

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF CINCINNATI BELL )  
TELEPHONE COMPANY FOR AUTHORITY TO )  
INCREASE AND ADJUST ITS RATES AND CHARGES ) CASE NO. 94-355  
AND TO CHANGE REGULATIONS AND PRACTICES )  
AFFECTING SAME )

O R D E R

On June 12, 1995, Cincinnati Bell Telephone Company ("Cincinnati Bell") filed for rehearing of three issues in the Commission's May 23, 1995 Order. On June 15, 1995, the Attorney General, by and through his Public Service Litigation Branch ("Attorney General"), filed a petition for rehearing of seventeen issues.

On June 16, 1995, the Attorney General filed a supplemental petition on the depreciation issue. On June 23, 1995, Cincinnati Bell filed a motion to strike this supplemental petition. The Attorney General responded also on June 23, 1995. On June 28, 1995, Cincinnati Bell responded to the remaining issues in the Attorney General's petition.

CINCINNATI BELL'S PETITION

Concession Service Revenues

Cincinnati Bell sought rehearing of the imputation of employee concession service citing its authority to grant free or reduced service under KRS 278.170(2). Further, Cincinnati Bell argued that

by imputing the revenue, the Commission was substituting its judgment for the company's on the issue of employee compensation.

The Commission, in its decision, did not deny Cincinnati Bell the right to offer its employees free or reduced service, but determined that the cost of providing this service should not be borne by the ratepayers. This decision is consistent with sound policy and many decisions made in previous rate proceedings.

#### Inside Wire Maintenance Programs

Cincinnati Bell alleges that the Commission did not have authority to find that there is not effective competition for inside wire maintenance programs. It also argued that potential competitors have the same opportunities to market these plans as Cincinnati Bell.

The regulatory treatment of inside wire maintenance plans is also an issue in Case No. 94-121.<sup>1</sup> Because of the importance of this issue to all telecommunication carriers in Kentucky, the Commission will grant rehearing and require South Central Bell to be made a party to this rehearing proceeding. Prefiled testimony shall be filed by Cincinnati Bell and South Central Bell within 30 days of the date of this Order. Intervenors shall file prefiled testimony within 60 days of the date of this Order.

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<sup>1</sup> Case No. 94-121, Application of BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company to Modify Its Method of Regulation.

### Rate Of Return

Cincinnati Bell seeks rehearing on its rate of return, arguing that the only credible evidence in the case concerning return on equity was presented by its own expert. Cincinnati Bell also argued that even though the Staff presented an exhibit of returns for other telephone companies, it was not established that they were similar to Cincinnati Bell. Cincinnati Bell finally argues that even though the Order states that the Commission relied on "current economic conditions," it does not specify what these conditions were.

The return on equity range of 12.5 percent to 13.5 percent for Cincinnati Bell was and is quite reasonable and totally in line with the risk factors Cincinnati Bell faces. The 14 percent proposed by Cincinnati Bell is not justifiable given the company's risks. The Commission must determine what is reasonable in the absence of convincing evidence in the record. The fact that only one witness presented testimony as a qualified expert on rate of return does not oblige the Commission to accept Cincinnati Bell's proposal. See Citizens Tel. Co. v. Public Service Commission, Ky., 247 S.W.2d 510, 514 (1952).

### ATTORNEY GENERAL'S PETITION

#### Post-Retirement Benefits/Pensions

The Attorney General asked the Commission to reconsider its rejection of the Attorney General's proposed adjustments to post-retirement benefits other than pensions and pensions. The Attorney

General reiterated his previous argument without presenting any new information or evidence.

#### Employee Stock Option Plan

The Attorney General also requested reconsideration of the Commission's rejection of the proposal to recognize a portion of the tax benefit Cincinnati Bell, Inc. received for dividends paid on stock held by its Employee Stock Option Plan. The Attorney General argued that tax benefits must flow with the expenses the ratepayers pay. The tax benefit arises from the dividends paid to the ESOP by Cincinnati Bell, Inc. and not from Cincinnati Bell's share of the cost of providing an employee benefit in the form of an ESOP.

#### Rate Group 5B/Southern Counties

The Attorney General stated that rates for customers in the Southern Counties should equal the rates in the Northern Counties, thus providing "true" rate uniformity. This would require a mandatory rate increase of nearly 100 percent on all Southern County customers. While the proposed rates would have been higher than the Attorney General now proposes, the Attorney General himself argued for optional extended area service.

Although a mandatory rate equivalent to the Northern Counties was considered, it has been the Commission's policy to establish optional plans when possible. Such plans offer customers more choices and give them the opportunity to tailor the service they choose to their individual needs.

### Revenue Sufficiency

The Commission determined that Cincinnati Bell had a revenue sufficiency of \$982,000. However, because of the uncertain effects on Cincinnati Bell of the Commission's mandates that the company provide EAS without changing telephone numbers and pursue toll free calling to and from Cincinnati for the Southern Counties, the Commission did not reduce Cincinnati Bell's rates. The Attorney General petitioned for rehearing arguing that the rates should be reduced now by \$982,000.

The Commission has ordered Cincinnati Bell to undertake activities which will impact Cincinnati Bell's revenues, the amount of which cannot be determined until the company has begun to comply with the mandates. It is therefore appropriate and reasonable to allow the company to retain this amount of revenue to meet these certain but unquantified expenses rather than reduce its rates at this time.

### Statutory Suspension Period

The Attorney General also argues that because Cincinnati Bell amended its application, the statutory suspension period should start over giving parties an additional five months to review the application. However, every aspect of the amended application contained either rate reductions or some change that all parties supported, such as providing EAS on an optional basis. Parties regularly seek to amend their applications and the Commission regularly grants such requests without the requirement of an extended suspension period.

### FCC Petition For Toll Free Calling

The Attorney General requests that the Commission clarify and expand its determinations regarding the FCC petition to eliminate toll charges to and from Cincinnati for Southern County customers selecting EAS. He argues that the Commission should fix a reasonable time in which Cincinnati Bell should file its petition and require the company to notify intervenors when it has done so. However, the Order requires Cincinnati Bell to file updates with the Commission every 60 days regarding its activity on this matter. These status reports will necessarily be filed in this proceeding and served on all parties of record.

The Attorney General further requests the Commission to establish a time or method for determining the time for hearings on the cost of providing EAS without changing telephone numbers and of providing toll free calling in the Cincinnati area. The establishment of any hearing on these matters would be premature since there is no more evidence in the record than that upon which the Commission has already ruled.

### Miscellaneous Adjustments

The Attorney General has also asked for rehearing on 1) deferred federal income taxes, 2) property expense, 3) Cincinnati Bell Information System billing, 4) rate case expense, 5) excess clearances, and 6) telephone association dues, on the basis that the Commission unlawfully placed the burden of proof on the Attorney General and not on Cincinnati Bell. The Attorney General has also sought rehearing on the question of non-income taxes. He

argues that the unique character of taxes merits treatment different than that afforded other expenses under the revenue split methodology.

A finding that argument is not persuasive of a proposed position does not amount to a determination that the burden of proof required of the applicant has shifted to those parties opposed to the petition.

#### Depreciation

Through a supplemental petition, the Attorney General asked the Commission to reconsider its decision on depreciation with regard to future rates. Cincinnati Bell filed a motion to strike the supplemental petition. Cincinnati Bell argued that on June 16, 1995, one day past the statutory deadline for filing rehearing petitions, the Attorney General supplemented his original rehearing application. The Attorney General has responded that the Commission maintains continuing jurisdiction to modify its Orders pursuant to KRS 278.390. Petitions for rehearing are provided for in KRS 278.400 which states that applications must be filed within 20 days after service of the Order and that service of the Commission Order is complete 3 days after the date the Order is mailed. The Attorney General's supplemental petition was filed out of time and, given the statutory stricture, this Commission has no discretion to grant a variance.

Had the supplemental petition been timely, it would nonetheless have been denied because there is no new evidence for the Commission to consider.

### Alleged Unlawful Contested Settlement

The Attorney General once again alleges that this Commission violated the rulings in Louisville Gas & Electric Company v. Commonwealth of Kentucky, Ky. App., 862 S.W.2d 897 (1993) and Kentucky-American Water Company v. Commonwealth of Kentucky ex rel. Frederick J. Cowan, Attorney General, Ky., 847 S.W.2d 737 (1993). However, he presented no issues not previously addressed by the Commission.

All parties to this case were invited to all settlement discussions and Commission Staff took no part in them. Therefore, this matter is clearly distinguishable from the Kentucky-American case. There, Kentucky-American and Staff had reached a settlement, but not all parties agreed. The Commission then held a hearing on the reasonableness of that settlement. Here, in contrast, the partial settlement was contained in the amended application which was addressed at hearing by the utility's witnesses. The partial settlement noted that all signatories recognized that there would be a full evidentiary hearing. The full evidentiary hearing took place and, indeed, the Commission did not accept all aspects of the amended application as reasonable.

The amended application provided for a rate increase of \$1.479 million for Cincinnati Bell. The Commission's Order found that no rate increase was reasonable. The amended application contained rates for the customers not selecting extended area service of \$10.11 for single-line residential and \$19.13 for single-line business. The Order, however, approved rates of \$9.65 for the



single-line residential and \$18.26 for single-line business. The amended application included a charge to customers for switching from their current service to extended area service. The Commission required a waiver of these charges for 90 days. The amended application provided for reductions in carrier common-line charges paid by interexchange carriers in the amount of \$900,000 effective April 1, 1996 and an additional \$900,000 effective April 1, 1997, if the Commission ordered increases sufficient to cover these reductions. The Commission's Order designed rates to produce an immediate \$1.411 million decrease in non-traffic sensitive rates, though Cincinnati Bell's revenue requirement was not increased.

The facts of this proceeding and the Kentucky-American case are obviously distinguishable. At its most basic, there is nothing in the case which precludes a party from amending its application before the Commission. It is clear from the differences between the amended application and the Commission's Order that the Commission made independent determinations of the issues before it.

The Commission, having considered the motions for rehearing and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The motions for rehearing are denied with the exception of the inside wire maintenance program.

2. Within 30 days of the date of this Order, Cincinnati Bell and South Central Bell shall file testimony relating to the inside wire maintenance program.

3. Within 60 days of the date of this Order, Intervenor shall file testimony related to inside wire maintenance programs.


4. South Central Bell shall be made a party to this rehearing proceeding.

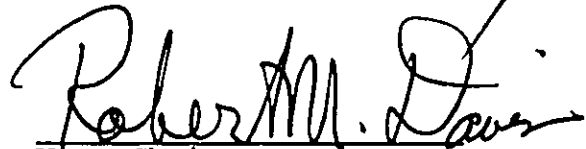
5. A copy of this Order shall be served on all local exchange carriers.

6. Cincinnati Bell's motion to strike the supplemental petition for rehearing of the Attorney General shall be granted.

Done at Frankfort, Kentucky, this 3rd day of July, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director