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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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September 4, 1996

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

DOCKET FILE COPY ORIGINAL

In the Matter of:

| | | |
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| Implementation of the Telecommunications Act of 1996: | ) | CC Docket No. 96-152 |
| Telemessaging, Electronic Publishing, and Alarm Monitoring Services | ) | |

Dear Mr. Caton:

Enclosed are an original and eleven copies plus two extra public copies of the Comments of Cincinnati Bell Telephone Company in the above referenced proceeding. A duplicate original copy of this letter and attached Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to me at the above address or by telephone on (513) 397-1393.

Sincerely,

David L. Meier

David L. Meier

Enclosure

cc: International Transcription Services, Inc.
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**Before the**
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## COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

## I. INTRODUCTION

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier ("LEC"), submits these comments in response to the July 18, 1996 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. The purpose of this NPRM is to clarify and to implement the non-accounting separate affiliate and non-discrimination safeguards prescribed by Congress in Sections 274, 275 and 260 with respect to BOC and/or LEC provision of electronic publishing, alarm monitoring and telemessaging services.[1] The Commission's goal is to establish non-accounting separate affiliate and non-discrimination safeguards that fulfill the statutory objectives. Pursuant to Sections 274, 275 and 260, the Commission seeks to guard against the potential that BOCs offering electronic publishing, as well as BOCs and other incumbent LECs offering alarm monitoring and telemessaging services, would improperly allocate costs in a way that adversely affects local telephone ratepayers or competition in markets those entities will enter.[2]

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[1] NPRM at ¶ 2.

[2] NPRM at ¶ 8.

## II. DISCUSSION

### A. Current Safeguards Provide Adequate Protection in the Emerging Competitive Market for Telecommunications Services.

In implementing the specific non-accounting separate affiliate and non-discrimination safeguards under Sections 274, 275 and 260 of the Act, the Commission must not overlook the primary purpose of the Act, i.e., the creation of a truly competitive telecommunications market. CBT has continuously stressed the need for regulatory symmetry in the creation of a competitive telecommunications market.[3] It is CBT's contention that no participant in the competitive telecommunications market should be given a competitive advantage over another as a result of asymmetrical regulation. Competitors should be competing based on product differentiation and quality of service, and one competitor should not be favored over another as a result of the regulatory treatment it receives. To the extent that the Commission proposes asymmetrical treatment of competitors, or imposes additional regulatory restraints on any or all participants, such proposals would be contrary to the creation of a truly competitive market for telecommunications services.

To the extent the Commission is considering additional safeguards as to electronic publishing pursuant to Section 274 of the Act or prohibitions relating to Alarm Monitoring Service under Section 275(a) of the Act, CBT submits that these provisions of the Act apply solely to the BOCs. Therefore, these provisions give the Commission no authority to apply additional safeguards related to these services on non-BOC LECs. Congress specifically placed

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[3] See Comments of CBT, at 42, *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Docket No. 96-98, filed May 16, 1996; Comments of CBT, at 13-14, *In the Matter of Price Cap Performance Review for Local Exchange Carriers*, Docket No. 94-1, filed December 11, 1995.

these provisions in Subtitle B of Title I of the Act, entitled "Special Provisions Concerning Bell Operating Companies," indicating their intention that these provisions apply solely to BOCs. Therefore, the Commission is not required in this proceeding to institute any additional safeguards for non-BOC LECs for these services. Indeed, CBT submits that existing safeguards are more than adequate and no additional safeguards are required. For those provisions which do apply to non-BOC LECs, such as Section 260 related to telemessaging service, CBT submits that existing accounting safeguards are more than adequate to prevent cross-subsidization between regulated and non-regulated activity within a carrier or between a carrier and its affiliates.

The Commission has outlined concern over LECs using their control over local exchange and access markets (1) to provide higher quality service to itself or its affiliate than the service provided to competing service providers at the same price; and (2) to provide exchange access services to itself or its affiliate at a lower rate than the rate charged to competing unaffiliated firms.[4] CBT submits that existing safeguards are adequate to prevent any discriminatory treatment against competing service providers. For example, in its provision of telemessaging services today, CBT, as well as its separate affiliate which provides telemessaging services, order services out of the CBT tariff. These access services are provisional and billed pursuant to the tariff in the same manner as they are to any other competing provider. Thus, ordering services directly from the tariff eliminates any discriminatory treatment as to quality or price.

CBT submits that the Commission should examine the telecommunications market as it has been transformed by the advent of competition and advances in telecommunications

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[4] NPRM at ¶ 16.

technology. The new telecommunications market will provide customers with multiple choices for telecommunications service. This competition will come from cable providers, wireless providers, electric utilities, as well as more traditional telecommunication providers such as the IXCs and RBOCs. In this new competitive market, customers will be able to substitute services from a variety of new service entrants to respond to any price increase implemented by any incumbent LEC.

As a recent study performed on behalf of CBT indicates, customers also desire to purchase a variety of products from a single carrier, and often seek to obtain discounts by purchasing a package of products from an individual carrier. In order to meet this demand, carriers will package products together in a manner which will offer customers additional benefits than might be available from separate suppliers.[5] Such "One Stop Shopping," "Packaging" and Discounting" will make it difficult for incumbent LECs to successfully engage in improper cost shifting, thereby further negating the reason for any additional restrictions. In fact, not only will cost shifting which would result in higher rates for local exchange subscribers not occur, local exchange subscribers will actually benefit. To the extent that a LEC provides services such as telemessaging on an integrated basis, local exchange subscribers will benefit from a sharing of joint and common overhead costs, thereby reducing the costs now paid by local exchange subscribers.

To reaffirm CBT's position regarding accounting safeguards outlined in Docket No. 96-150, it is counter-intuitive to conclude that LECs will be able to raise prices based on inappropriately allocated costs, given the choices available to customers in a competitive market.

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[5] Comments of CBT, CC Docket 96-115 at 4.

Further, this concern and the Commission's proposed solution is inconsistent with the Commission's recent Interconnection Order, CC Docket No. 96-98, which requires specific pricing rules for resale, unbundling and interconnection based not on accounting or booked costs, but on forward looking economic costs.[6]

**B. Size Differences Must Be Considered.**

The Commission must be sensitive to the unique circumstances that small and mid-size LECs face in the new competitive market. Small and mid-size companies like CBT will be facing competition from extremely large national and global telecommunication providers such as AT&T, MCI, Time Warner, and the RBOC's.

CBT, for example, is dwarfed by some of the competitors it will face. CBT, operating in a relatively small geographic area, with only 900,000 access lines and operating revenue of $600 million, faces a very different market in comparison to AT&T, with $50 billion dollars revenue, MCI, with over $15 billion dollars revenue, or Time Warner, with over $8 billion dollars revenue. Indeed, proposed mergers between the RBOCs, if approved, would result in LECs that eclipse CBT by 40 times in both access lines and revenue and operate in territories spanning several states and many major metropolitan areas.[7]

In the past, the Commission has recognized these differences and designed rules to accommodate them.[8] Congress has also recognized these differences and incorporated special

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[6] CBT Comments Docket No. CC 96-150, at 4.

[7] CBT Comments CC Docket No. 96-98, at 3.

[8] See, e.g., CC Docket No. 91-135, Report and Order, Adopted May 13, 1993, Effective June 11, 1993, at ¶¶ 1-15. Second Report and Order, CC Docket No. 87-313, Adopted September 19, 1990, Effective October 4, 1990, at ¶¶ 103, 257, 258, 259, 260.

provisions into the Act for smaller companies.[9] These provisions, based on the Senate version of the legislation, were designed "to provide a level playing field" for smaller companies facing "competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources" of the smaller company.[10]

It is unreasonable to believe that given the tremendous differences in size, small and mid-size LECs could possibly exercise sufficient marketpower to confer on themselves or their affiliates an unlawfully discriminatory competitive advantage when providing competitive services. Therefore, no additional safeguards are necessary.

Congress has also provided guidance which the Commission should follow in the implementation of any regulation or additional safeguard under the Act. Congress recognized within the Act the effect of size differences for carriers who have less than 2% of the nation's access lines. Congress intentionally differentiated between small/mid-size LECs and the seven RBOCs, GTE and Spring/United, which are substantially larger. The Commission should adopt 2% of the nation's access lines as a standard and not impose additional burdensome regulations on any LEC with less than 2% of the nation's access lines.

### C. Applicability Of Computer III And ONA To Small And Mid-Size LECs.

The Commission seeks comment on whether the non-discrimination provisions of its Computer III and ONA proceedings are consistent with Section 260(a)(2) and whether it should

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[9] See Telecommunications Act of 1996, §§ 252(f)(1) and (2).

[10] Telecommunications Act of 1996, Joint Explanatory Statement, p. 119.

be applied to all incumbent LECs to fulfill the requirements of Section 260(a)(2).[11] In reaching a conclusion on this issue, the Commission must consider the significant differences in size and scope between the RBOCs and small and mid-size LECs. CBT asserts that none of the provisions of Computer III and ONA, previously applicable only to RBOCs, should be made applicable to independent LECs. In originally implementing the provisions of Computer III and ONA in 1992, the Commission did not find it necessary to apply those requirements to small and mid-size LECs. Now, with the emergence of a competitive market, even fewer reasons exist to apply additional restrictions on non-RBOC LECs. Competitive market forces will constrain actions of all participants in the market, including incumbent LECs.

### D. Scope Of Commission's Authority.

The Commission must refrain from creating additional regulations which are not required by the Act. Other than an expedited complaint procedure under Section 260(b), the Act does not require the Commission to issue additional regulations on small and mid-size companies providing telemessaging services. In fact, the nondiscrimination safeguards instituted by the Act under Section 260(a) are clear on their face and require no additional clarification. The Commission should not exceed the specific authority granted it under the Act.

The Commission seeks comments regarding its authority to preempt potentially inconsistent state regulations regarding a LECs ability to provide telemessaging services on an integrated basis under Section 260. CBT submits that given the limited size and scope of small and mid-size carriers, where state regulations on the intrastate provision of telemessaging service

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[11] NPRM at ¶ 77.

restrict the ability to provide this service on an integrated basis, such state regulations should be preempted.

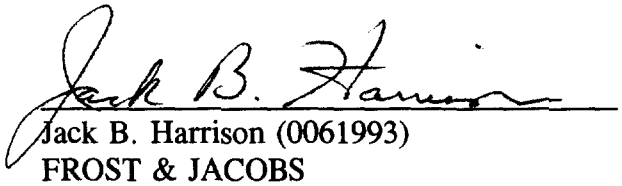
### E. Additional Requirements Are Not Necessary For The Commission To Enforce The Provisions Of Sections 260, 274 And 275 Of The Act.

CBT submits that the explicit language of the Act provides adequate guidance as to how these provisions are to be enforced. In order to ensure that meaningless and frivolous complaints are not filed pursuant to Sections 260 and 275, the Act requires that the complainant show "material financial harm" in order to support their complaint. Where the complaint fails to make such a showing the complaint should be dismissed by the Commission.

## III. CONCLUSION.

CBT respectfully requests that the Commission consider these Comments as it develops rules to implement the provisions of the Act related to non-accounting safeguards for the provision of electronic publishing, alarm monitoring, and telemessaging services.

Respectfully submitted,



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