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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cincinnati Bell Telephone Company for Approval of a Retail Pricing Plan Which May Result in Future Price Increases and a New Alternative Regulation Plan	)	Case No. 96-899-TP-ALT
In the Matter of the Application of Cincinnati Bell Telephone Company for Suspension/Modification of Certain Requirements of Section 241(b) and (c) of Telecommunications Act of 1996, the Federal Communication Commissions Rules, and the Public Utilities Commission's Local Service Guidelines	)	Case No. 96-1317-TP-UNC
In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company	)	Case No. 97-152-TP-ARB

MEMORANDUM OF CINCINNATI BELL TELEPHONE COMPANY IN OPPOSITION TO APPLICATION FOR REHEARING OF MCI TELECOMMUNICATIONS CORPORATION

In its March 26, 1997 Entry in these proceedings, the Commission ordered that Cincinnati Bell Telephone Company's ("CBT") application for suspension/modification of certain requirements of the Telecommunications Act of 1996 ("the Act"), Case No. 96-1317-TP-UNC, filed December 9, 1996, ("the 2% Request") be decided in the context of CBT's pending Alternative Regulation Case, Case No. 96-899-TP-ALT ("the Alt Reg Case"). The Commission also ordered that the pending arbitration proceeding not decide the 2% Request issues. MCI objects to the Entry to the extent it would extend the decision date on the 2% Request past June 9, 1997. MCI's application for rehearing should be denied.

I. There Is No Time Restriction On When A 2% Request May Be Made

MCI contends that the Commission may not defer decision on the 2% Request past 180 days and that CBT cannot dismiss and refile the 2% Request to restart the 180 period. MCI is wrong. There is no statutory deadline dictating when a 2% request may be filed. Thus, nothing prevents the dismissal and refiling of the 2% Request or, for that matter, the filing of a separate 2% Request, which would itself have a 180 time period for action.

The Act only requires that the Commission "act" on the 2% Request within 180 days, but does not define "action." CBT submits that since the March 26, 1997 Entry expressly set forth a procedure whereby a final decision on CBT's 2% Request would be rendered prior to the time the requirements in question would otherwise need to be implemented, the March 26, 1997 Entry could be considered action on the 2% Request. In any event, MCI presents no authority for the proposition that it has standing to object to extension of the 180 period. CBT will take no action to enforce the 180 day period, so long as CBT's rights are not prejudiced by any delay. CBT would benefit the most from an immediate grant of the 2% Request and has nothing to gain by delay. In fact, CBT would prefer that the Commission not defer the 2% Request, but is willing to entertain such an extension if it will give the Commission time to consider the 2% Request, so long as it does not prejudice CBT's opportunity to obtain the relief sought in the 2% Request. The 2% Request should be granted before any new entrant has the opportunity to cause CBT the undue economic hardships which the 2% Request was intended to prevent. Otherwise, the 2% Request could become moot.

The only time limit MCI cites for filing a 2% Request is the December 9, 1996 date specified in the Guideline II.A.2.e.i. That Guideline does not state that a 2% Request may not be filed after December 9, 1996, but only requires that a plan be filed by that date. CBT filed the 2% Request on December 9, 1996 in order to comply with the requirement to file a plan. In any event, even if the Guideline means what MCI claims, the Commission has the inherent power to modify or waive its own Guidelines in order to consider a 2% request filed after December 9, 1996:

> Nothing contained within these guidelines and procedures shall preclude the Commission from waiving any provision in this document for good cause shown or upon its own motion.

Guideline II.A.2.a (emphasis added). The Commission established the December 9, 1996 date and has the power to eliminate it.

Regardless of this Guideline, justification for CBT to file a 2% Request after December 9, 1997 can be found in the Commission's September 5, 1996 Entry in Case No. 96-707-TP-UNC:

> Should CBT have any specific arguments and supporting documentation concerning an alleged burden due to a particular interconnection request or a particular regulatory requirement, the Commission may consider such arguments and information in the context of a company-specific arbitration or in CBT's new alternative regulation case, Case No. 96-899-TP-ALT. (Emphasis added.)

It would have been impossible for CBT to raise 2% issues in a company-specific arbitration until such an arbitration proceeding existed. As none was in place on December 9, 1996, the Commission's order necessarily authorized the raising of 2% issues at a later date. MCI did not file for arbitration until February 10, 1997. In order to raise 2% issues in the MCI

arbitration proceeding, CBT had to have the ability to introduce the issues in its Response to MCI's Petition.

II. MCI Is Not Harmed By Deferral of The 2% Request

While MCI objects to the Commission's procedural treatment of the 2% Request, curiously, MCI agrees that the Commission acted properly in deferring the determination of permanent prices to the Alt Reg Case. If MCI agrees with the logic of that decision, it has no legitimate objection to the same treatment of the 2% issues. MCI complains that if the 2% Request is deferred, MCI cannot know the ground rules in order to establish a business plan. However, MCI is willing to accept the risk that permanent unbundled element prices are different than the interim rates that will be established by arbitration. MCI will not know the real cost of doing business until after the permanent rates have been established. MCI is apparently willing to establish business plans and enter the market not knowing the ultimate price, perhaps the most important competitive issue. Thus, if MCI truly objected to the uncertainty of interim solutions, it would not be able to agree to interim prices. In contrast, MCI knows the extent of the possible relief CBT may obtain because it is described in CBT's 2% Request. MCI could certainly make business plans based upon the assumption the 2% Request would be granted.

The Commission is correct that there is a relationship between the MCI arbitration, the 2% Request and the Alt Reg Case. One of the primary purposes of the Alt Reg Case is to rebalance CBT's rates so that the retail rates are more aligned with the underlying costs. Without doing so, CBT would be vulnerable to price arbitrage. The significance of MCI's arbitration case is that it signals MCI's entry into the market and, without the relief sought

by CBT, will allow MCI to create undue economic burdens on CBT until it rebalances its rates. Thus, it is as a direct result of MCI's and others' requests for interconnection that the 2% Request is necessary and it is necessary that the 2% Request be designed to bridge the gap between the conclusion of the MCI arbitration proceeding and the completion of the Alt Reg Case.

The 2% Request will not forestall competition but, instead, will permit competition to go forward in a fair manner. MCI is free to enter the market as a facilities-based carrier, as a reseller or as a user of unbundled network elements. MCI will not be disadvantaged by the 2% Request but would be able to compete on the same footing as CBT. As CBT's Alt Reg Plan goes into effect, the relief sought in the 2% Request would gradually phase out. MCI's complaint is not about the fairness of CBT's 2% Request; MCI's complaint is about losing the ability to unfairly compete against CBT.

III. The 2% Request Need Not Be Permanently Decided By The Arbitration Proceeding

MCI argues that all arbitration issues must be permanently decided within 9 months, even while it acknowledges that the most important issue, price, may be established on an interim basis. MCI cites no authority for this proposition other than the bare language of § 252(b)(4)(C). That provision states:

> The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

While this states that there must be "resolution" of each issue within 9 months, the "resolution" is to be done "by imposing appropriate conditions as required to implement

subsection (c)." Subsection (c), in turn, requires that the resolution "meet the requirements of section 251" (which includes by definition § 251(f)(2), the basis for the 2% Request), and also that the solution "provide a schedule for implementation of the terms and conditions." Neither of these statements mandates a "permanent" decision or a "one-time" solution. Certainly, an issue can be resolved by ordering that it follow the outcome of the 2% Request. Further, the Commission could impose a schedule for implementing the 2% Request, which would not necessarily require that the same terms and conditions be in effect at all times. Therefore, § 252(b)(4)(C) does not support MCI's argument.

IV. CBT Has Shown The Need For Relief Under § 252(f)(2) And Demonstrated How The 2% Request Is Directly Linked To Rate Rebalancing

CBT has met its burden of proof to obtain suspension/modification of portions of the Act, the FCC Rules and Commission Guidelines. It is inappropriate for MCI to argue the merits of the 2% Request in its application for rehearing of the March 26, 1997 Entry, which was only a procedural entry stating how the Commission intended to handle the 2% Request. Nevertheless, MCI is wrong as to whether CBT has met its burden of proof. There is no doubt that without the 2% Request, CBT would be subject to an "undue economic burden beyond the economic burden that is typically associated with efficient competitive entry." Until CBT can rebalance its rates, competition between CBT and NECs can never be efficient competition. CBT is restricted in what it can do to price its services or to change its prices to meet market conditions. NECs are under no such constraints and have considerable marketing advantages until CBT obtains regulatory relief. MCI knows this and wishes to have the opportunity to exploit it. That is the very reason why the 2% Request was necessary.

When MCI objects to any relief pursuant to § 251(f)(2) being tied to rate rebalancing, it fails to acknowledge the clear relationship between the Alt Reg Case and the 2% Request. One of the bases for relief under § 251(f)(2) is "to avoid imposing a requirement that is unduly economically burdensome beyond the economic burdens typically associated with efficient competitive entry." Guideline II.A.2.e.iii.a.ii. CBT's 2% Request describes the inefficient competition which would occur if NECs are able to obtain unbundled network elements at cost and resold services at avoided cost discounts, if CBT is still bound by rate regulation that prevents it from freely adjusting its prices to meet competition. MCI's economic witness in the arbitration proceeding clearly understood this problem and acknowledged that there was a regulatory delay that would prevent CBT from reacting to market forces. The premise of much of the 2% Request is that CBT should obtain relief from these clear price arbitrage opportunities until such time as CBT can rebalance its rates in the Alt Reg Case. Once the rate rebalancing has occurred, much of the relief fashioned to address this problem would no longer be necessary.

The relief sought with respect to operational support systems ("OSS") was based upon a different premise. This was a problem of technical and economic feasibility for CBT. CBT is of such a size that it could not implement the same OSS solutions available to an RBOC or GTE. The large scale systems being developed for RBOCs are entirely impracticable for a company the size of CBT. CBT's operational support systems are a collection of legacy systems, some of which were never designed by their vendor for multiple users. CBT has worked diligently towards finding and implementing OSS solutions, and stands willing to work with MCI and others to meet their reasonable OSS needs. Rather

than do that, however, MCI continues to demand an ultimate "one size fits all" solution to its OSS wishes, without any commitment to pay for that solution. CBT presented a plan with its 2% Request as to how and when it intended to comply with the requirements to unbundle operational support systems. Fortunately, recent developments have allowed CBT to accelerate the pace of this program, and to meet many of MCI's needs. The specifics of CBT's present plans were described in CBT's unrebutted testimony in the MCI arbitration.

MCI criticizes CBT's arguments, stating that CBT's problems are the same as any carrier's -- large or small. However, MCI ignores the fact that only carriers with less than 2% of the nation's access lines are eligible for relief under § 251(f)(2), so it is irrelevant whether large carriers would suffer the same consequences. MCI does not dispute that CBT is of a size that renders it eligible for relief under § 251(f)(2). As to the merits, the FCC and the Commission have both chosen to define "undue economic burden" by comparison to the burdens associated with efficient competitive entry. MCI does not refute the basic fact that CBT would be subject to inefficient competition until the Alt Reg Case is completed. Given this inefficient competitive entry, CBT has proven an "undue economic burden" that, in turn, compels relief under § 251(f)(2). MCI and others are poised ready to enter the Cincinnati market. There is every reason to expect that they would exploit every competitive advantage available to them until CBT can rebalance its rates. The 2% Request will be necessary as soon as any NEC starts doing business in CBT's market area.

MCI incorrectly states that the 2% Request would exempt CBT from most of the obligations under the Act and the Guidelines. CBT's 2% Request is not "sweeping" but is narrowly tailored to address a few specific matters and is, for the most part, temporary.

CBT has not sought limitations on the rules pertaining to interconnection and the exchange and termination of traffic. CBT has not sought limitations on unbundling, other than with respect to the pricing of combinations of elements that duplicate services and the pricing of business loops. CBT has simply requested to be able to price "combinations" on the same basis as the retail services that they would duplicate. Thus, MCI would have the ability to obtain those combinations and compete on the same footing as CBT or any other provider. Even then, the relief sought is temporary. With respect to resale, CBT has only sought reasonable restrictions on a handful of niche services. The vast majority of services, including basic service, both business and residential, would be available for resale. CBT has pledged to work with any NEC to provide necessary functionality to allow the NEC to access OSS functions. MCI has not shown any prejudice from CBT's proposals.

Finally, with respect to LNP, CBT has simply requested deferral of long-term number portability until the technical solution has been proven in other markets that are not the sole market of the relevant provider. As CBT has explained, the LNP provisions would apply to CBT's entire market area at once. There is no room for error in case of technical snafus. In addition, due to the enormous investment required to implement long-term number portability, CBT requests that it be able to defer implementation until the method of funding these costs has been resolved. In the meantime, interim number portability is available.

V. Conclusion

CBT submits that it has provided adequate justification for the relief requested in the 2% Request and asks that the Commission grant the same. CBT has not challenged the Commission's prerogative as to how it procedurally wishes to handle the 2% Request. CBT

has already presented two arbitration cases, including MCI's, on the basis that the arbitrations were only to provide interim solutions on 2% Request issues. CBT recently filed a motion to amend the Alt Reg Case to incorporate the 2% Request. CBT has no objection to the Commission taking beyond June 9, 1997 in which to decide the 2% Request, so long as CBT's positions are not prejudiced.

If it is determined that the Commission may defer final decision on these issues past the 180 day period, CBT only requests that the 2% Request be decided before the harms CBT seeks to avoid materialize. If the Commission prefers that CBT refile the 2% Request so as to restart the 180 day clock, upon appropriate waiver of the Guidelines that arguably required 2% Requests to be filed by December 9, 1996, CBT would be willing to make such a refiling. In any event, MCI's application for rehearing of the March 26, 1997 Entry should be denied.

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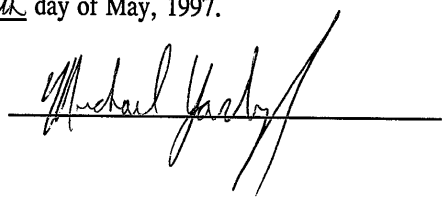
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent by ordinary United States mail, postage prepaid to the following on this 5th day of May, 1997.



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