

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC JOINT APPLICATION  
OF RED FIBER PARENT LLC, RF  
MERGER SUB, INC., CINCINNATI  
BELL, INC., AND CINCINNATI BELL  
TELEPHONE COMPANY LLC FOR (1)  
APPROVAL OF THE PROPOSED  
INDIRECT TRANSFER OF CONTROL  
OF CINCINNATI BELL TELEPHONE  
COMPANY LLC TO RED FIBER  
PARENT LLC PURSUANT TO KRS  
278.020(6) AND KRS 278.020(6) AND  
A DECLARATION THAT APPROVAL  
UNDER KRS 278.020(7) IS NOT  
REQUIRED; (2) NOTICE OF THE  
PROPOSED INDIRECT TRANSFER  
OF CONTROL OF CINCINNATI BELL  
EXTENDED TERRITORIES LLC AND  
CBTS TECHNOLOGY SERVICES, LLC  
TO RED FIBER PARENT LLC; AND,  
(3) ALL OTHER REQUIRED  
APPROVALS AND RELIEF

CASE NO.  
2020-00259

**TIME WARNER CABLE INFORMATION SERVICES (KENTUCKY), LLC'S REPLY TO  
APPLICANTS' MEMORANDUM IN OPPOSITION TO TIME WARNER CABLE  
INFORMATION SERVICES (KENTUCKY), LLC'S  
MOTION TO INTERVENE**

On September 4, 2020, Red Fiber Parent LLC, RF Merger Sub, Inc., Cincinnati Bell Inc., and Cincinnati Bell Telephone Company LLC (collectively, "Applicants") filed their memorandum in opposition ("Opposition") to Time Warner Cable Information Services (Kentucky), LLC's ("Charter") Motion to Intervene.

Charter respectfully submits this reply to the Opposition ("Reply").

## **I. PROCEDURAL BACKGROUND.**

On August 10, 2020, Applicants filed their joint application (“Application”), requesting that the Commission issue an order (1) approving, among other things, the transfer of indirect control of Cincinnati Bell Inc. and Cincinnati Bell Telephone LLC (“CBT”) resulting from the planned upstream acquisition of these entities by Red Fiber Parent (the “Transaction”), or, alternatively, declare that approval is not required; and (2) granting all other relief necessary and appropriate for the Transaction to be consummated.

On August 20, 2020, the Commission issued an order and procedural schedule. Pursuant to the Commission’s order, Charter filed its Motion to Intervene on August 28, 2020. Applicants filed their Opposition on September 4, 2020.

## **II. ARGUMENT**

Charter should be granted intervention in this proceeding because Charter meets the minimum standards for intervention set out in the applicable Kentucky statute and regulation. Consistent with KRS 278.040(2), Charter has an interest in CBT’s rates and services because, in the conduct of its own business, Charter relies on CBT to provide wholesale network interconnection, number porting, operations support systems, and pole attachments at reasonable and nondiscriminatory rates, terms and conditions. To the extent the Transaction could result in diminution, impairment or modification of those services and/or increases to their current rates, Charter and its customers would experience significant harm.

Charter also meets both of the alternate criteria for intervention set forth in 807 KAR 5:001, Section 4(11) because Charter has a special interest that is not otherwise

adequately represented in this case. Specifically, Charter is concerned about the impact of the Transaction on its operations as a competitive carrier that relies on CBT for access to wholesale services and facilities such as interconnection, number porting, operations support systems, pole attachments, conduits, and rights-of-way at reasonable and nondiscriminatory rates, terms and conditions. Again, to the extent those services are negatively affected (through either non-availability or increased rates), the Transaction would inhibit the ability of providers such as Charter to compete effectively in Kentucky's telecommunications market. Notably, no other party - including the Attorney General - has sought intervention in this proceeding; therefore, no other party could represent Charter's special interest. Lastly, Charter will present issues and develop facts that will assist the Commission without unduly complicating or disrupting the proceedings. As an example, Charter has requested information only related to the Applicant's operations support systems, porting, pole attachments, interconnection agreements, and other issues under the Commission's jurisdiction. In sum, for the reasons set forth in this Reply, Charter respectfully submits that it meets the qualifications set forth in KRS 278.040(2) and in 807 KAR 5:001, Section 4(11), to intervene and become a party to this proceeding.

**A. Charter seeks to preserve and safeguard competition by ensuring that the Transaction does not adversely affect the status quo.**

Charter has nothing to gain by delaying this proceeding. Applicants argue, "Charter's Motion to Intervene is an improper attempt by a competitor to: (1) delay or hinder the regulatory approval of the proposed transfer of indirect control; and (2)

advance Charter's market position . . . ."<sup>1</sup> However, as explained in its Motion to Intervene,<sup>2</sup> Charter strongly supports fostering and preserving competition in Kentucky's local telecommunications market. To that end, Charter's interest is in ensuring that the Transaction does not adversely affect CBT's fitness, willingness, and ability to provide critical Commission-regulated services on which competition relies, including, but not limited to, interconnection, wholesale ordering and billing processes, and access to poles, conduit capacity, and rights-of-way.

Excluding those interests might make this proceeding slightly speedier, but doing so would make its resolution less just and would unfairly deprive Charter of the opportunity to express its concerns about the Transaction. For example, Applicants argue, "Charter has ample opportunity to raise pole attachments issues before the Commission"<sup>3</sup> in a separate ongoing proceeding, and that "no modifications will be required to [CBT's] Tariff as a result of the transaction."<sup>4</sup> Despite that pole attachments are the subject of an active proceeding, the final order released in that case may be of limited application to the instant proceeding for which a final order is expected within 120 days, as required by the compressed-case timeline for proposed transfers of control.<sup>5</sup> Pole owners may significantly impact the buildout of competitive networks, especially within rural areas. As competitive carriers seek to expand their networks to underserved or unserved areas, whether in response to the present pandemic or

---

<sup>1</sup> Opposition at 3.

<sup>2</sup> The arguments presented in Charter's Motion to Intervene are hereby incorporated by reference.

<sup>3</sup> Opposition at 8.

<sup>4</sup> *Id.*

<sup>5</sup> See KRS 278.020(7).

otherwise, practices that would unnecessarily condition or impede pole attachment requests ultimately harm the general public. Moreover, Applicants' assertion that no modifications to the existing tariff for pole attachments, or other wholesale inputs, will be required is not an assurance that such modifications will not be made by CBT in the future.

Charter does not seek to broaden the scope of issues to be addressed and opposes Applicants' counterarguments on this point. Applicants argue "Charter's allegations are not reasonably pertinent to and would unreasonably broaden the issues already presented . . . ." <sup>6</sup> Charter disagrees. The "issues already presented" in this case include whether the Transaction might adversely affect the performance of CBT's wholesale obligations and whether the Transaction is reasonable and consistent with the public interest. Charter will focus on the applicable issues established by the Commission and raised in the Application that concern the Transaction's likely effect on competitive service providers that depend on CBT for services and facilities. Charter has provided similar assurances throughout its Motion to Intervene. <sup>7</sup>

**B. Charter meets the standard for intervention in this proceeding.**

Charter meets the standard for intervention under the Commission's rule at 807 KAR 5:001, Section 4(11), and KRS 278.040(2). Applicants allege, without factual or legal support, that the Transaction "will have no adverse impact on customers" <sup>8</sup> and that the Commission's authority is "limited to" retail rate regulation. <sup>9</sup> Notwithstanding,

---

<sup>6</sup> *Id.* at 4.

<sup>7</sup> Motion to Intervene at 3-4.

<sup>8</sup> Application at para. 38.

<sup>9</sup> Opposition at 7.

Applicants bear the burden of proof that the Transaction will not adversely affect its services and facilities as described herein and in Charter's Motion to Intervene. Accordingly, those services and facilities, including interconnection, operations support systems, and related process concerns, strike at the very heart of whether the Transaction would adversely impact CBT's wholesale customers. These customers indisputably require access to CBT's systems and facilities to facilitate the exchange of local traffic with end user customers and to allow such end users to send critical 911 traffic to the correct public safety answering points, among other things.

Notably, the Commission's authority to regulate rates is not so limited as the Applicants claim. KRS 278.040(2) grants the Commission authority over the rates and services of utilities; however, nothing in the statute limits the Commission's authority to *only* retail rates and services. In addition, KRS 278.160 requires utilities to file with the Commission *all* rates and conditions for service, necessarily requiring utilities to file and seek approval of their wholesale tariffs.

Additionally, the Duke Energy Kentucky case that Applicant's cite in arguing the appropriate standard for intervention is not analogous to this proceeding.<sup>10</sup> Unlike ChargePoint which did not pay rates or receive services from Duke Energy Kentucky, Charter is directly impacted by CBT's rates and services because Charter relies on CBT to provide wholesale network interconnection, number porting, operations support systems, and pole attachments at reasonable and nondiscriminatory rates, terms and conditions. If those services become unavailable or prohibitively expensive as a result of the Transaction, Charter and its customers would experience significant harm.

---

<sup>10</sup> *Id.* at 6-7.

Further, in the instant proceeding, the Attorney General has not sought intervention, and even if he did, he would be suited to represent the interests of the general public but not the unique and more complex wholesale interests of competitive wireline carriers.<sup>11</sup>

**C. Charter's interests are not adequately protected by contract.**

Charter's interests are not adequately protected by the terms of existing interconnection or other wholesale services agreements because these do not specifically address the possible impact to service quality, facilities issues, or the effects of systems migration or consolidation that may result from the Transaction. Applicants depict the Transaction as a nonevent because CBT will remain an indirect subsidiary of Cincinnati Bell and that only the ownership of Cincinnati Bell will change. Applicants also argue that, because Charter has not sought to amend its interconnection agreement with CBT in almost eight years, Charter's concerns about CBT's post-Transaction wholesale performance are invalid. However, the Applicants' arguments ignore the fact that the ultimate owner of CBT will control the future decision-making on matters like capital and operating budgets and the choice of and incentives provided to management, as well as overall business strategies. While Applicants outline the significant infrastructure investments managed by Macquarie Infrastructure and Real Assets ("MIRA"), Red Fiber Parent's ultimate parent, importantly, it appears that MIRA has no prior experience managing a U.S.-based incumbent local exchange carrier. Therefore, the Commission must ensure that MIRA will maintain the efficiency of the operations support systems and business support systems and wholesale processes, as well as CBT's performance under its interconnection and other wholesale services

---

<sup>11</sup> See Charter's Motion to Intervene at 2-3.

agreements, to ensure compliance with Section 251 and 252 of the Federal Communications Act and related State laws.

Charter's primary concern is that a change in the ultimate control of CBT may have the unintended consequences of degrading CBT's performance or impairing the operations of competitive service providers. Applicants insist that by seeking intervention, Charter is merely seeking to advance its own competitive position, and not to protect the public interest.<sup>12</sup> However, because Charter provides competitive voice services to the public, issues that adversely affect Charter logically result in adverse effects for its customers, *i.e.*, the public. In addition, all of the issues on which Charter will provide input reasonably concern the competitive process and the interests of other competitive service providers, including VoIP and wireless service providers, which compete with CBT to provide voice services. Competitive communications providers other than Charter also require prompt, error-free access to high quality interconnection facilities, ordering systems and number porting processes. Requiring competitive carriers to seek resolution of the certain limited issues addressed in interconnection or other wholesale agreements according to the dispute resolution procedures therein will not ensure that the Transaction does not disrupt existing arrangements. The sound approach that Charter recommends will reduce the likelihood of future disputes and simplify their resolution.

In reviewing similar transactions, state regulatory commissions throughout the United States have considered and addressed these valid competitive concerns by taking rational measures, which have included freezes on ILEC changes to evergreen

---

<sup>12</sup> Opposition at 6, 9-10.



interconnection agreements (other than those required as a result of a change of law) and collaborative processes to prevent adverse changes to operations support systems and/or business support systems.<sup>13</sup>

Charter has not developed a final position on whether to support or oppose the Application, but seeks to avoid or lessen any adverse effects that may result from the

---

<sup>13</sup> See, e.g., *Northwest Fiber, LLC, Frontier Communications Corporation, and Frontier ILEC Holdings LLC Joint Application Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Transfer of Control of Frontier Communications Northwest Inc. and Citizens Telecommunications Company of Oregon to Northwest Fiber, LLC*, Order No. 20-06, Docket No. UM 2008 (Or. PUC Jan. 27, 2020) (extending all CLEC interconnection agreements for 36 months, requiring the ILEC to process and complete local number portability (“LNP”) to meet commission and FCC requirements, requiring no changes to operations support systems or business support systems (“OSS/BSS”) for 24 months, and requiring compliance with existing wholesale OSS Interface Change Management Process for any OSS changes after such 24 months); *Northern New England Telephone Operations LLC d/b/a FairPoint Communications-NNE Request for Approval of Reorganization*, Order Adopting Stipulation, Docket No. 2016-00307, 2017 WL 2462746, Order Adopting Stipulation (Me. PUC Jun. 5, 2017) (extending all existing interconnection agreements for 30 months, providing assurances with respect to LNP performance, and limiting changes to OSS/BSS for 24 months, among other conditions); *Joint Application of Frontier Communications Corporation and AT&T Inc. For Approval of a Change of Control*, Docket No. 14-01-46, 2014 WL 5317737, Decision, Attachment A (Conn. PURA Oct. 15, 2014) (extending all existing interconnection agreements for 36 months, providing assurances with respect to LNP performance, and requiring a change management process for operations support systems that involved monthly meetings with CLECs, among other conditions); *Application for Approval of Merger Between CenturyTel Inc. and Qwest Communications International Inc.*, Order No. 11-095, Docket No. DM 1484, 2011 WL 1111828 (Or. PUC Mar. 24, 2011) (legacy OSS systems maintained for at least 24 months; commercial and wholesale agreements extended for at least 18 months; interconnection agreements extended for at least 36 months after the transaction closing date, whether or not the initial or current term had expired or the agreement was in evergreen status); Order 11-095 corrected. Order No. 11 101, 2011 WL 1318790 (Or. PUC April 4, 2011); *Application of Qwest Communications International Inc., and CenturyTel Inc.*, Order No. 72232, 2011 WL 914033 (Ariz.C.C. Mar. 9, 2011) (legacy OSS systems maintained for at least 24 months; commercial and wholesale agreements extended for at least 18 months; interconnection agreements extended for at least 36 months after the transaction closing date, whether or not the initial or current term had expired or the agreement was in evergreen status); and *Frontier Communications Corporation, New Communications Holdings, Inc., and Verizon Communications Inc. for Consent and Approval of a Change in Control*, Order, Docket No. 09-454TP-ACO, 2010 WL 590887 (Ohio PUC Feb. 11, 2010) (legacy OSS systems maintained for at 36 months after the merger closing date unless Frontier would provide 180 days prior notice to the commission and to the CLECs; carriers could extend their existing interconnection agreements up to 30 months from the transaction closing date even if the initial term of the agreement had expired).

Transaction. Without Charter's active involvement in this proceeding, the record will be devoid of competitive carriers' unique perspective and specific input, leaving the Commission without a complete record on which to base its analysis and decision.

### III. CONCLUSION

For the reasons set forth herein, Charter respectfully submits that it meets the qualifications, as set forth in KRS 278.040(2) and 807 KAR 5:001, Section 4(11), and the Commission's Order entered in this proceeding on August 20, 2020, to intervene and become a party to this proceeding with full rights of intervention.

**RESPECTFULLY SUBMITTED** this \_\_\_ day of September 2020.

TIME WARNER CABLE INFORMATION  
SERVICES (KENTUCKY), LLC



---

James W. Gardner  
M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street, Suite 1500  
Lexington, KY 40507  
Phone: (859) 255-8581  
E-mail: [jgardner@sturgillturner.com](mailto:jgardner@sturgillturner.com)  
E-mail: [tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)

Tiffany Smink  
VP Law – Telephone Regulatory  
Charter Communications, Inc.  
6399 South Fiddler's Green Circle, 6<sup>th</sup> Floor  
Greenwood Village, CO 80111  
Phone: (303) 712-8644  
E-mail: [tiffany.smink@charter.com](mailto:tiffany.smink@charter.com)

*Counsel for Time Warner Cable Information  
Services (Kentucky), LLC*