

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Cincinnati Bell Telephone Company for)
Approval of an Alternative Form of) Case No. 04-720-TP-ALT
Regulation Pursuant to Chapter 4901:1-4,)
Ohio Administrative Code.)

In the Matter of the Commission Ordered)
Investigation of an Elective Alternative) Case No. 00-1532-TP-COI
Regulatory Framework for Incumbent)
Local Exchange Companies.)

FINDING AND ORDER

The Commission finds:

- (1) On May 14, 2004, Cincinnati Bell Telephone Company (CBT) filed an application for approval of an elective alternative regulation plan. CBT filed its application pursuant to Chapter 4901:1-4, Ohio Administrative Code (O.A.C.).¹ Along with its application, CBT filed an application for waiver pursuant to Rule 4901:1-4-05(B), O.A.C., seeking permission to continue one of its Lifeline assistance programs. The effective date of CBT's alternative regulation plan, unless suspended, will be July 1, 2004.
- (2) Under the elective alternative regulation rules adopted by the Commission, an electing incumbent local exchange carrier (ILEC) has pricing flexibility for services other than basic local exchange service. In exchange for this, a company adopting an elective alternative regulation plan would be required to fulfill a number of important commitments to benefit its customers. Most importantly, the electing company would not be permitted to increase its existing basic local telephone rates and basic Caller ID rates for as long as the company is in the plan. The company also must provide, on demand, high speed internet access within one and two years of adopting the plan

¹ For a summary discussion of the legislative and regulatory background of alternative regulation, see the Commission's Finding and Order issued on October 3, 2002, in *In the Matter of the Application of United Telephone Company of Ohio dba Sprint for Approval of an Alternative Form of Regulation Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 02-2117-TP-ALT.

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in areas across the state that would otherwise not likely receive this service. Additionally, the company must offer an enhanced Lifeline assistance program to assist customers at or below 150 percent of the poverty level in maintaining and establishing service.

Pricing for services other than basic local exchange service have varying levels of flexibility under the plan, depending upon the level of public interest in the services. Prices for Call Waiting, second and third local exchange service access lines, Call Trace, Centrex, PBX trunks, per line identification blocking, non-published number service, N-1-1 codes, and payphone access lines would be capped for two years with limited pricing flexibility thereafter. All other regulated, non-basic local exchange services, like toll services and some custom calling services, would not be subject to any rate caps and would be priced by the electing company at marked-based rates. While an electing company would have more pricing flexibility, it would remain subject to all of the Commission's rules protecting customers from unfair, inadequate and unsafe company practices. Finally, the company is not permitted to end its alternative regulation plan until all commitments are fulfilled.

- (3) Chapter 4901:1-4, O.A.C., establishes the process by which ILECs can opt into the elective alternative regulation plan. Specifically, pursuant to Rule 4901:1-4-02, O.A.C., an ILEC can opt into an elective alternative regulation plan at anytime by making an appropriate filing. As set forth in the rules, an appropriate filing is one that includes: a completed application form; a proposal to cap basic local exchange service rates at existing levels pursuant to Section 4927.04, Revised Code, and price all other telephone services pursuant to Rule 4901:1-4-05(D), O.A.C., and Section 4927.03, Revised Code; a 30-day pre-filing of all necessary tariff modifications; and a plan as to how the company will meet all of the commitments set forth in Rule 4901:1-4-05, O.A.C. An application filed under Chapter 4901:1-4, O.A.C., will be automatically approved on the 46th day after filing, unless the Commission suspends the application.

Rule 4901:1-4-02(D), O.A.C., allows any person to file a request for hearing on an application within 20 days of the filing of an elective alternative regulation plan. The rule further provides

that "absent extraordinary circumstances established through clear and convincing evidence that reasonable grounds for a hearing exist, a hearing will not be held."

- (4) CBT's application for an elective alternative regulation plan was filed pursuant to Chapter 4901:1-4, O.A.C. Along with this application, CBT filed a request for waiver of Rule 4901:1-4-05(B), O.A.C., regarding Lifeline commitments.
- (5) CBT notes in its application that, in accordance with Rule 4901:1-4-02(A)(3), O.A.C., it prefiled all necessary tariff modifications with the Commission's staff on April 15, 2004. With the exception of CBT's request to maintain an alternative Lifeline assistance program, CBT states that CBT and staff have agreed on all tariff modifications. CBT's request to maintain the Federal Plan is the subject of CBT's separately filed waiver request.
- (6) CBT agrees to fulfill the advanced services requirement by complying with Rule 4901:1-4-05, O.A.C. CBT has listed the Class 5 central offices in its traditional operating area which serve census tracts with a population density of 500 or more people per square mile, as defined by the 2000 census.

Within its tariff, CBT has included the provisions for a Lifeline assistance program in accordance with the specifications of Rule 4901:1-4-05(B), O.A.C. In addition to the Lifeline plan conforming to its alternative regulation plan, CBT also seeks to offer, as an alternative Lifeline program for eligible customers, its Federal Plan. CBT will continue to provide automatic enrollment to customers who participate in a qualifying program and to provide for self-certification to enroll customers who qualify on the basis of household income.

- (7) CBT intends to establish an annual marketing budget of \$0.10 per residential access line and will continue to coordinate Lifeline assistance program activities, including outreach and promotion, through the advisory board established in *In the Matter of the Application of Cincinnati Bell Telephone Company for Approval of a Retail Pricing Plan Which May Result in Future Rate Increases and for a New Alternative Regulation Plan*, Case No. 96-899-TP-ALT. Any marketing budget that remains at the conclusion of CBT's current alternative regulation plan will be added to the budget created under the new plan. Going

forward, budget surpluses will be carried forward from year-to-year. The advisory board will maintain the schedule of meetings established for 2004.

- (8) CBT will adhere to the retail rate commitments contained in Rule 4901:1-4-05(C), O.A.C., for all Tier 1 core and non-core services and Tier 2 services. Furthermore, CBT will use the process and registration form adopted in Case Nos. 99-998-TP-COI and 99-563-TP-COI as found in the Competitive Retail Service Rules 4901:1-6-01 through 4901:1-1-6-24, O.A.C.
- (9) As for CBT's Lifeline waiver request, CBT's alternative regulation plan would require the termination of its Federal Plan, which is one of CBT's Lifeline assistance programs offered through its general exchange tariff. The Federal Plan has been in existence since January 1, 1998. Under the plan, eligible residential customers are given a waiver of the federally-tariffed end-user common line charge (EUCL), a discount of \$1.75 off their monthly line rate for basic local exchange service, and the ability to purchase any optional feature. The other Lifeline plan offered by CBT is the CBT Plan. By comparison, the CBT Plan provides a \$7.00 discount off the monthly rate for basic local exchange service, waives the EUCL, but prohibits the purchase of optional features. The CBT Plan became effective November 13, 1998. Presently, customers can choose between the two plans. According to CBT, customers have preferred the Federal Plan by two to one.
- (10) In its waiver request, CBT seeks authority to continue to offer the Federal Plan. In the alternative, CBT requests that it be allowed to grandfather the Federal Plan, allowing customers to keep their optional services until they make changes to their local exchange service.
- (11) CBT contends that maintaining the Federal Plan is in the public interest. CBT believes that eligible Lifeline customers should be treated no differently than other customers insofar as the ability to select options and packages that suit their needs.
- (12) On June 3, 2004, the Ohio Consumers' Counsel (OCC) moved to intervene in this proceeding. The OCC moves to intervene as the representative of residential customers and under the statutory authority of Chapter 4911, Revised Code. In asserting

its right to intervene, the OCC claims that it meets the criteria for intervention set forth in Rule 4901-1-11(A), O.A.C., and Section 4903.221(B), Revised Code. The Commission has granted intervention to the OCC in elective alternative regulation cases involving United Telephone Company of Ohio dba Sprint (Sprint), SBC Ohio, and CenturyTel of Ohio, Inc. (CenturyTel), Case Nos. 02-2117-TP-ALT, 02-3069-TP-ALT, and 04-62-TP-ALT, respectively.

The OCC has stated sufficient grounds for intervention. Accordingly, the OCC's motion to intervene shall be granted.

- (13) On June 3, 2004, concurrently with its motion to intervene, the OCC filed a request for hearing. In its supporting memorandum, the OCC alleges that, pursuant to Rule 4901:1-4-02(D), O.A.C., extraordinary circumstances exist that warrant a hearing. As evidence of extraordinary circumstances, the OCC points to CBT's level of earnings. Highlighting CBT's return on equity, the OCC finds unacceptable excess revenue generated by the company. The OCC accuses CBT's parent company of using CBT's regulated excess revenues to subsidize debt and losses sustained from unregulated broadband operations. To determine whether CBT's application is in the public interest, given CBT's level of earnings and without a commitment to reduce rates, the OCC urges the Commission to conduct a hearing.
- (14) The OCC also questions whether CBT meets the standards of Section 4927.03(A), Revised Code, concerning the existence of competition or reasonably available alternatives. The OCC claims that the record in Case No. 00-1532-TP-COI was devoid of such evidence. Pointing to the absence of CLECs serving residential customers and the absence of ubiquitous wireless service in CBT's service territory, the OCC questions whether CBT meets the standards of Section 4927.03(A), Revised Code.
- (15) According to the OCC, an alternative regulation plan must be in the public interest. In exchange for pricing flexibility, the ILEC must agree to certain commitments that benefit ratepayers. Moreover, there must be an incremental benefit to ratepayers. In examining CBT's gains under the alternative regulation plan, the OCC finds the plan to be out of balance in comparison to the benefits offered to ratepayers.

With regard to the advanced services commitment, CBT does not state whether it is currently providing advanced services in the required areas of its service territory. If the advanced services were already deployed under traditional regulation, there would be no incremental benefit to ratepayers from alternative regulation. Examining the rate cap commitment, the OCC finds no benefit to ratepayers given CBT's level of earnings. Finally, the OCC objects to CBT's refusal to provide a 30-day notice of rate increases. In all, the OCC finds no balance or *quid pro quo* in the commitments offered by CBT. The OCC urges the Commission to conduct a hearing to determine whether CBT's commitments provide a sufficient incremental benefit to make the plan in the public interest.

- (16) Turning to CBT's Lifeline waiver, the OCC advocates for its denial. The OCC contends that the waiver would significantly reduce the benefits available to customers. Moreover, the OCC calculates that the reduction in benefits would amount to \$1.3 million. As an additional reason for denying the waiver, the OCC asserts that granting the waiver would fundamentally modify the elective alternative regulation plan. Granting the waiver would convert the plan into a company-specific plan, not an off-the-shelf plan as intended by alternative regulation. The OCC regards a change in the Lifeline commitment to be a major modification to an alternative regulation plan. Where there is a proposed major reduction in a significant benefit, the OCC finds grounds for rejection of the proposal.
- (17) On June 4, 2004, Communities United for Action (CUFA) filed a pleading alternatively raising objections or requesting a hearing. CUFA objects to CBT's waiver request. Noting that Rule 4901:1-4-2(D), O.A.C., does not contemplate anything less than a formal hearing, CUFA wishes to raise its objection and, if necessary, request a hearing.² CUFA notes that CBT is the first company to seek a modification of its alternative regulation plan. CUFA is concerned that granting the waiver will lead to additional requests for waivers.

² In its entry on rehearing issued March 6, 2003, in *In the Matter of the Application of SBC Ohio for Approval of an Alternative Form of Regulation*, Case No. 02-3069-TP-ALT, the Commission clarified that under Chapter 4901:1-4, O.A.C., parties may file comments or concerns within 20 days after an application for alternative regulation is filed.

- (18) CUFA describes itself as a nonprofit corporation based in Cincinnati, Ohio. It is a multi-issue community organization that brings together organizations and communities representing a variety of cultural and ethnic backgrounds and economic levels. It has a particular interest in working-class neighborhoods. CUFA was an active party to CBT's current alternative regulation plan. It is a member of CBT's consumer advisory board and has assisted in the development of CBT's Lifeline service. CUFA also participated in the Commission's alternative regulation rule making proceeding.
- (19) CUFA describes CBT's Lifeline services as having two tiers: Federal Lifeline and CBT Lifeline. Customers who purchase CBT Lifeline receive a monthly discount of \$12.34 and are not allowed to purchase vertical services. As of April 2004, CBT reported that 16,077 customers were receiving CBT Lifeline. Federal Lifeline customers receive a discount of \$7.09 and are unrestricted in their choice of vertical services. As of April 2004, CBT reported that 31,152 customers were receiving Federal Lifeline. The difference in discounts is funded by CBT.

CBT's alternative regulation plan allows a Lifeline plan that resembles the CBT Lifeline plan, with the exception that customers may order one vertical service—Call Waiting. The Lifeline customer may only obtain other vertical services by self-certifying based on health or safety. The alternative regulation rules would "grandfather" CBT Lifeline customers, allowing them to retain their vertical services until or unless they make a change in their service.

- (20) CUFA suspects that CBT is seeking an opportunity to market high-priced, vertical services to Lifeline customers. Of concern also is that customers who opt for vertical services may unwittingly remove themselves from the Lifeline program. CUFA is not persuaded by CBT's arguments concerning the loss of choice. Nor is CUFA convinced by CBT's allusions to discriminatory treatment resulting in a subclass of low-income customers. CUFA acknowledges that some customers may be disappointed by vertical service purchase restrictions. Nevertheless, CUFA believes that customers will be pleased at the doubling of their Lifeline discount.

- (21) If the Commission is receptive to changes in CBT's alternative regulation plan, CUFA suggests that Caller ID be placed equally with Call Waiting as a permissible Lifeline vertical service. According to CUFA, Caller ID rivals Call Waiting in popularity among consumers. Moreover, CUFA recommends that Lifeline customers be allowed to purchase Caller ID without self-certification. CUFA explains that Caller ID has been marketed and accepted in the market as a security device. Even low-end telephone devices incorporate the Caller ID window.
- (22) CBT's arguments in support of its waiver request do not convince CUFA. CUFA believes that CBT's true motivation is based upon economics, not customer choice. CUFA points out that the difference in the Federal and CBT discounts is \$5.25. CBT funds \$3.50 of the difference. CUFA calculates that it would cost approximately \$109,469 per month or \$1.313 million per year to migrate 31,277 customers. Conversely, CUFA computes that Lifeline customers would save \$1.313 million on their telephone bills.
- (23) On June 11, 2004, CBT filed a memorandum contra the pleadings filed by the OCC and CUFA. In response to the OCC's request for hearing, CBT contends that the OCC has failed to make a showing of extraordinary circumstances. Acknowledging that the Commission did not define extraordinary circumstances, CBT argues that the Commission did provide guidance by referring to Section 4905.381, Revised Code, which alludes to the requirement that an ILEC provide adequate service. Taking into account that elective alternative regulation proceedings are intended to avoid the protracted hearings and settlement negotiations often attendant to company-specific applications, CBT argues that the OCC must show that CBT provides inadequate service. In this vein, CBT points out that neither the OCC nor any customer has lodged a complaint against CBT for inadequate service pursuant to Section 4905.381, Revised Code. In addition, CBT claims that it has exceeded the standards of the service quality benchmark objectives of its alternative regulation plan. Moreover, CBT declares that it has exceeded its service quality benchmark objectives for each reporting period for the last six years. CBT also lauds itself for having won awards from J.D. Power and

Associates for the years 2001 and 2002, years in which CBT won the Local Residential Telephone Consumer Satisfaction Award.

- (24) CBT concludes that the OCC's request for hearing on the basis of CBT's level of earnings should be rejected. According to CBT, the Commission specifically rejected earnings review in the context of alternative regulation. CBT points out that the Commission rejected similar level-of-earnings arguments posited by the OCC in Sprint's and CenturyTel's applications for alternative regulation. Consequently, CBT urges the Commission to reject the OCC's request for a hearing to investigate CBT's level of earnings. CBT asks the Commission to take into consideration that CBT's current alternative regulation plan is the result of negotiations with several parties, including the OCC. CBT reminds the Commission that OCC, by stipulation, agreed to limit its right to initiate earnings related proceedings against CBT.

Equally, CBT urges the Commission to reject the OCC's suggestion that CBT demonstrate financial need as a prerequisite to increase its Tier 2 services or its Tier 1 non-core services prior to adopting the alternative regulation plan. Citing the alternative regulation rules, CBT declares that a company's financial need to raise rates for non-basic services is irrelevant.

To CBT, it is of no import what CBT does with earnings realized from the sale of either regulated or non-regulated services. CBT reasons that the Commission must refuse the OCC's request to hold a hearing on CBT's payment of dividends to its parent company. CBT contends that it is free to pay dividends to its parent company. Only on the condition that CBT's payments were to result in an inability to meet its service obligations would regulatory interference be justified.

Taking issue with the OCC's suggestion that CBT reduce its rates as a condition precedent to the adoption of an alternative regulation plan, CBT responds that the Commission has already considered and rejected such a notion. Such a requirement is not contemplated by the Commission's rules. Moreover, the Commission reasoned that a detailed financial analysis would defeat the purpose of alternative regulation.

- (25) Contrary to the recommendation of the OCC, CBT declares that it is not required to show the existence of competition or reasonably available alternatives in order to adopt alternative regulation. CBT finds no support for such a recommendation in the record of Case No. 00-1532-TP-COI. CBT reminds the Commission that it has rejected the OCC's position in previous applications for rehearing. CBT states that the Commission, in its opinion and order issued in Case No. 00-1532-TP-COI, established as a matter of record that all non-basic services for all ILECs in Ohio are subject to competition or have reasonably available alternatives. Moreover, the Ohio Supreme Court supported the Commission in this finding. Since the issue has been decided, CBT finds the OCC's argument to be without merit.
- (26) CBT rejects the OCC's argument that it is required to make a company-specific showing that its application is in the public interest. Specifically, CBT rejects OCC's assertion that CBT must show that its commitments provide an incremental benefit to customers as a condition to approval of its application. Relying on the record in Case No. 00-1532-TP-COI, CBT highlights that the Commission found that alternative regulation meets the public interest criteria of Section 4927.03, Revised Code. It was the Commission's view that the capping of local exchange service rates was in the public interest because the caps would ensure reasonable rates for basic local exchange service. On the other hand, flexibility for non-basic services was deemed to be in the public interest because it would encourage ILECs toward innovative products and services. Market forces would restrict rates for non-basic services. A company's earnings, according to CBT, are immaterial to the aforementioned public interests.

CBT disagrees with OCC's argument that CBT's commitment to advanced services is of no incremental benefit if CBT already offers advanced services or if the facilities for their provision were deployed under traditional regulation. CBT states that it voluntarily deployed its facilities for advanced services while it was under alternative regulation, not traditional regulation. Moreover, CBT dismisses as irrelevant whether it currently provides advanced services. CBT avers that the Commission was aware that some ILECs were already offering advanced services when it created the advanced services commitment.

The Commission found that the advanced services commitment was in the public interest for all ILECs, including CBT. According to CBT, one reason the Commission adopted the alternative regulation rules was to avoid a company-by-company evaluation of each commitment. CBT notes that the Commission rejected a similar argument lodged by the OCC against CenturyTel's application for alternative regulation.

CBT describes as misplaced OCC's recommendation that CBT provide 30-days notice of rate increases. CBT states that it will abide by the customer notice requirements set forth in the Commission's Local Service Guidelines.

- (27) Notwithstanding the objections raised by OCC and CUFA over its waiver request, CBT believes that it should be allowed to continue its Federal Plan. CBT rejects the contention that granting its waiver would make CBT's application for alternative regulation company-specific. CBT believes that it has shown good cause for waiver pursuant to Rule 4901:1-4-01(D), O.A.C. Moreover, by promoting customer choice and avoiding customer confusion, CBT believes that its waiver promotes a public interest that outweighs the objections raised by the OCC and CUFA.

In further support of its position, CBT points to a recent decision by the Federal Communications Commission (FCC). The FCC decided against adopting rules that would prohibit Lifeline customers from purchasing vertical services. The FCC reasoned that a restriction on the purchase of vertical services may discourage qualified customers from enrolling in Lifeline.

CBT believes that it has shown good cause given that it would incur a disproportionate burden if it were required to migrate customers. Other ILECs have not engaged in Lifeline outreach efforts or have not had as much success as CBT in enrolling customers into a Lifeline program like CBT's Federal Plan.

- (28) The OCC filed a reply on June 17, 2004. Confronting CBT's argument that inadequate service is required for a showing of extraordinary circumstances, the OCC accuses CBT of misinterpreting the alternative regulation rule. Reviewing Rule 4901:1-4-02(D), O.A.C., the OCC does not see that extraordinary circumstances are necessarily related to service quality.

Inadequate service is merely an example of extraordinary circumstances. Relying on the affidavits filed with its request for hearing, the OCC declares that it has shown extraordinary circumstances. Refocusing on its allegation that CBT is subsidizing the non-regulated operations of its parent, the OCC points to *In the Matter of the Commission Investigation of the Financial Condition of the Dayton Power and Light Company*, Case No. 04-486-EL-COI (DP&L Investigation) as a basis for investigating CBT's financial condition.

- (29) The OCC disagrees with CBT's position that there are no restrictions on what it can do with its earnings. The OCC admits that Chapter 4927, Revised Code, does not specifically bar an ILEC from conveying earnings from its regulated operations to its non-regulated operations. Nevertheless, the OCC argues that the telecommunications policy underlying Chapter 4927, Revised Code, does not countenance subsidization amounting to billions of dollars. The OCC relies on the DP&L Investigation as grounds for maintaining a separation of regulated and non-regulated operations.
- (30) The OCC is not persuaded by CBT's claim that it would suffer a disproportionate burden if required to migrate Lifeline customers from the Federal Plan to its alternative regulation plan. Underlying alternative regulation, according to the OCC, is an exchange of commitments. To reap the benefits of flexible pricing an ILEC must subject itself to certain commitments. CBT, the OCC believes, is attempting to renege on one of the commitments. If CBT believes that \$1.3 million is too great a cost to migrate customers, the OCC suggests that CBT file a company-specific alternative regulation plan instead of an elective alternative regulation plan.
- (31) The Commission is aware that the Federal Communications Commission (FCC) has issued a recent decision that affects not only the federal default Lifeline program, but also Lifeline plans that states have adopted under their own authority to provide additional support to low-income consumers. To give the Commission an opportunity to determine what impact, if any, the FCC's decision may have on the enhanced Lifeline program required by the off-the-shelf alternative regulation plan, the Commission shall hold in abeyance its decision on whether to grant CBT a waiver to continue its Federal Plan.

- (32) CBT's application for alternative regulation should be approved. Upon review of the objections raised by OCC and CBT's responses, the Commission finds that OCC has raised issues which have been decided in previous alternative regulation proceedings. The Commission's order in Case No. 00-1532-TP-COI fully addressed OCC's arguments raised in both Case No. 00-1532-TP-COI and this proceeding and there is no reason for the Commission to repeat the same analyses and conclusions set forth in that order. There is also no reason to restate and reevaluate the evidence submitted in the record in Case No. 00-1532-TP-COI for the purpose of addressing the OCC's same arguments. Accordingly, the Commission hereby incorporates into the record in this case the entire record from Case No. 00-1532-TP-COI, including, but not limited to, all of the Commission's orders as well as the evidence submitted by the parties in that case. The record from that case should be considered as part of the record in this case and that record supports the Commission's orders in Case No. 00-1532-TP-COI and the resulting rules adopted in Chapter 4901:1-4, O.A.C. For example, OCC wishes to conduct a hearing on CBT's level of earnings, on whether competition and reasonably available alternatives exist, and on whether CBT's alternative regulation plan is in the public interest. Based on the arguments underlying these issues, the OCC believes that it has shown extraordinary circumstances sufficient to justify a hearing.

Reiterating our finding in Case No. 00-1532-TP-COI, it should be emphasized that alternative regulation is an alternative to rate base/rate-of-return, revenue requirements regulation. In exchange for more flexible regulation, a utility must cap basic local exchange rates. By opting for alternative regulation and foregoing its opportunity to earn the authorized return on investments, the utility takes on additional risk while maintaining its obligations to the public. In Case No. 00-1532-TP-COI, we found that, under such circumstances, a company should be relieved from the filing requirements of Section 4909.18, Revised Code, and earnings review during the term of the off-the-shelf alternative regulation plan. The Commission still has the authority to investigate the reasonableness of service terms, conditions, and rates during the term of the alternative regulation plan.

Similarly, the OCC's argument that the DP&L Investigation should serve as a basis for investigating CBT lacks merit. The Commission opened an investigation of DP&L based upon concerns that the unregulated activities of DP&L's parent could negatively affect the financial condition or service quality of DP&L. If the Commission were likewise concerned that the financial activities of CBT's parent might impair the financial condition of the company or cause an unacceptable diminution in service quality, the Commission would not hesitate to investigate CBT's activities. In this proceeding, the OCC does not allege that CBT has rendered inadequate service or is financially at risk. Furthermore, unlike DP&L, CBT is not a rate-of-return regulated company, and its customers will benefit from a cap on basic local exchange service rates during the alternative regulation plan. Thus, the Commission finds no basis for initiating a similar investigation against CBT in the context of this case.

The OCC would also have the Commission conduct a hearing to determine whether CBT's non-basic services are subject to competition or whether reasonably available alternatives exist. Again, the OCC has raised an issue that the Commission has decided. In Case No. 00-1532-TP-COI, the Commission issued record-based findings and conclusions that all non-basic services for all ILECs in Ohio are subject to competition or have reasonably available alternatives. Making such a finding, the Commission concluded that ILECs were entitled to regulatory relief under Section 4927.03, Revised Code. The Commission's findings and conclusions would apply to CBT. Therefore, the Commission must reject the OCC's basis for hearing.

Equally, the Commission must reject the OCC's desire to question whether CBT's alternative regulation plan is in the public interest. In Case No. 00-1532-TP-COI, the Commission concluded that elective alternative regulation satisfies the public interest test of Section 4927.03, Revised Code, and satisfies the state's policy goals outlined in Section 4927.02, Revised Code. Capping basic local exchange rates ensures that reasonable rates for basic local exchange service is maintained. Market forces will keep non-basic rates in check. It was also determined in Case No. 00-1532-TP-COI that elective alternative regulation will encourage companies to develop innovative products, services, and service packages.

Encouraging ILECs to innovate will, in turn, motivate competitors to innovate and diversify the offerings they provide in Ohio. Alternative regulation is consistent with the policy of the state to embrace more flexible regulatory treatment for the competitive telecommunications environment.

Rule 4901:1-4-02(D), O.A.C., states that, "absent extraordinary circumstances established through clear and convincing evidence that reasonable grounds for a hearing exist, a hearing will not be held." Upon review of the OCC's request for hearing, we find that it does not meet the test established by the rule. We must note, however, in disagreement with CBT, that "extraordinary circumstances" is not confined to inadequacy of service. With respect to CBT's application, we find that it contains all the requisite information. We further find that CBT intends to adhere to the commitments set forth in Chapter 4901:1-4, O.A.C. Accordingly, CBT's application is approved and shall be effective July 1, 2004. In light of this conclusion and approval, the OCC's motion for hearing is denied.

- (33) It should be noted that CBT currently provides local exchange service outside of its territory. On November 17, 1999, in *In the Matter of the Joint Application of Cincinnati Bell Telephone Company and Cincinnati Bell Long Distance for a Waiver of Certain of the Commission's Local Service Guidelines*, Case No. 99-1496-TP-UNC, CBT and Cincinnati Bell Long Distance (CBLD) filed a joint application for a waiver to provide service beyond the ILEC territory. Specifically, CBT and CBLD sought a permanent waiver of Guideline II(A)(4) of the guidelines issued in *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. By such waiver, CBT sought to compete as a new entrant carrier (NEC) outside of its existing local service area without creating a separate affiliate that would be subject to the Commission's affiliate transaction guidelines. CBLD sought a permanent waiver that would effectively allow it to compete as a NEC throughout Ohio, including CBT's territory.

Guideline II(A)(4) prohibited CBT or any affiliate of CBT from providing NEC or competitive local service inside of CBT's existing local service territory. CBT and CBLD are affiliated

companies. The guideline also required that CBT establish a separate affiliate to provide NEC competitive local service outside of CBT's ILEC local service territory.

After receiving comments and objections from ILECs, interexchange carriers, and the OCC, the Commission issued a finding and order on March 2, 2000, granting the waiver requested by CBT and CBLD. Instead of granting a permanent waiver, the Commission opted to grant the waiver on a trial or pilot basis, pending review of local competition guidelines in *In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines*, Case No. 99-998-TP-COI. To use the results of the trial in its review of local competition guidelines, the Commission ordered CBT and CBLD to submit quarterly reports. The Commission also imposed several conditions on CBT and CBLD.

Several parties filed applications for rehearing, seeking to reverse the Commission's grant of the waiver. The Commission denied the applications for rehearing in an entry on rehearing issued April 27, 2000. In its entry on rehearing, the Commission emphasized that the waivers were granted on a trial basis and are subject to review. Moreover, CBT could operate out of territory only pursuant to the protections of its existing alternative regulation plan, which gave CBT more limited pricing flexibility than that provided to NECs under the then existing Local Service Guidelines. Even granting the waiver, the Commission instructed CBT and CBLD to continue to abide by the affiliate transaction requirements set forth in *United Telephone Long Distance*, Case No. 86-2173-TP-ACE.

- (34) Rule 4901:1-6-08, O.A.C., superseded Guideline II (A)(4) and now governs competitive operations of ILECs. To continue its out-of-territory local exchange service under its new alternative regulation plan, CBT must comply with Rule 4901:1-6-08, O.A.C. Among other things, CBT must establish a separate affiliate to provide services outside of its ILEC local service area. Within 90 days of this order, CBT shall make certification and tariff filings to bring it into compliance with Rule 4901:1-6-08, O.A.C., pertaining to the competitive operations of ILECs. In addition, until CBT obtains CLEC certification, CBT must also revise its out-of-territory service tariffs to comply with the same pricing rules and procedures pertaining to CBT's in-

territory operations. CBT shall file such tariff as soon as possible but no later than within 30 days of this order under a ZTA purpose code.

It is, therefore,

ORDERED, That CBT's application for alternative regulation pursuant to Chapter 4901:1-4, O.A.C., is approved. The effective date of this new alternative regulation plan is July 1, 2004. It is, further,

ORDERED, That the Commission shall hold in abeyance the objections to CBT's Lifeline waiver filed by CUFA and the OCC, as well as our decision on whether to grant CBT's request for waiver of Rule 4901:1-4-05(B), O.A.C. It is, further,

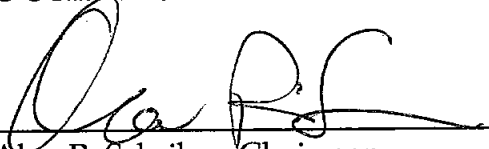
ORDERED, That the OCC's motion to intervene is granted. It is, further

ORDERED, That the OCC's and CUFA's motions for hearing are denied. It is, further,

ORDERED, That CBT file tariffs and applications consistent with Finding (34). It is, further,

ORDERED, That a copy of this finding and order be served upon all parties, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

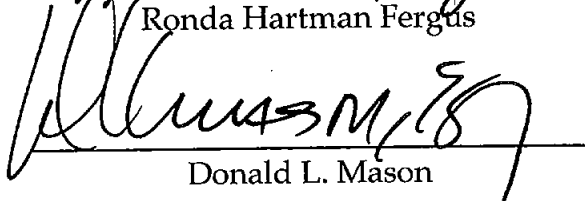


Alan R. Schriber, Chairman



Ronda Hartman Fergus

Judith A. Jones



Donald L. Mason

Clarence D. Rogers, Jr.

LDJ/vrm

Entered in the Journal
JUN 30 2004



Renee J. Jenkins
Secretary