

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues.	:	Case No. 95-845-TP-COI
:		
In the Matter of MCI Metro Access Transmission Services, Inc. to Add a New Rate.	:	Case No. 96-808-TP-ATA
:		
In the Matter of the Following Applications for Authority to Provide Local Telecommunication Services in Ohio:	:	
Time Warner Communications of Ohio, L.P.	:	Case No. 94-1695-TP-ACE
MCI Metro Access Transmission Services, Inc.	:	Case No. 94-2012-TP-ACE
MFS Intelenet of Ohio, Inc.	:	Case No. 94-2019-TP-ACE
ICG Access Services, Inc.	:	Case No. 95-814-TP-ACE
Cablevision Lightpath	:	Case No. 95-1131-TP-ACE
AT&T Communications of Ohio, Inc.	:	Case No. 96-190-TP-ACE
LCI International Telecom Corp.	:	Case No. 96-263-TP-ACE
Scherers Communications Group Inc.	:	Case No. 96-298-TP-ACE
Brooks Fiber Communications of Ohio, Inc.	:	Case No. 96-349-TP-ACE
TCG Cleveland	:	Case No. 96-382-TP-ACE
Preferred Carrier Services Inc.	:	Case No. 96-428-TP-ACE
Communications Buying Group, Inc.	:	Case No. 96-431-TP-ACE
Ameritech Communications of Ohio, Inc.	:	Case No. 96-658-TP-ACE
Sprint Communications Company L.P.	:	Case No. 96-879-TP-ACE
Blue Ribbon Rentals II, Inc. dba Talk One America	:	Case No. 96-926-TP-ACE
NEXTLINK	:	Case No. 96-1036-TP-ACE
Cable & Wireless	:	Case No. 96-1038-TP-ACE
MIDCOM Communications Inc.	:	Case No. 96-1123-TP-ACE
WinStar Wireless of Ohio, Inc.	:	Case No. 96-1206-TP-ACE
LCI International Telecom Corp.	:	Case No. 96-1288-TP-ACE
A.R.C. Networks, Inc.	:	Case No. 96-1370-TP-ACE
:		
In the Matter of the Following Applications to Amend Authority:	:	
MFS Intelenet of Ohio, Inc.	:	Case No. 96-1240-TP-AAC
ICG Telecom Group, Inc.	:	Case No. 96-1336-TP-AAC

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APPLICATION FOR REHEARING

Cincinnati Bell Telephone Company ("CBT"), pursuant to R.C. § 4903.10 and OAC § 4901-1-35(A), hereby applies for rehearing of the Commission's January 16, 1997 Supplemental Finding and Order in the above-captioned proceedings (the "Order"). CBT submits that the Commission's Order is unreasonable and unlawful in the following respects:

- (1) the Commission failed to require each applicant to prove satisfaction of the requirements of R.C. § 4905.24;
- (2) the Commission limited its inquiry to each applicant's technical, financial and managerial capabilities;
- (3) the certification procedure applied by the Commission in these proceedings shifts the burden of proof from applicants to intervenors;
- (4) the Commission applied the certification provisions of its Local Service Guidelines in these proceedings when the Commission contends on appeal that the Guidelines are not final; and
- (5) the Commission denied CBT's motions to intervene and requests for hearing in each of the cases listed on Appendix A of the Order.

The reasons supporting the granting of this Application are set forth in the attached Memorandum in Support.

Respectfully submitted,


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Filed: February 18, 1997

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MEMORANDUM IN SUPPORT

In its Order, the Commission summarily granted a number of certificates of public convenience and necessity to competing providers of basic local exchange service, partially suspended a number of cases pending such applicants' completion of their proposed tariffs, and denied CBT's motions to intervene and requests for hearing in several cases. As explained below, the Commission's Order is unreasonable and unlawful in several respects.

The Commission did not conduct a public hearing of all parties interested and require the applicants in these proceedings to make a showing pursuant to R.C. § 4905.24 that the exercising of these certificates would be "proper and necessary for the public convenience." Instead, the Commission chose to limit its inquiry in these proceedings to each applicant's technical, financial and managerial capabilities. This limited inquiry did not satisfy the requirements of R.C. § 4905.24. Thus, the Order is unreasonable and unlawful in that it fails to apply the appropriate statutory standard in each of these proceedings.

Under R.C. § 4905.24, the burden of proving that the requested authority is proper and necessary for the public convenience is clearly placed upon the applicant. The certification procedure applied by the Commission in these proceedings was unreasonable and unlawful in that it shifted this burden of proof from the applicants to intervenors. The Commission refused to consider holding a hearing unless an interested party "can set forth identifiable concerns regarding the technical, managerial, or financial capabilities of an applicant." Order at p. 4. Thus, the Commission has both limited the issues for which it will hold a hearing and required

intervenors to justify the need for a hearing when the statute clearly requires a hearing on a broader group of issues.

Moreover, CBT submits that it is unreasonable for the Commission to be applying the certification provisions of its Local Service Guidelines while the Commission is contending that the Guidelines are not final.¹ If, as the Commission has asserted, the Guidelines are subject to further revision and are not ripe for appeal, they should not be applied in these cases as if they were final.

Finally, CBT submits that the Commission's denial of its motions to intervene and requests for hearing in each of the cases listed on Appendix A of the Order was unreasonable. As explained in its motions, CBT has a real and substantial interest in these proceedings and has met the standard for intervention as set forth in OAC Section 4901-1-11. CBT has been granted intervention in other certification cases for the same reasons. Thus, CBT should not have been denied intervention in these proceedings. Similarly, the Commission's refusal to conduct public hearings in these cases after receiving requests from intervenors to do so was unreasonable and unlawful. Section 4905.24 clearly states that a certificate may only be granted "after public hearing of all parties interested." The Commission is incorrect in its assertion that it may satisfy this public hearing requirement through a paper proceeding. The Commission has no such statutory discretion pursuant to Section 4905.24.

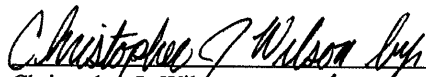
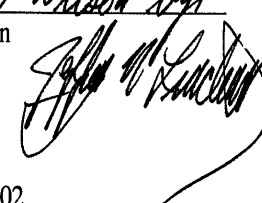
The Commission's power can only be supplied by the Ohio General Assembly. Ohio Mfrs. Assoc. v. Pub. Util. Comm. (1976), 46 Ohio St. 2d 214, 346 N.E.2d 770. It is the

¹ See, Commission's Motion to Dismiss Appeal, filed January 28, 1997 in Cincinnati Bell Telephone Company v. PUCO, Ohio Supreme Court Case No. 97-26.

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 public hearings on these applications.

For all of the foregoing reasons, CBT respectfully requests the Commission to grant this Application for Rehearing.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by ordinary U.S. mail, postage prepaid, upon the parties listed on the attached list this 18th day of February, 1997.

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