

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-07-IH-4282
)	
)	NAL/Acct. No. 200932080013
Cincinnati Bell, Inc.)	
)	FRN No. 0003-0180-33

ORDER

Adopted: November 21, 2008

Released: December 3, 2008

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (the "Bureau") and Cincinnati Bell, Inc., Cincinnati Bell Telephone Company and Cincinnati Bell Extended Territories, Inc. ("Cincinnati Bell"). The Consent Decree terminates the enforcement proceeding initiated by the Bureau against Cincinnati Bell for possible violations of sections 9(a)(1), 225(b)(1) and 254 of the Communications Act of 1934, as amended (the "Act"), and sections 1.1151, 1.1154, 1.1157(b)(1), 52.17, 52.32, 54.706, 54.711, 54.713, and 64.604 of the Commission's Rules, relating to universal service, and certain Rules relating to universal service, the Telecommunications Relay Service ("TRS") Fund, the North American Numbering Plan Administration ("NANPA"), Local Number Portability ("LNP") and regulatory fees.¹

2. The Bureau and Cincinnati Bell have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the enforcement proceeding.

4. In the absence of material new evidence relating to this matter, we conclude that the Bureau's investigation raises no substantial or material questions of fact as to whether Cincinnati Bell possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act,² the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. §§ 9(a)(1), 225(b)(1), 254; 47 C.F.R. §§ 1.1151, 1.1154, 1.1157(b)(1), 52.17, 52.32, 54.706, 54.711, 54.713, and 64.604.

² 47 U.S.C. § 154(i).

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Douglas D. Orvis II, Bingham McCutchen LLP, 2020 K Street, N.W., Washington, D.C. 20006-1806.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and Cincinnati Bell, Inc., Cincinnati Bell Telephone Company and Cincinnati Bell Extended Territories (collectively, “Cincinnati Bell”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation concerning Cincinnati Bell’s compliance with section 254 of the Communications Act of 1934, as amended (the “Act”),¹ relating to universal service, and certain Rules relating to universal service, the Telecommunications Relay Service (“TRS”) Fund, the North American Numbering Plan Administration (“NANPA”), Local Number Portability (“LNP”) and regulatory fees.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (d) “Cincinnati Bell” means Cincinnati Bell, Inc., Cincinnati Bell Telephone Company and Cincinnati Bell Extended Territories, Inc., and its predecessors-in-interest and successors-in-interest or assigns.
- (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 13.
- (g) “Effective Date” means the date on which the Commission releases the Adopting Order.

¹ 47 U.S.C. § 254.

- (h) “Investigation” means the investigation commenced by the Bureau’s March 6, 2007 Letter of Inquiry² regarding Cincinnati Bell’s universal service and other reporting and contribution obligations associated with FCC Form 499-A and FCC Form 499-Q.
- (i) “Parties” means Cincinnati Bell and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Pursuant to section 254(d) of the Act and sections 54.706, 54.711, and 54.713 of the Rules, telecommunications carriers that provide interstate telecommunications services are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Form 499-A and FCC Form 499-Q) and contribute to the federal Universal Service Fund (“USF”).³

4. Pursuant to section 251(e) of the Act and sections 52.17 and 52.32 of the Rules, all telecommunications carriers are required to contribute to the costs of establishing numbering administration and local number portability, based on information contained in FCC Form 499-A and FCC Form 499-Q.⁴

5. Pursuant to section 225(b)(1) of the Act and section 64.604 of the Rules, telecommunications carriers that provide interstate telecommunications services are required to contribute to the TRS Fund, based on information contained in FCC Form 499-A and FCC Form 499-Q.⁵

6. Pursuant to section 9(a)(1) of the Act and sections 1.1151, 1.1154, and 1.1157(b)(1) of the Rules, interstate telecommunications carriers are required to pay regulatory fees.⁶

7. Cincinnati Bell offers interstate and international telecommunications services and is subject to the requirements discussed in paragraphs 3 through 6 above.

8. On January 30, 2007, Cincinnati Bell informed the Bureau that, as part of a review of its compliance with its universal service and other associated reporting and contribution obligations, it may have underreported its interstate telecommunications revenues on its FCC Form 499-As and FCC Form 499-Qs. As a result, Cincinnati Bell’s federal USF contributions, numbering administration and local number portability contributions, TRS Fund contributions, and regulatory fee payments may have been calculated incorrectly. Shortly thereafter, the Bureau issued Letters of Inquiry (“LOIs”) concerning Cincinnati Bell’s voluntary disclosures. Cincinnati Bell submitted to the Universal Service Administrative Company (“USAC”) revised FCC Form 499-As to report accurate revenue. Cincinnati Bell timely responded to each LOI, has paid all subsequent invoices from USAC fully and timely, and has

² See Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Karen Brinkmann, Latham & Watkins LLP, issued March 6, 2007.

³ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711, 54.713.

⁴ 47 U.S.C. § 251(e); 47 C.F.R. §§ 52.17, 52.32.

⁵ 47 U.S.C. § 225(b)(1); 47 C.F.R. § 64.604.

⁶ 47 U.S.C. § 9(a)(1); 47 C.F.R. §§ 1.1151, 1.1154, 1.1157(b)(1).

remained in compliance with all federal regulatory payment obligations since the inception of the Investigation.

III. TERMS OF AGREEMENT

9. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

10. **Jurisdiction.** Cincinnati Bell agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

12. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Cincinnati Bell agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Cincinnati Bell concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Cincinnati Bell with respect to Cincinnati Bell's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Cincinnati Bell agrees to create within sixty (60) days a Compliance Plan related to Cincinnati Bell's future compliance with the Act, the Commission's Rules, and the Commission's Orders governing telecommunications service providers' federal reporting and contribution requirements. The Plan will include, at a minimum, the following components:

- (a) **Compliance Manual.** Cincinnati Bell shall create, maintain and update an FCC Compliance Manual. Cincinnati Bell personnel who engage in activities related to FCC regulation of Cincinnati Bell will have ready access to the Compliance Manual and are to follow the procedures contained therein. The Compliance Manual will, among other things, describe the rules and requirements as they apply to Cincinnati Bell regarding the annual regulatory fee, the USF, the TRS Fund, and the NANPA and LNP regulatory requirements. The Compliance Manual will set forth a schedule of filing and payment dates associated with these regulatory programs. The Compliance Manual will encourage personnel to contact Cincinnati Bell's Designated Contact or internal regulatory legal counsel, with any questions or concerns that arise with respect to Cincinnati Bell's FCC compliance. Cincinnati

Bell shall submit to the Bureau a final version of its Compliance Manual sixty (60) days after the Effective Date.

- (b) Compliance Training Program. Cincinnati Bell will establish an FCC compliance training program for any employee who engages in activities related to FCC regulation of Cincinnati Bell. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the FCC's regulations and policies and, for new employees who are engaged in such activities, within the first sixty (60) days of employment.
- (c) Designated Contact. Cincinnati Bell designates its General Counsel as the point of contact for all FCC compliance matters.
- (d) Review and Monitoring. Cincinnati Bell will review the FCC Compliance Manual and FCC Compliance Training Program annually to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein.
- (e) Compliance Reports. Cincinnati Bell will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Cincinnati Bell, stating that the officer has personal knowledge that Cincinnati Bell has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C320, Washington, D.C. 20554.
- (f) Termination. Cincinnati Bell's obligations under this Paragraph shall expire twenty-four (24) months after the Effective Date.

14. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Cincinnati Bell or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Cincinnati Bell of the Act, the Rules, or any Commission Order.

15. **Voluntary Contribution.** Cincinnati Bell agrees that it will make a voluntary contribution to the United States Treasury in the amount of four hundred fifty thousand dollars (\$450,000) within thirty (30) days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money Order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal

Reserve Bank of New York, and account number 27000001. Cincinnati Bell will also send electronic notification within forty-eight (48) hours of the date said payment is made to David.Janas@fcc.gov.

16. **Waivers.** Cincinnati Bell waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Commission issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Cincinnati Bell shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Cincinnati Bell nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Cincinnati Bell shall waive any statutory right to a trial *de novo*. Cincinnati Bell hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

17. **Contingent on Bureau Action.** Cincinnati Bell's decision to enter this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order, adopting the Consent Decree without change, addition, or modification.

18. **Future Petitions.** Nothing in this Consent Decree shall preclude Cincinnati Bell from petitioning the Commission for relief as to future obligations under Section 254 of the Act and Commission's Rules or other relevant sections of the Act and the Commission's Rules.

19. **Subsequent Legal Action.** In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Cincinnati Bell does not expressly consent) that provision will be superseded by such Commission Rule or Order.

21. **Successors and Assigns.** Cincinnati Bell agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

22. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Cincinnati Bell does not admit or deny noncompliance, violation or liability for violating the Act or Case Reports in connection with the matters that are the subject of this Consent Decree.

23. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

24. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

25. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

26. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

Christopher Wilson
Vice President and General Counsel
Cincinnati Bell

Date