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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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DOCKETING DIVISION  
Public Utilities Commission of Ohio

In the Matter of the Application of )  
MIDCOM Communications Inc. for )  
Certification as a New Entrant Carrier ) Case No. 96-1123-TP-ACE  
to Provide Basic Local Exchange )  
Services Within the State of Ohio )

REPLY OF CINCINNATI BELL TELEPHONE COMPANY TO  
MEMORANDUM CONTRA MOTION TO INTERVENE AND  
MEMORANDUM CONTRA TO MOTION TO ACCEPT LATE FILED PLEADING

I. INTRODUCTION

On November 22, 1996, Cincinnati Bell Telephone Company ("CBT") filed a Motion to Intervene and Request for Hearing in this proceeding (hereinafter referred to as the "Motion to Intervene"). CBT sought intervention to address a number of issues which will directly impact CBT. On December 12, 1996, MIDCOM Communications Inc. ("MIDCOM") filed a Motion to Accept Late-Filed Pleading, in order for it to file a Memorandum Contra CBT's Motion to Intervene. MIDCOM provides no detailed justification for why the Commission should grant its Motion to Accept Late-Filed Pleading, stating only that its late filing was caused by "a series of extraordinary events outside ordinary office procedures." This is not an adequate basis on which the Commission should grant this Motion and the Commission should strike these filings.

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## II. DISCUSSION

MIDCOM asserts that since it is not currently seeking authority to operate in CBT's service territory, CBT has failed to demonstrate a real and substantial interest in this proceeding.<sup>1</sup> As explained in its Motion to Intervene, CBT has a real and substantial interest in this proceeding, and has met the standard for intervention as set forth in OAC Section 4901-1-11. CBT sought intervention to address a number of issues which will directly impact CBT, including whether the Commission has the authority under the current statutory framework to grant the certificate requested by MIDCOM. The fact that MIDCOM is not currently seeking authority to operate in CBT's territory does not nullify CBT's real and substantial interest in this proceeding, particularly when there is nothing to prevent MIDCOM at any point in the future from seeking to expand into CBT's service territory pursuant to what CBT contends is an unlawful 30-day automatic approval process.<sup>2</sup>

Unless CBT is allowed to intervene in this proceeding, its right to address the issues identified in its Motion to Intervene will have been effectively denied. Moreover, to the extent issues decided in this proceeding are deemed to be resolved for purposes of future proceedings, this proceeding may represent CBT's only opportunity before the Commission to be heard. Thus, a denial of CBT's Motion to Intervene will, as a practical matter, impair or impede its ability to protect its interests. Accordingly, CBT must be permitted to intervene.

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<sup>1</sup> MIDCOM Memorandum Contra at p. 2.

<sup>2</sup> See Section II(C)(3) of the Commission's Local Service Guidelines.

MIDCOM also opposes CBT's request for a public evidentiary hearing.<sup>3</sup> However, Section 4905.24 clearly states that a certificate may only be granted "after public hearing of all parties interested that the exercising of such license, permit, right or franchise is proper and necessary for the public convenience." MIDCOM is incorrect in its assertion that the Commission's Local Service Guidelines somehow remove this statutory requirement. The Commission has no such statutory discretion pursuant to Section 4905.24.

The Commission's power can only be supplied by the Ohio General Assembly. Ohio Mfrs. Assoc. v. Pub. Util. Comm. (1976), 46 Ohio St. 2d 214, 346 N.E.2d 770. It is the exclusive role of the General Assembly to decide what authority the Commission has. See Canton Storage & Transfer Co. v. Pub. Util. Comm. (1995), 72 Ohio St. 3d 1, 647 N.E.2d 136; Time Warner AxS v. Pub. Util. Comm. (1996), 75 Ohio St. 3d 229, 661 N.E.2d 1097. Thus far, the General Assembly has not seen fit to modify the clear language of Section 4905.24 which requires that the Commission hold a public hearing on the MIDCOM's Application. Therefore, even if it is determined that the Commission does have the authority to grant the certificate being sought by MIDCOM, which CBT does not concede, such authority must be exercised in strict conformity with the clear language of Section 4905.24.

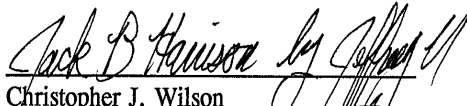
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<sup>3</sup> MIDCOM Memorandum Contra at p. 4.

III. CONCLUSION

For all of the foregoing reasons, the arguments raised by MIDCOM in its Memorandum Contra and its Motion to Accept Late-Filed Pleading should be rejected. CBT respectfully requests that its Motion to Intervene and Request for Hearing be granted.

Respectfully submitted,

  
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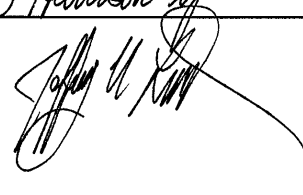
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Dated: December 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Memorandum was served by ordinary U.S. mail, postage prepaid, upon Charles C. Hunter, counsel for MIDCOM Communications Inc., Hunter & Mow, P.C., 1620 I Street, N.W., Suite 701, Washington, D.C. 20006, this 20th day of December, 1996.

*Jack B. Harrison* by  


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