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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application)
of Cincinnati Bell Telephone Company)
and Cincinnati Bell Long Distance) Case No. 99-1496-TP-UNC
For a Waiver of Certain of the)
Commission's Local Service)
Guidelines.)

AMERITECH OHIO'S MEMORANDUM CONTRA
THE APPLICATIONS FOR REHEARING

Ameritech Ohio, by its attorneys, submits this memorandum contra the applications for rehearing filed in the captioned case on April 3, 2000, by AT&T Communications of Ohio ("AT&T"), MCI WorldCom, Inc. ("MCI WorldCom"), and the Ohio Consumers' Counsel ("OCC"). Ameritech Ohio filed comments and reply comments on the waiver application and has previously identified its interest in this case.

The three rehearing applicants seek to overturn the Commission's progressive order adopted on March 2, 2000. In that order, the Commission granted waivers of the Local Service Guidelines to both Cincinnati Bell Telephone Company ("CBT") and Cincinnati Bell Long Distance ("CBLD"). The order waived the Guidelines' restriction that prevents a CLEC affiliated with an ILEC from offering basic local exchange service within the ILEC's territory. Since the adoption of that order, Commission representatives have pointed to it as an example of the progress the Commission is making in relaxing regulation, consistent with its current statutory authority. Ameritech Ohio supports the

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Commission's action. The waivers represent a good first step in the process of updating and reforming Ohio regulation in today's competitive telecommunications environment.

The rehearing applicants challenge the Commission's order on the basis that it lacks a proper factual or legal foundation and did not meet the "good cause" showing required for such a waiver.

For its part, AT&T asserts, among other things, that the waiver has the effect of permitting CBT to use its CLEC affiliate, CBLD, to avoid price floor and price cap regulation. AT&T, p. 7. AT&T does not explain why a CLEC that is related to an ILEC should be regulated differently than other CLECs. The Commission has wisely moved toward parity of regulation among CLECs and has, through the granted waiver, minimized the unfair discrimination and the Guidelines' barrier to entry against ILEC-affiliated CLECs.

AT&T apparently seeks additional market opening initiatives as the "price" for the granting of the requested waiver. AT&T notes that "(u)nlike Ameritech, CBT has no Section 271-type incentive to comply with the Act and open its markets." AT&T, p. 12. Again, AT&T does not demonstrate why requirements that are not created by Ohio law for other CLECs should be imposed on a CLEC related to an ILEC.

AT&T seeks a "public investigation" into the state of competition in CBT's territory before what it calls the "anti-competitive" waiver becomes effective. AT&T, p.

15. This rhetoric does not cloud the fact that the Commission's action is pro-competitive, and not anti-competitive. The Commission has permitted an ILEC-affiliated CLEC the same opportunity to compete for customers that non-affiliated CLECs have. AT&T appears to be arguing that simply the association with an ILEC is grounds enough to subject a CLEC related to an ILEC to discriminatory regulatory treatment.

MCI echoes many of AT&T's arguments. It cites the Commission's orders adopting the Guidelines extensively, attempting to show that the rationale supporting the adoption of the Guideline cannot support its waiver. MCI, p. 5. MCI forgets that the Local Service Guidelines are just that - - Guidelines - - that were not adopted as administrative rules. It is appropriate that the Commission consider - - and grant - - waivers of those Guidelines under circumstances like those presented here. The Local Service Guidelines contain a waiver provision in which the Commission reserves the right to waive any provision of the Guidelines "for good cause shown" or "upon its own motion." Local Service Guideline II.A.2. The Commission should grant similar waivers to other requesting applicants and should, where appropriate, revise the Guideline consistent with the granted waivers.

MCI argues that ILECs will "line up for relief from this prohibition," suggesting that an Ameritech Ohio affiliate, Ameritech Communications Services, Inc., may seek to do so in its pending certification case. MCI, p. 7. MCI does not explain why such relief would not be appropriate. If the fact that others may seek the same relief were reason enough to deny a waiver, the waiver process would grind to a halt. Moreover, MCI's

argument is inconsistent with the "me-too" waiver process that the Commission has explicitly adopted in the context of the Competitive Telecommunications Service Guidelines. *See*, CTS Guideline I.D.4.

OCC makes the now-familiar argument that the Commission failed to require "additional commitments" from CBT in exchange for the waivers. OCC, p. 2. This is not an appropriate forum for the discussion of commitments that have typically been made in alternative regulation cases. Nowhere do the Local Service Guidelines or Ohio law require "commitments" of the kind OCC seeks. Nor would such a requirement be appropriate under TA96 since such a commitments requirement (as well as the Guideline restriction) represents a unlawful barrier to entry.

In its recent comments on the Local Service Guidelines, Ameritech Ohio recommended that the Commission repeal Guideline II.A.4. In its place, Ameritech Ohio advocated that the Commission should simply mirror the FCC rules that govern the relationships between LECs and their separate subsidiaries. In the Matter of the Commission Ordered Investigation of the Existing Local Service Guidelines, Case No. 99-998-TP-COI, Ameritech Ohio's Initial Comments, p. 8. There, Ameritech Ohio noted that federal law preempts the prohibition against an ILEC affiliate operating as a NEC in the ILEC territory. *Id.* The same principles clearly apply where the ILEC seeks to provide service as a CLEC outside its current territory. The limitation created by the Guideline - - that an ILEC may do so only through a NEC affiliate - - is inconsistent with the federal law.

In the companion case involving Sprint, Case No. 99-1584-TP-AAC, Sprint noted that of the 18 states served by its ILEC, Ohio is the *only one* where the Sprint NEC cannot compete in the ILEC's territory. Application of Sprint Communications Company, December 3, 1999, p. 3, note 1. This fact underscores the propriety of the Commission's action granting the waivers requested by CBT/CBLD. The Commission should also move quickly to amend the Local Service Guidelines, as proposed by Ameritech Ohio in Case No. 99-998-TP-COI, to make them consistent with the waivers that have been granted and with federal law.

For all of the foregoing reasons, the applications for rehearing should be denied.

Respectfully submitted,

AMERITECH OHIO

By: 

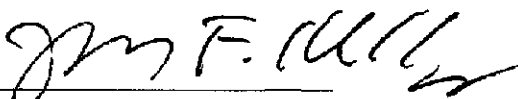
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Certificate of Service

I hereby certify that a copy of the foregoing Memorandum Contra has been served this 13th day of April, 2000, by first class mail, postage prepaid, on each of the parties shown on the attached service list.



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