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Public Utilities Commission of Ohio

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Brooks Fiber Communications of Ohio, )  
Inc. for a Certificate of Public ) Case No. 96-349-TP-ACE  
Convenience and Necessity to Provide )  
Local Telecommunications Services in )  
Certain Specified Areas in Ohio )

MOTION TO INTERVENE AND REQUEST FOR HEARING

Pursuant to Ohio Adm. Code § 4901-1-11, Cincinnati Bell Telephone Company ("CBT") respectfully moves to intervene in this proceeding. CBT also requests that the Commission order a public evidentiary hearing on various issues raised by the April 5, 1996 Application for a Certificate of Public Convenience and Necessity filed by Brooks Fiber Communications of Ohio, Inc. ("Brooks Fiber"). The reasons supporting the granting of this Motion to Intervene and Request for Hearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

FROST & JACOBS

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**MEMORANDUM IN SUPPORT**

According to its Application, Brooks Fiber seeks a certificate of public convenience and necessity to provide a full range of competitive local telecommunications services, including local exchange, exchange access, and dialtone services in the Toledo, Ohio Metropolitan area. CBT submits that the Application raises a number of issues which will directly impact CBT. For example, CBT maintains that under the current statutory framework in Ohio, the Commission lacks the authority to grant the certificate requested by Brooks Fiber. Other issues raised by the Application include: (1) whether the granting of the certificate to Brooks Fiber would serve the public interest; (2) whether Brooks Fiber will be required to serve all customers within the exchanges where it is authorized to provide service; (3) whether the granting of a certificate to Brooks Fiber would adversely impact the availability to certain customers of adequate basic local exchange service at just and reasonable rates; (4) to the extent Brooks Fiber plans to offer services as a facilities-based provider, whether Brooks Fiber's network facilities will be designed to permit interconnection and unbundling to the same extent as may be required of incumbent Ohio LECs; and (5) to the extent Brooks Fiber plans to offer services as a non-facilities based reseller, whether the terms and conditions under which incumbent LECs may be required to accommodate such an arrangement would serve the public interest.

CBT submits that it has a real and substantial interest in this proceeding, and that it has met the standard for being granted intervention in this proceeding as set forth in OAC Section 4901-1-11. Indeed, unless CBT is allowed to intervene in this proceeding and made a party, its right to address the issues identified in this Motion to Intervene will have been effectively denied

since CBT will be without standing to appeal any final order coming out of this proceeding to the Supreme Court. Ohio Domestic Violence Network et al. v. PUCO, 70 Ohio St. 3d 311 (1994). Thus, a denial of CBT's Motion to Intervene will, as a practical matter, impair or impede its ability to protect its interests in this proceeding.

Even if Brooks Fiber is not currently seeking authority to operate in CBT's territory, CBT submits that there is nothing to prevent Brooks Fiber at some point in the future from seeking to expand any authority granted in this proceeding to include areas within CBT's service territory. While permitting Brooks Fiber to expand into CBT's territory without giving CBT a full opportunity to address the issues raised in this Motion to Intervene would clearly constitute a denial of CBT's right to due process, CBT submits that, 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. Accordingly, CBT must be permitted to intervene.

In addition, depending on the rules adopted by the Commission to govern local competition, CBT may elect to purchase unbundled services from Brooks Fiber for resale to customers in areas covered by the Application. Thus, as a potential customer of Brooks Fiber, CBT has a real and substantial interest in making sure Brooks Fiber's network facilities will be designed to permit interconnection and unbundling at least to the same extent as may be required of existing Ohio LECs.

WHEREFORE, CBT respectfully requests that its Motion to Intervene and Request for Hearing be granted.

Respectfully submitted,

FROST & JACOBS

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Dated: May 28, 1996

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene and Request for Hearing was served by ordinary U.S. mail, postage prepaid, upon Sally W. Bloomfield, counsel for Brooks Fiber Communications of Ohio, Inc., Bricker & Eckler, 100 South Third Street, Columbus, Ohio 43215-4291, this 28th day of May, 1996.

*Christopher J. Wilson by Donald E. Longwell R*

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