



P.O. Box 2301
Cincinnati, OH 45201-2301

DOCKET FILE COPY ORIGINAL

November 21, 1995

RECEIVED

NOV 22 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

In The Matter Of:)
)
Local Exchange Carriers' Rates, Terms, and)
Conditions for Expanded Interconnection)
Through Virtual Collocation for Special)
Access and Switched Transport.)
)
Cincinnati Bell Telephone Company,)
Tariff FCC No. 35)

CC Docket No. 94-97, Phase II

Dear Mr. Caton:

Enclosed for filing are the original and seven copies of Cincinnati Bell Telephone Company's Reply in reference to the above-captioned proceeding.

Please date-stamp and return the enclosed duplicate of this letter to acknowledge its receipt.

Questions regarding this Reply should be directed to Mr. Charles A. Margolen at the above address or by calling him at 513-397-1339.

Sincerely,

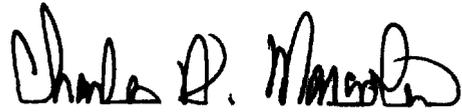
Charles A. Margolen
Integrated Corporate Planning
Access Services

Attachment

No. of Copies rec'd 027
List ABCDE

CERTIFICATE OF SERVICE

I, Charles A. Margolen, do hereby certify of this 21st day of November, 1995, that I have caused a copy of the foregoing Cincinnati Bell Telephone Company's Reply to be returned, via first class United States mail, postage, to the persons on the attached service list.



Charles A. Margolen

Mr. William F. Caton *
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

ITS *
1919 M Street, N.W., Room 246
Washington, D.C. 20554

Chief - Common Carrier Bureau *
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Regina Keeney *
Chief - Tariff Division
1919 M Street, N.W., Room 518

Steve Funkhouser *
Tariff Public Utility Specialist
1919 M Street, N.W. Room 518
Washington, D.C. 10554

MCI Telecommunications Corporation
Don Sussman
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Via Hand Delivery *

Brian Conboy
John L. McGrew
Thomas Jones
Willkie Farr & Gallagher
Three LaFayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036

Attorneys for: Time Warner
Communications Holdings, Inc.

Hopper and Knaouff, P.C.
Michael L. Glaser
K. Harsha Krishnan
1610 Wynkoop, Suite 200
Denver, CO 80202-1196

Attorneys for:
ICG Access Services, Inc.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Local Exchange Carriers' Rates, Terms,) CC Docket No. 94-97, Phase II
and Conditions for Expanded Interconnection)
Through Virtual Collocation for Special)
Access and Switched Transport) DOCKET FILE COPY ORIGINAL

REBUTTAL OF CINCINNATI BELL TELEPHONE COMPANY

I. Background.

On February 28, 1995, the Bureau released its Order Designating Issues For Investigation in the first phase of the Bureau's investigation of the LECs' virtual collocation tariffs.¹ The Phase I Designation Order designated for investigation whether the local exchange carriers' overhead loadings for virtual collocation were justified. In its Report and Order released May 11, 1995, the Commission affirmed the Bureau's conclusion that "CBT's overhead loadings appear to comport with this Commission's overhead loading standard."² Accordingly, Cincinnati Bell Telephone Company (CBT) was one of only two LECs who was not required to reduce its overhead loading levels.

¹Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, Order Designating Issues For Investigation, CC Docket No. 94-97, Phase I, 10 FCC Rcd 3927 (1995) (Phase I Designation Order).

²Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, Report and Order, CC Docket No. 94-97, Phase I, FCC 95-200, 10 FCC Rcd 6375 (1995), at para. 97.

On September 19, 1995, the Bureau released its Order Designating Issues For Investigation in Phase II of this investigation.³ CBT filed its Direct Case in compliance with the Phase II Designation Order on October 19, 1995. Numerous commenters in this proceeding make general comments that purportedly apply to all LECs, rather than offer specific comments on specific tariffs. In most instances, the general comments do not apply to CBT or to CBT's virtual collocation tariff. Only two parties -- Time Warner Communications Holdings, Inc. (Time Warner) and MCI Telecommunications Corporation (MCI) -- filed comments specifically addressing CBT's Direct Case.⁴ CBT hereinafter responds to those comments and demonstrates that its virtual collocation tariff is just and reasonable and that the accounting order imposed on CBT's tariff should be removed.⁵

II. Confidential Treatment of Proprietary Information is Warranted.

MCI opposes CBT's request to withhold proprietary information regarding CBT's DS1 and DS3 access services from public disclosure. (MCI Comments at pp. 5-10.) As in Phase I of this investigation, the Bureau has required CBT to furnish detailed, disaggregated investment and expense information for each component of CBT's DS1 and DS3 access services. This level of detail is substantially greater than usually required for tariff filings and would provide CBT's

³Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, Order Designating Issues For Investigation, CC Docket No. 94-97, Phase II, DA 95-2001 (released September 19, 1995) (Phase II Designation Order).

⁴ICG Access Services, Inc. filed comments purportedly addressing CBT's tariff, but the comments express only generalized concerns about anticompetitive rate structures, nonrecurring charges and differing pricing methodologies. ICG does not cite to CBT's Direct Case and offers no specific comments on CBT's tariff.

⁵On September 2, 1994, the Bureau suspended the LECs' virtual collocation tariffs for one day and permitted them to take effect subject to an accounting order.

competitors with valuable, competitively-sensitive information. The Bureau concluded in Phase I of its investigation that competition for access services exists in the Cincinnati area and that disclosure of disaggregated DS1/DS3 investment and expense information "could be used by competitors to devise strategies to introduce new services to the competitor's benefit, or exploit weaknesses in the existing CBT operation."⁶ The Bureau's conclusions apply with equal force to Phase II of this investigation. Because competition for access services exists in CBT's operating territory and because the disaggregated investment and expense information would confer an unwarranted advantage on CBT's competitors, CBT's request for confidential treatment should be granted.

Contrary to MCI's assertions,⁷ CBT's request for confidentiality will not impede the efforts of interested parties to evaluate CBT's virtual collocation tariff. The public version of CBT's Direct Case contains detailed information that is fully responsive to the Phase II Designation Order, without revealing confidential data. The non-confidential data is sufficient for all interested parties to evaluate CBT's virtual collocation tariff with regard to the issues raised in the Phase II Designation Order. Indeed, MCI does not allege that the public version of CBT's direct case is insufficient to evaluate CBT's tariff. MCI offers no examples how access to the confidential information could improve MCI's analysis. Rather, MCI offers only generalized, unsupported comments that protecting this confidential information is not in the

⁶Letter from Kathleen M.H. Wallman, Chief, Common Carrier Bureau, to John L. McGrew, dated August 11, 1995, DA 95-1788.

⁷MCI Comments at p. 7.

public interest. CBT's request for confidential treatment of highly sensitive investment and expense information should be granted.

III. Charges for Interconnector-Designated Equipment.

Both MCI and Time Warner urge the Commission to order CBT to enter into \$1 sale/repurchase arrangements with respect to interconnector-designated equipment. (MCI Comments at p. 16; Time Warner Comments at p. 24.) However, as the Commission recognizes, "a \$1 sale and repurchase right would effectively make the interconnector the owner of the equipment in all but formal title, and would perhaps run afoul of the D.C. Circuit's analysis in Bell Atlantic v. FCC."⁸ MCI and Time Warner urge the Commission to adopt a policy that the D.C. Circuit has determined is beyond the Commission's authority. Accordingly, their comments in this regard must be denied.

MCI suggests that LECs should be forced to return the interconnector-designated equipment when its use is terminated. (MCI Comments at pp. 16-17.) This suggestion is functionally the same as a mandatory \$1 sale/repurchase arrangement and is inconsistent with the requirement that the LEC own the interconnector-designated equipment. MCI has a right to designate the equipment, but the LEC owns it. As explained in its Direct Case, CBT will dispose of interconnector-designated equipment consistent with its disposition of other CBT equipment.

Time Warner also strongly favors the \$1 sale/repurchase arrangement for interconnector-designated equipment. However, Time Warner supports CBT's method for determining the

⁸Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, CC Docket No. 91-141, 9 FCC Rcd 5154 (1994), at para. 127.

lowest reasonably available purchase price as an acceptable alternative, stating that it "appears to comply with both the letter and the intent of the Commission's stated standard for determining [interconnector-designated equipment] costs" (Time Warner Comments at p. 19.) CBT is encouraged that Time Warner finds its methodology for determining the lowest reasonably available purchase price for interconnector-designated equipment to be an acceptable alternative to a \$1 sale/repurchase arrangement.⁹ If the interconnector does not desire to sell equipment to CBT, or if the interconnector's price is higher than the price charged by CBT's usual sources, CBT believes it is reasonable to pass along any discounts CBT receives from its sources. In this regard, CBT concurs with Time Warner that actual equipment prices do not "necessarily involve the disclosure of information that is proprietary to the manufacturers/vendors of the equipment."¹⁰ If CBT is obligated to not reveal a vendor's prices, however, CBT will comply with that obligation. In such event, CBT will purchase the equipment at a price that CBT is permitted to disclose to the interconnector.

Time Warner also argues that the cost of interconnector-designated equipment should be recovered through recurring charges. (Time Warner Comments at p. 37.) CBT's virtual collocation rate structure provides for a nonrecurring equipment charge because of the substantial

⁹While generally supporting CBT's methodology, Time Warner believes this methodology "continues to suffer from the inclusion of excessive overheads in rates, a problem the \$1 sale and repurchase approach avoids." Time Warner Comments at p. 19. The Commission has already determined CBT's overheads to be reasonable, as discussed above. In addition, overhead loadings and one-time equipment charges are not necessarily related. For example, if CBT purchases equipment from Time Warner for \$1, then Time Warner is charged a nonrecurring equipment charge of only \$1, but overhead loading levels are not based on the \$1 price.

¹⁰Time Warner Comments at p. 22.

risk of stranded investment if an interconnector terminates service before the cost of the equipment is recovered. Time Warner concedes that equipment is "stranded," and thus the equipment's cost cannot be recovered, if the equipment is not useful elsewhere in the LEC's network. (Time Warner Comments at p. 44.) Even if the LEC has deployed similar equipment to provide other services, Time Warner's argument for a recurring rate structure ignores the likely possibility that the equipment is not presently needed elsewhere in the network. It would be unreasonable for a LEC to forego purchasing necessary equipment because a piece of interconnector-designated equipment might become available. Even if the type of interconnector-designated equipment is used by the LEC to provide other services, it will still be "stranded" unless the LEC has a present need for the equipment to provide those services. Otherwise, CBT's other ratepayers would unfairly be forced to bear equipment costs caused by the interconnector. CBT's nonrecurring equipment charge is based on the lowest reasonably available purchase price. CBT's methodology is reasonable and justified. Time Warner's preference for a different rate structure does not create questions of lawfulness with respect to CBT's rate structure.

IV. Land and Building Costs.

MCI alleges that CBT is double recovering land and building costs associated with virtual collocation. (MCI Comments at pp. 13-14.) As explained in its Direct Case, CBT recovers land and building costs for virtual collocation through direct assignment to the equipment bay rate element. CBT does not recover these costs through overhead loadings assigned to interconnection rate elements. CBT assigns land and building costs to all services that require equipment to be placed within CBT's central offices, including DS1 services, DS3 services, and

virtual collocation services. This methodology is reasonable and justified. MCI's request to remove land and building costs from the virtual collocation rates must be denied.¹¹

V. Charges for Power and Floor Space.

Time Warner seeks to impose a uniform methodology for determining power costs and floor space costs for both virtual collocation and DS1/DS3 service. (Time Warner comments at pp. 32-37.) There has never been a requirement that LECs adopt the same methodology for determining costs for different services. The relevant question is whether the proposed methodology is reasonable and justified. Time Warner does not suggest that CBT's methodologies for determining power costs and floor space costs for virtual collocation are unreasonable or unjustified. Time Warner would simply prefer a different methodology. As with the rate structure for interconnector-designated equipment, Time Warner's preference for a different cost methodology does not create questions of lawfulness with respect to CBT's tariff.

VI. Training.

Both MCI and Time Warner complain that CBT's technicians are trained on a network-wide, rather than a per central office, basis. (MCI Comments at p. 20; Time Warner Comments at p. 50.) CBT's service territory consists primarily of a single metropolitan area, Cincinnati. CBT does not assign its technicians to a particular central office within the service territory. Technicians are trained to monitor, maintain, and repair CBT's equipment on a network-wide basis. It would be unreasonable and unjustifiable to force CBT to alter its training and staffing

¹¹On page 15 of its comments, MCI provides a table that purportedly shows how CBT's virtual collocation rates should be reduced by the removal of land and building costs. This table is fundamentally flawed. MCI's table shows CBT's land and building investment for DS1 service, not virtual collocation. The table is meaningless as it applies to virtual collocation and must be disregarded.

policies simply because the equipment was designated by an interconnector. It would also be contrary to the Commission's requirement that LECs treat interconnector-designated equipment like other LEC equipment. CBT's training procedures are reasonable and MCI's and Time Warner's suggestions to the contrary must be rejected.

VII. Installation, Maintenance and Repair Intervals.

MCI and Time Warner argue that specific installation, maintenance and repair intervals for interconnector-designated equipment should be tariffed. Pursuant to paragraph 57 of the Virtual Collocation Order, LECs are already obligated to install, maintain and repair interconnector designated equipment under the same time intervals, and with the same failure rates, that apply to comparable LEC equipment.¹² Particular maintenance intervals, response times and restoration priorities (each of which may vary depending on the type of equipment involved) would not provide any additional benefit to the interconnector.

VIII. Unrelated Issues.

Both Time Warner and MCI raise issues in their comments that are unrelated to the issues designated for investigation. First, Time Warner continues to complain about CBT's riser cable space rates. (Time Warner Comments at p. 29.) This issue was addressed and resolved in Phase I of this investigation and Time Warner's attempt to revive this subject must be denied. Secondly, MCI offers unsolicited suggestions regarding reporting requirements and rolling over circuits. (MCI Comments at p. 23-24.) The Bureau designated neither issue for investigation,

¹²Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, CC Docket No. 91-141, 9 FCC Rcd 5154 (1994), at para. 57.

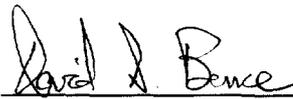
and those topics are beyond the scope of this proceeding. The comments of MCI and Time Warner regarding issues that are not designated for investigation must be ignored.

IX. Conclusion.

Neither of the two parties that commented on CBT's Direct Case raises any issues that warrant continuing the Bureau's investigation of CBT's virtual collocation tariff. Accordingly, the Bureau should terminate that investigation and remove the accounting order imposed on CBT's tariff.

Respectfully submitted,

FROST & JACOBS

By: 

William D. Baskett III
Thomas E. Taylor
David S. Bence

2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45201-5715
(513) 651-6800

Attorneys for Cincinnati Bell
Telephone Company

Dated: November 22, 1995

0256548.02