining the assessment amount owed by each provider.

{¶ 8} Ohio Adm.Code 4901:1-6-36 does not specifically address the timing of TRS assessments, but in its August 27, 2008 Finding and Order in Case No. 08-815-TP-ORD, the Commission determined that the TRS assessment period should correspond with Ohio's fiscal year, July 1st through June 30th, and that the TRS assessment calculation would be made in the same fashion as the annual assessment calculation for the Commission's operating budget. *In re the Adoption of the Rules for Telecommunications Relay Service Assessment Pursuant to Section 4905.84, Revised Code, as Enacted by House Bill 562*, Case No. 08-815-TP-ORD, Finding and Order (August 27, 2008). Therefore, the discussion below regarding the rationale for the fiscal assessment shall equally apply to CBW's request for refund of its TRS payment.

### III. PROCEDURAL HISTORY

{¶ 9} On April 1, 2015, Cincinnati Bell Wireless, LLC (CBW) filed an application in Case No. 15-646-TP-RCC, to relinquish its wireless certificate, Certificate No. 90-5357, effective as of April 1, 2015.

{¶ 10} On June 18, 2015, CBW filed a motion in Case No. 15-01-AU-RPT requesting a refund of the Commission's May 1, 2015 invoice, which represents the first half of CBW's 2015 regulatory assessment for the maintenance of the Commission, pursuant to R.C. 4905.10(B), in the amount of \$52,552.27, which it paid on May 29, 2015.

{¶ 11} On August 14, 2015, CBW filed a similar motion in Case No. 08-815-TP-ORD requesting a refund of its payment of the Commission's May 1, 2015 invoice for the annual TRS assessment for the term July 1, 2015 through June 30, 2016, in the amount of \$14,304.05, which it paid by the July 1, 2015 deadline.

{¶ 12} In its motions, CBW states that it operated as a commercial mobile radio service provider in Ohio beginning in 1998. CBW asserts that it sold its wireless spectrum license and certain related assets to Verizon Wireless on September 30, 2014, but continued to provide service to existing customers under a lease-back arrangement with Verizon Wireless until February 28, 2015, and completely ceased operations on March 31, 2015. CBW states that it doubted the propriety of either the regulatory or TRS assessments but still paid the noticed amounts in order to avoid any contention that it had violated a Commission order.

{¶ 13} CBW argues that it was no longer a public utility at the time of the May 1, 2015 invoices, nor will it be a public utility during any part of the next fiscal year, commencing July 1, 2015. Therefore, CBW contends that it should not have been assessed for the next fiscal year. In support of this argument, CBW notes that the August 20, 2014 Finding and Order in Case No. 14-01-AU-RPT excluded companies that had stopped doing business in Ohio in the calculation of future regulatory assessments, even though they had failed to pay their 2013 assessment. *In re Annual Reports for Fiscal Assessment of all Regulated Entities for Calendar Year 2013*, Case No. 14-01-AU-RPT (2013 Annual Report Case), Finding and Order (Aug. 20, 2014) at 4-5. CBW surmises that while the Commission did not expressly state this, the Commission must have determined that future assessments from entities no longer in business would be improper as they were no longer public utilities in Ohio.

{¶ 14} CBW asserts that its situation is the same as the entities in the 2013 *Annual Report Case*, but for the timing of its cessation of jurisdictional operations in Ohio. CBW explains that the entities in the 2013 *Annual Report Case* ceased doing business in 2013, while CBW was still in business in Ohio for a small part of the 2015 calendar year. However, CBW explains that the relevant time frame for regulatory assessments in Ohio is the fiscal year commencing July 1, 2015. Thus, CBW argues that since it ceased doing business prior to fiscal year 2015 and was no longer a public utility as of the May 1, 2015 invoice date, it should not be subject to the current assessments. CBW asserts that the Commission's practice of

excluding from the assessment list only those entities that ceased doing business during the preceding calendar year should be expanded to also exclude those companies, like itself, that ceased doing business between December 31st through July 1st, the end of the calendar year through the start of the next fiscal year. Therefore, CBW contends, it should not be subject to any assessment for the fiscal year beginning July 1, 2015, and should receive a refund of the \$52,552.27 assessment for maintenance of the Commission and the \$14,304.05 TRS assessment that it paid pursuant to the May 1, 2015 invoices.

#### IV. DISCUSSION

{¶ 15} As noted above, while R.C. 4905.10 references fiscal years, it is specifically with regard to the Commission's own fiscal operations, which run from July 1st of one year to June 30th of the next year. For purposes of calculating a public utility's assessment, pursuant to R.C. 4905.10(A), the Commission assesses it in proportion to the public utility's IGR or receipts for the "preceding calendar year in which the assessment is made." R.C. 4905.10(B) further describes the calculation, invoicing, and payment of the initial and final assessment, and has several references to the fiscal year indicating how the calculation should be done, but only as reference to the Commission's fiscal operations. Consequently, CBW's assertion that the fiscal year is the relevant time frame for the calculation of a company's regulatory assessment is inaccurate based on a review of the statutory language.

{¶ 16} In this instance, CBW's 2015 regulatory assessment is based upon its IGR reported for calendar year 2014, because it admits that it was operating throughout that year. Consequently, based on a plain-meaning of the statute, the May 1, 2015 assessment invoice CBW received constituted a portion of its total 2015 assessment based on its IGR for the 2014 calendar year.

{¶ 17} Importantly, the Commission does not collect fees for filing applications, submitting comments, or otherwise participating in Commission activities. As such, the fiscal assessment is the only means of funding for the Commission's operations. Moreover,

because the fiscal assessment is based upon a previous year's IGR, the fiscal assessment is always an after-the-fact collectible for past Commission activities. To agree with CBW's premise would require the Commission to absorb the expenses associated with CBW's cessation of operations and the resulting necessity of PUCO's statutory oversight over the activity and would cause the remaining Commission-regulated utilities to fund CBW's operations. This consequence, and thus CBW's underlying premise, is unacceptable.

{¶ 18} Furthermore, the assessments previously excluded by the Commission in the August 20, 2014 Finding and Order for the *2013 Annual Report Case* represented the statutory minimum, pursuant to R.C. 4905.10(A). This case is factually distinguishable from the facts involved in our prior decision and raises questions of workability with the purpose of the statute. CBW's assessment based on calendar year 2014 IGR, \$69,401.22, represents a more significant deficit that the Commission either must absorb or, more likely, appropriate to the remaining utility companies proportionally. This is unfair to the remaining utilities. More importantly, this would represent a windfall for CBW as it collected IGR in 2014 but would not be assessed on those revenues.

{¶ 19} The Commission also notes that it has made advancements in collection practices since the *2013 Annual Report Case*. Previously, the Commission manually maintained Excel spreadsheets to calculate annual assessments for entities. As we noted in our March 14, 2018 Entry for Case No. 18-01-AU-RPT, the Commission has now adopted a new, streamlined, web-based filing system known as the PUCO Community, which utilizes the Salesforce technology platform. *In the Matter of the Annual Reports for Calendar Year 2017 for the Fiscal Assessment of All Regulated Entities*, Case No. 18-01-AU-RPT, Entry (March 14, 2018) at 2. The Salesforce platform makes it much easier to calculate, invoice, and track assessments. The platform also makes it possible for the Commission to electronically remit a final bill invoice at the time a company seeks to cease utility operations and applies that final assessment in the proper financial period with little to no manual interaction. This

capability to electronically remit an invoice and apply assessments properly was not possible without manual interaction when the precedent cited by CBW was adopted.

{¶ 20} Due to the fact that the Commission has now adopted a technologically advanced filing system and that CBW's assessment is significantly more than the statutory minimum, the Commission finds that the precedent set by the Commission in the 2013 *Annual Report Case* should be overturned. A public utility subject to Commission regulation should be responsible for paying an assessment based upon the IGR the entity receives while holding such a designation. Because CBW was operational for the entire 2014 calendar year, it should not be refunded the \$52,552.27 payment it made under the May 1, 2015 invoice for its 2014 IGR of \$57,605,744. Additionally, as CBW operated during the entire 2014 calendar year and held its certification until April 1, 2015, CBW could have been billed \$16,848.95 as its final 2015 assessment and \$3,993.26 as its initial 2016 assessment for the first few months CBW continued operations into calendar year 2015. However, as CBW has now been non-operational for over three years and filed the pending motion in reliance on a precedent we have now overturned, and in the interest of balancing equity, the Commission will not further invoice CBW for the remainder of its 2015 regulatory assessment. Finally, the Commission denies CBW's motions for refunds of its regulatory and TRS assessment payments invoiced on May 1, 2015.

#### V. ORDER

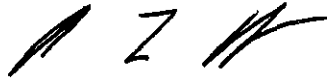
{¶ 21} It is, therefore,

{¶ 22} ORDERED, That CBW's motions for refunds of its payment of Commission regulatory and TRS assessments invoiced on May 1, 2015, be denied. It is, further,

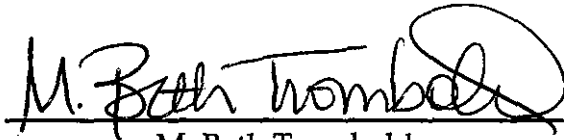
{¶ 23} ORDERED, That a copy of this Fourth Finding and Order be served upon CBW. It is, further,

{¶ 24} ORDERED, That a notice of this Fourth Finding and Order be served via the Electric-Energy, Gas-Pipeline, Railroad, Telephone, and Water industry list serves.

THE PUBLIC UTILITIES COMMISSION OF OHIO



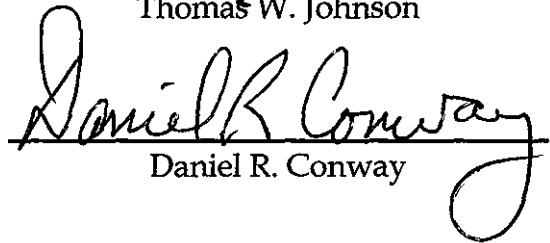
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson

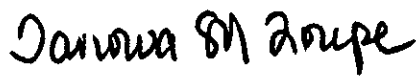


Daniel R. Conway

Lawrence K. Friedeman

AS/mef

Entered in the Journal  
JAN - 3 2019



Tanowa M. Troupe  
Secretary