

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of Prescribing the)
Authorized Unitary Rate of Return) **CC Docket No. 98-166**
for Interstate Services of Local)
Exchange Carriers)

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company (“CBT”), a mid-size local exchange carrier (“LEC”) serving fewer than 2% of the nations access lines and subject to price cap regulation, hereby submits the following separate comments in this proceeding. In addition, by virtue of its membership in both the United States Telephone Association (“USTA”) and the Independent Telephone and Telecommunications Alliance (“ITTA”), CBT hereby adopts and incorporates by reference the joint direct case and comments being filed today by the USTA, the National Telephone Cooperative Association, the National Rural Telecom Association, the Organization for the Protection and Advancement of Small Telephone Companies, the ITTA, and the National Exchange Carrier Association (hereinafter collectively referred to as the “Joint Petitioners”).

At paragraph 55 of the Commission’s October 5, 1998 Notice of Proposed Rulemaking in this proceeding,¹ the Commission seeks comment on two issues related to the low-end formula adjustment (“LFAM”) for price cap LECs. First, the Commission seeks comment on whether the LFAM should change. Second, the Commission seeks

¹ In the Matter of Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 98-166, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking, released October 5, 1998, at para. 55.

comment on its tentative conclusion that the LFAM should remain 100 basis points below the rate of return to be prescribed in this proceeding.

As to the first issue, CBT urges the Commission to maintain the current LFAM of 10.25% for several reasons. First, as Dr. William Avera concludes in his testimony,² the 11.25% prescribed rate of return is a conservative estimate of the cost of capital for ILECs. As Dr. Avera correctly observes, the overall level of risk for ILECs has increased. For example, the passage of the Telecommunications Act of 1996 (the “1996 Act”) has ushered in a far more competitive marketplace than previously existed. In today’s telecommunications marketplace, Competitive Local Exchange Carriers (“CLECs”) have the choice of building their own networks, reselling portions of the ILECs network, or using combinations of the two. No matter which strategy the CLEC utilizes, the incumbent LEC’s market share and cash flow are clearly more vulnerable and subject to greater risk than ever before.

In addition, state utility commissions and the FCC have implemented various rules and regulations that have made competition a reality. For example, CBT currently has 21 signed interconnection agreements with wireless providers, resellers and full service providers. CBT also has implemented full local number portability (“LNP”) and is aware that at least three CLEC switches have been installed in its operating area. Besides having opened up its local exchange market to competitors, CBT’s intralata toll market has also been subject to competition for several years due to dialing parity arrangements.

Another factor that has led to increased risk for ILECs is the continuing uncertainty of several important policy issues. Universal Service issues are still in a state

² Dr. Avera’s testimony is attached to the Joint Petitioners’ Direct Case and Comments being filed today in this proceeding.

of flux at both the state and federal levels. LNP and CALEA cost recovery issues are still uncertain.³ Rules to reform jurisdictional separations procedures have yet to be finalized. Internet Service Provider (“ISP”) issues remain to be resolved. One certainty in this otherwise uncertain environment is that ILECs are being required to make significant expenditures to open their markets to competition and maintain Universal Service objectives without a clear means for recovering those costs in the future. This is of particular concern for a mid-size LEC like CBT.

Beyond the risk factors discussed above, CBT submits that there is another important reason to maintain the LFAM at its current level. The link between price cap regulation and traditional rate of return regulation is no longer appropriate. Many changes have occurred since the last prescription.⁴ The passage of the 1996 Act and implementation of regulatory rules (e.g., CC Docket 98-96, Implementation of the Local Competition Provisions of the Telecommunications Act; Public Utilities Commission of Ohio Case No. 95-845-TP-COI, Establishment of Local Exchange Competition and Other Competitive Issues; etc.) have removed barriers to entry and have allowed competition to evolve. Moreover, the Commission has significantly reformed both the access charge rules and the price cap rules since the last prescription. Both of these reforms have promoted growth of competition as envisioned by the 1996 Act.⁵ The Commission in the

³ Indeed, based on the Common Carrier Bureau’s December 14, 1998 Memorandum Opinion and Order in CC Docket No. 95-116, CBT estimates that a significant percentage of the costs it has incurred to implement LNP may now be at risk. CBT and other interested parties have filed Applications for Review of the Bureau’s decision in this regard. The Commission has not yet issued a ruling on these applications.

⁴ The prescribed rate of return for interstate access is currently 11.25%. It was established in 1990. See, In the Matter of Represcribing the Authorized Rate of Return for Interstate Services for Local Exchange Carriers, CC Docket No. 89-624.

⁵ See, May 7, 1997 Public Notice, Report No. CC 97-22. As reformed, the price cap plan for incumbent LECs will improve incentives for incumbent LECs to become even more efficient and promote and accommodate the growth of competition as envisioned by the Telecommunications Act of 1996. See also, May 7, 1997 Public Notice, Report No. CC 97-23. The access charge reform Order, which applies to the

Access Reform proceeding also stated that relying on a market-based approach that would allow marketplace forces to establish price levels for interstate access rates would better serve the public interest.⁶ The Commission is currently considering how this market-based approach should be implemented. In short, many changes have taken place and many changes are still expected to occur.

Given the dynamic nature of today's telecommunications marketplace, it would not be in the public interest to change the current level of the LFAM using the traditional, antiquated rate of return paradigm. CBT recommends that the Commission break the linkage between the prescribed rate of return and the LFAM (i.e., eliminate the 100 basis point difference) and use the current 10.25% as an interim LFAM until such time as the Commission can initiate a proceeding to establish a new LFAM that reflects the new competitive and regulatory environment. To do otherwise would not serve the public interest.

Respectfully submitted,

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nation's largest telephone companies, will foster competition and economic growth by creating an access charge system that is economically efficient, fair and compatible with competition.

⁶ In the Matter of Access Charge Reform, Order, CC Docket No. 96-262, at para. 263.