

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
Revolution Communications, Ltd. Against)
AT&T Ohio for Unjust and Unreasonable) Case No. 06-427-TP-CSS
Billings and Other Violations Under the)
Parties' Interconnection Agreement.)

ENTRY ON REHEARING

The Commission, considering the Opinion and Order issued on February 4, 2009, the Application for Rehearing filed by AT&T Ohio on March 6, 2009, and the Memorandum Contra filed on March 16, 2009, by Revolution Communications, Ltd., issues its Entry on Rehearing.

- (1) On March 15, 2006, Revolution Communications, Ltd. (Revolution) filed a complaint against AT&T Ohio (AT&T). Among other things, Revolution alleged that AT&T billed improperly for dispatch charges and Traffic Type 27 (TT27). Revolution explained that dispatch charges relate to the provisioning of new telephone service orders. To provide service to a customer, connections can be made either manually or electronically. If a connection requires the dispatch of a technician, AT&T is authorized to charge \$33.88. If the connection can be completed electronically without the aid of a technician, AT&T is authorized to charge \$.74. In its complaint, Revolution alleged that AT&T in many instances charged Revolution the manual rate where it was appropriate to charge the electronic rate.

In its complaint, Revolution alleged that AT&T charged Revolution for TT27 without being able to provide verification or documentation. TT27 involves usage for calls that are originated by competitive local exchange carriers (CLECs) that use AT&T's local switching, are intraLATA (local access and transport area), interswitch in nature, and which do not terminate on AT&T's network. Instead, the calls terminate to an end user served by another facilities-based CLEC, incumbent local exchange carrier (ILEC), or wireless carrier.

- (2) By agreement of the parties and approval of the attorney examiner, this case was decided solely upon a stipulated

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record, consisting of prefiled testimony, discovery responses, and other documents without cross-examination.

- (3) On February 4, 2009, the Commission issued an opinion and order deciding the issues in Revolution's favor for both dispatch charges and TT27 charges.
- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.
- (5) On March 6, 2009, pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35(A), Ohio Administrative Code (O.A.C.), AT&T filed an application for rehearing. In its application for rehearing, AT&T contends that the Commission's order is unreasonable and unlawful. AT&T lists the following as assignments of error:
 - (a) The Commission improperly shifted the burden of proof from Revolution to AT&T.
 - (b) Revolution failed to prove its claims by a preponderance of the evidence.
 - (c) The order is manifestly against the weight of the evidence.
 - (d) The Commission exceeded its authority under Section 4905.381, Revised Code.
 - (e) The Commission failed to sustain the CCI charges.
 - (f) The Commission failed to sustain the TT27 charges.

AT&T requests that the Commission grant rehearing and find that Revolution failed to meet its burden of proof on all issues. Moreover, AT&T asks the Commission to validate its billing and order Revolution to pay the balances due. Finally, AT&T seeks an order granting it the funds held in escrow, with accrued interest, as provided by the terms of the escrow agreement.

- (6) AT&T condemns the Commission's decision for being against the manifest weight of the evidence. According to AT&T, the standard of review for a decision claimed to be "unlawful and unreasonable" under Section 4903.13, Revised Code, is whether the Commission's decision is so clearly unsupported by the record that it shows misapprehension, mistake, or willful disregard of duty. Applying this standard, AT&T concludes that there is insufficient probative evidence to support the Commission's conclusions. AT&T further accuses the Commission of being misled by Revolution's bare assertions and argument. From AT&T's analysis of the record, Revolution did not provide concrete evidence that AT&T's billing was incorrect. To AT&T, it is insufficient for Revolution to prevail simply by putting into question AT&T's billing. Moreover, AT&T believes that it is inappropriate for the burden to shift merely by claiming billing errors. Revolution must establish that AT&T's billing is incorrect.
- (7) AT&T claims that the Commission upon reexamination of the evidence will find that Revolution did not meet its burden of proof by establishing by a preponderance of evidence that AT&T's billing practices were unreasonable. AT&T contends that the Commission allowed Revolution's bare allegations and arguments to substitute for evidence. Moreover, by improperly shifting the burden of proof, AT&T claims that the Commission sabotaged AT&T's defense. AT&T argues that it was denied the opportunity to complete the record by including documents provided to Revolution during discovery. If the shift in the burden of proof had been disclosed prior to briefing, AT&T contends that it at least would have had the opportunity to respond. Citing other cases that address the improper shifting of the burden of proof, AT&T claims that the Commission has committed a violation of due process.
- (8) Revolution, in response, declares that it met its burden of proof by making a *prima facie* case in support of its complaint. If a complainant makes a *prima facie* case, it is incumbent upon the respondent to refute the complainant's case. The standard of proof, according to Revolution, is by a preponderance of the evidence. That is, the evidence of one side must outweigh the evidence of the other.

Revolution rejects the idea that the Commission sabotaged AT&T's defense. Instead, Revolution believes that AT&T took the unwise risk of not presenting its best arguments, believing instead that Revolution had not met its burden of proof.

Addressing the burden of proof, it appears to Revolution that AT&T expects Revolution to present the kind of evidence that AT&T would present to support its case. Revolution rejects such a standard because it would compel Revolution to have complete access to AT&T's billing records. Under such a standard, Revolution contends that billed parties like Revolution would never obtain relief in the event of billing errors. To Revolution, the critical issues are whether Revolution presents a credible challenge to AT&T's billing and whether AT&T can provide credible support. If AT&T cannot provide credible support, then Revolution contends that the Commission's decision is reasonable. Without this standard, a billing company could prevail simply by withholding evidence.

- (9) Revolution is correct in its discussion of the burden of proof. Revolution as the complainant in this proceeding had the obligation of carrying the burden of proof. We did not shift the burden of proof from Revolution to AT&T. Revolution presented sufficient evidence to indicate legitimate issues and concerns with respect to the reasonableness and accuracy of AT&T's billings for dispatch and TT27 charges. Upon placing the accuracy of AT&T's billing into question, it became incumbent upon AT&T to present evidence which would allow the Commission to substantiate or verify AT&T's bills. Given that the parties agreed to conduct this proceeding without cross-examination of witnesses, AT&T relied on the record as stipulated to support the accuracy of its billings. As discussed below, in the absence of relevant, credible evidence to support the accuracy of its bills, and to refute Revolution's evidence, we found that Revolution should prevail.

Regarding AT&T's argument that it was denied the opportunity to complete the record by including documents provided to Revolution during discovery, we disagree. AT&T never requested the opportunity to supplement the record with additional evidence while the record was open. For the first time on rehearing, AT&T intimated that it may have documents to further support its billings for dispatch and TT27

charges. Section 4903.10, Revised Code, states in part that the Commission shall not upon rehearing take any evidence which, with reasonable diligence, could have been offered upon the original hearing. As AT&T has admitted, these documents were provided to Revolution during discovery. Whatever the reason, AT&T chose not to submit such documents allegedly supporting AT&T's billing as part of the agreed upon record of the case. AT&T's assignment of error is thus denied.

- (10) In its second assignment of error, AT&T contends that Revolution failed to prove its claims by a preponderance of the evidence. Relying upon Commission precedent, AT&T concludes that the applicable standard is proof by a preponderance of the evidence. AT&T notes that the Commission has rejected proof based upon a "totality of the circumstances." To define a preponderance of the evidence and the amount of proof required to establish a fact, AT&T refers to equivalent expressions such as "more likely than not," and "more likely true than not true." AT&T criticizes the Commission's decision for failing to analyze why or how Revolution's evidence outweighed that of AT&T.

Upon its analysis, AT&T cannot find how it can be that it is "more likely true than not true" or "more probable than not" that Revolution was improperly billed. AT&T claims that the order does not explain. In failing to do so, AT&T contends that the Commission did not adhere to the requirements of Section 4903.09, Revised Code, by clearly stating its findings of fact and conclusions of law to allow appellate review. Moreover, AT&T emphasizes that it is the quality of the evidence not the quantity of the evidence that must be given greater consideration.

- (11) Revolution rejects AT&T's assertion that Revolution did not meet its burden of proof by a preponderance of the evidence. In support of its position, Revolution enumerates the 11 items of evidence that it relied upon for its case. Along with the evidence that it provided, Revolution highlights that AT&T billed over \$100,000 for dispatch charges and that it billed over \$200,000 for TT27 charges for 21,000,000 traffic transactions in a non-compliant ordering and billing forum (OBF) format. When Revolution requested verification of the TT27 charges, Revolution alleges that AT&T referred Revolution to DUF

records that were no longer maintained by either Revolution or AT&T. Notwithstanding support which Revolution regarded as inadequate, AT&T billed Revolution for \$360,869.26, refused to provision service to new Revolution customers, and threatened collection.

- (12) We believe that Revolution met its burden of proof by a preponderance of the evidence. Concerning dispatch charges, Revolution presented relevant and credible evidence that AT&T's dispatch charges were inaccurate or of doubtful reliability. As discussed below, based on a stipulated record agreed to by the parties, we find that Revolution has presented sufficient evidence, that AT&T's billing for dispatch charges may be unreasonable. In the absence of any evidence in the record to support the accuracy of AT&T's bills, we found that the bills were unreasonable.

With respect to the charges for TT27, Revolution has likewise submitted sufficient evidence to carry the burden of proof. We summarize the issue as whether a backbill consisting of a single line entry without records to audit or verify the billing is reasonable. We found that Revolution met its burden of proof that AT&T's backbill for TT27 charges was unjust and unreasonable. Again, in the absence of any basis in the record for the Commission to substantiate the TT27 charges, we concluded that AT&T's charges billed to Revolution should be invalidated.

- (13) By finding AT&T's billing for dispatch and TT27 charges to be unreasonable, ordering that AT&T cease collection of charges, and awarding the funds held in escrow to Revolution, AT&T contends that the Commission exceeded its authority under Section 4905.381, Revised Code. AT&T cites the following portion of Section 4905.381, Revised Code, to support its position:

Whenever the commission finds after hearing in any proceedings instituted in the manner provided in section 4905.26, of the Revised Code, that the rules, regulations or practices of any telephone company with respect to its public service are unjust or unreasonable, the commission shall determine the rules, regulations

and practices thereafter to be adopted and observed, and prescribe the same by appropriate order to be served upon such company.

AT&T believes that the Commission has fashioned a remedy that conflicts with the statute. Invalidating the charges, according to AT&T, is an unreasonable and unlawful retroactive remedy. To comply with the statute, AT&T contends that the Commission should have prescribed specific practices to be followed in the future in the event of unreasonable billings.

- (14) Revolution dismisses AT&T's reliance upon Section 4905.381, Revised Code, as wrong and inapposite. Revolution argues that this case is not about imposing new rules or regulations. It is about compelling AT&T to follow existing rules, law, or terms of the interconnection agreement. Moreover, Revolution accuses AT&T of violating one of the basic principles of regulatory law: a customer has the right to know the basis of billings and the public utility is obligated to demonstrate that its rates are just and reasonable. As support for its contention, Revolution relies upon Section 4905.22, Revised Code, which recites in pertinent part as follows:

...All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

Furthermore, Revolution claims that AT&T violated the terms of the interconnection agreement by not billing monthly and by failing to present backbilled charges in an OBF compliant format. Further repudiating the applicability of Section 4905.381, Revised Code, Revolution contends that Section 4905.381, Revised Code, is not the only remedy in a complaint proceeding. The Commission may grant other appropriate relief.

- (15) Revolution is correct. Section 4905.381, Revised Code, is not the only available remedy. The facts in the record lead us to conclude that AT&T's practice of billing without itemization or opportunity for verification is an inherently unreasonable practice. Upon a finding that a practice is unreasonable, we can in this instance, as an alternative or in addition to Section 4905.381, Revised Code, institute a remedy pursuant to Section 4905.22, Revised Code. Section 4905.22, Revised Code, prohibits unjust or unreasonable charges. Thus, contrary to AT&T's assertion, the Commission is not confined to a remedy that would compel us to issue rules, regulations, and practices designed to prevent a reoccurrence of unreasonable charges.
- (16) AT&T argues that the Commission committed error by failing to sustain AT&T's dispatch charges. AT&T points to the factors that the Commission considered in reaching the conclusion that AT&T's dispatch charges "may" be unreasonable. AT&T criticizes the Commission for presenting a tentative conclusion. Describing as clear error, AT&T points to the Commission's conclusion that the record is "devoid of any evidence from which the Commission can conclude that AT&T's bills were accurate."

Referring to an Electronic Data Interchange (EDI) spreadsheet, AT&T asserts that Revolution and the Commission have drawn the erroneous conclusion that no dispatch was made. AT&T claims that Revolution and the Commission ignored evidence included with AT&T's Reply Brief (Attachment 4) showing the WFA-DI (Work Force Administration-Dispatch In) records of six disputed orders. For the six orders, AT&T states that it provided records to show the telephone number, person assigned to do the work, the amount of time spent on the inside work, the time that the work was loaded to the central office technician, the time the order was completed in the central office, and the equipment affected by the order.

According to AT&T, close examination of the disputed records shows evidence of physical labor. AT&T explains the codes used in the record to show that there was physical work and an appropriate charge of \$33.88. AT&T also provided samples of supporting detail for six of the orders. AT&T points out that the supporting detail shows that for each order for which detail was provided there is an indication of "No Dispatch." From

the information provided and the presence of an EDI indicator showing "no dispatch," AT&T contends that the Commission erred in finding that AT&T's charges were unreasonable for lack of information. Moreover, AT&T claims the Commission ignored that "no dispatch" refers only to outside work, not central office work.

In response to the Commission's determination that AT&T should have provided support for dispatch charges, AT&T reveals that it provided hundreds of pages of documentation of such support to Revolution in discovery. Although AT&T highlighted six examples in its reply brief, it states that it provided 54 orders in response to discovery. AT&T states that it used the examples to show that orders could be completed by technicians quickly, in less than 15 minutes. Most orders included in the discovery response, AT&T points out, were completed the same day they were received from Revolution. AT&T calculates an average work time of 10 minutes using the sample provided in its reply brief. In response to Revolution's discovery request, AT&T states that it provided detailed information relating to certain orders from August 2005 that were provided to Revolution in August 2006. The information included details such as the technicians' names, technician job titles, nature of the work performed, an explanation of how the work was performed, the duration of the work, the locations of the work, a list of all orders filled or worked by the technician on the day referenced in the order, and starting point and arrival locations of any dispatch of a technician. AT&T accuses Revolution of ignoring this information. Moreover, if Revolution believed that the information provided by AT&T were inadequate, AT&T responds that Revolution could have pursued the matter in discovery.

AT&T claims that Revolution disputed over 5,000 orders. None, according to AT&T, has been shown to be billed incorrectly. It is unreasonable and unrealistic, AT&T believes, to require the above noted level of detail for each order. By showing that its billing is consistent with each of the sample orders, AT&T argues that the Commission cannot require more, particularly where Revolution has not sought additional information through discovery. Accusing Revolution of choosing to bluff the Commission through arguments instead

of evidence, AT&T chides Revolution for not responding to the records provided by AT&T.

AT&T states that, in essence, Revolution contends that AT&T never proved that a technician performed the billed service. To AT&T, the Commission accepted Revolution's assertion without the necessary proof. AT&T alludes to the occasions and sources of information where it provided Revolution proof that technicians conducted the work. AT&T refers to hundreds of pages of information provided to Revolution during discovery, which Revolution chose to ignore. It is argued by AT&T that the Commission has "sandbagged" AT&T by shifting the burden and holding that AT&T did not prove its case.

- (17) Revolution disputes AT&T's reliance upon the WFA-DI records for six orders. First, Revolution claims that AT&T did not provide the information prior to Revolution filing its complaint. Second, Revolution declares that the information is flawed. Revolution points out that the Commission was not provided instructions on how to read the attachments to its reply brief until AT&T provided an explanation in its application for rehearing. Revolution believes the instructions should have been provided earlier.

Pointing to the flaws in AT&T's evidence, Revolution claims that AT&T's reliance on six out of 5,000 disputed orders is not statistically significant and cannot be used to establish the accuracy of AT&T's billings. Moreover, Revolution notes that the six samples were taken from August 2006. It is Revolution's understanding that AT&T improved its billing system at or near that point in time. Most of the problems encountered by Revolution occurred from 2003 to 2005. Revolution, therefore, concludes that the 2006 data are irrelevant to the current dispute. Information relating to the period 2003 to 2005 is no longer available. Revolution points out further that AT&T protects as confidential information the pages provided to the Commission. Typically, such information is not available to CLECs.

In the absence of relevant information from AT&T, in contrast to the documentation provided by Revolution, Revolution concludes that the Commission had no choice but to find that

AT&T's charges were not adequately verified and, therefore, unjust and unreasonable. Revolution believes that the current billing dispute with respect to dispatch charges is a continuation of the billing problems that were settled in Case No. 02-1957-TP-UNC. Taking into account the current dispute and the previous case, Revolution believes that AT&T has not corrected its billing system.

Revolution claims uncertainty as to whether manual labor was involved in completing certain connections. It is Revolution's understanding that more than 24 hours are needed from the time an order is submitted to the time it takes a technician to complete wiring a new service order. Also, Revolution points to AT&T's testimony where it states that four hours are required for a mechanized-electronic pass-through connection. Revolution also highlights AT&T's testimony that any connection completed the same day is safely assumed to be an electronic connection. To further substantiate its point that technicians are unlikely to complete orders in less than four hours or on the same day, Revolution enumerates several factors that would make manual completion in less than four hours improbable.

Notwithstanding AT&T's assertions to the contrary, Revolution states that AT&T cannot point to any instance where it can verify that it processed an order by manual labor. Although AT&T provided spreadsheets, Revolution did not find them trustworthy because they appeared to be summaries of unverifiable information. In addition, the spreadsheets were not OBF compliant. Explaining the lack of evidence available to AT&T, Revolution points to AT&T's practice of eliminating, after 30 to 90 days, records of pass-through connections.

For its part, Revolution contends that it has met its burden by showing that AT&T's billing for dispatch charges is faulty and untrustworthy. In essence, Revolution states that AT&T cannot rebut Revolution's evidence because it has not retained any relevant records. Lacking the ability to verify its billing, Revolution concludes that the bills are inherently unjust and unreasonable. Ultimately, Revolution urges the Commission to sustain its decision and deny AT&T's application for rehearing with respect to AT&T's dispatch charges.

- (18) Revolution presented sufficient evidence to meet its burden of proof by presenting a number of factors to support its claim that AT&T billed improperly for dispatch charges. Revolution referred to a prior proceeding, Case No. 02-1957-TP-UNC, where similar dispatch billing problems were at issue. There was testimony that the billing system that gave rise to the problems in Case No. 02-1957-TP-UNC had not been corrected. Lending additional weight is the evidence of short time periods for the completion of work, suggesting that the work was completed electronically. Revolution also noted the factors that would make it improbable for a technician to complete a service order in less than four hours.

AT&T, for its part, did not present relevant, credible evidence. Its records of dispatch labor expire after a period of 30-90 days. Thus, AT&T had no records or data to rebut Revolution's evidence. AT&T could only resort to service order samples taken from time periods that were not relevant to the disputed facts and a description of its practices with respect to provisioning of service orders. By credible, relevant evidence, Revolution has called into question the accuracy of AT&T's bills. We find that the stipulated record agreed to by the parties is devoid of evidence supporting AT&T and thus we find in favor of Revolution on this claim.

- (19) AT&T challenges the Commission's order for failing to sustain AT&T's TT27 charges. AT&T rejects the Commission's findings concerning backbilling and maintains that there is insufficient evidence to support the Commission's conclusions, particularly where Revolution is held to the burden of proof.

AT&T rejects as false and baseless Revolution's assertion that AT&T never provided sufficient detail to support the backbilling of TT27 charges. To AT&T, the record is clear, by Revolution's own discovery admissions, that AT&T provided Revolution with daily usage feed (DUF) files from which to verify billings. AT&T is certain that Revolution had the means to audit and verify its billings but chose not to do so. Revolution's motivation, suspects AT&T, is to avoid payment.

AT&T declares that the Commission ignored that the record discloses AT&T's many attempts to reconcile Revolution's charges. As an example, AT&T offered to pull a month of DUF

data to do a comparison. According to AT&T, Revolution refused, demanding instead reprocessing of all DUF data. AT&T states that it offered additional detailed information and spreadsheets, with the assistance of an account manager, to assist in the reconciliation of Revolution's accounts.

AT&T makes the point that AT&T provided usage detail in compliance with OBF guidelines and in accordance with the parties' interconnection agreement. According to AT&T, its backbills were OBF compliant. AT&T explains that the disputed traffic was a backbilled adjustment that was not billed within the current usage section of the carrier access billing system (CABS) bill. AT&T rejects the notion that its actions amounted to an unreasonable practice.

AT&T argues that Revolution never provided opposing evidence. It did not dispute that it made the calls or that the call volumes were incorrect. AT&T finds it unreasonable to allow Revolution to pay nothing for billable traffic simply by disputing the backbilling of traffic. AT&T claims that it is entitled to compensation for the calls that Revolution made.

- (20) Revolution agrees with the Commission's finding that AT&T's TT27 charges are unjust and unreasonable. It is clear from the record, according to Revolution, that AT&T presented a billing for TT27 without itemization or supporting documentation. Moreover, there were no DUF data available to support AT&T's billing for TT27. Notwithstanding that AT&T may have provided DUF data sometime in 2002, the data were unavailable at the time that AT&T submitted its backbilling nearly two years later. Neither AT&T nor Revolution had retained DUF records for that time period. To Revolution, it would be unreasonable and nonsensical to require it to retain DUF records longer than AT&T's record retention period. Assuming that backbilling is permissible, Revolution agrees with the Commission that backbilling should be no less subject to OBF compliance as monthly billing.

Revolution emphasizes that the purpose of OBF compliance is to allow bills to be audited and charges verified. To be OBF compliant, the bill must include (1) minutes of transport, (2) the number of calls transited the network, (3) rate per minute for the transport, and (4) the identity of the end office where the

traffic terminated. In its review of the evidence, Revolution finds that AT&T admitted that its backbill, consisting of a line item without supporting details, was not OBF compliant. As did the Commission, Revolution rejects AT&T's argument that providing DUF records with the initial billing is sufficient to waive OBF compliance for a backbilling.

Aside from being billed for service without verification, Revolution finds unreasonable that AT&T would attempt to cause Revolution to review 21,000,000 traffic transactions that occurred during the disputed period. Being a small telephone company, Revolution also protests the economic impact of having to pay such a large sum of money at once. Agreeing with the Commission, Revolution believes that AT&T's backbilling of TT27 charges was inherently unjust and unreasonable because they were neither compliant with OBF standards nor the interconnection agreement.

Revolution rejects AT&T's attempts to legitimize its TT27 billing with spreadsheets and other efforts. To Revolution, AT&T's efforts were only attempts to estimate TT27 charges. Revolution emphasizes that the DUF records supporting any TT27 charges are no longer available. Under the interconnection agreement, Revolution concludes that it has no obligation to pay estimated billings.

In response to AT&T's plea for compensation and accusation that Revolution is attempting to avoid payment for billable traffic, Revolution doubts that it is responsible for much of the traffic. In addition, Revolution argues that it should not be held responsible for AT&T's billing system failures. Revolution goes further to state that it should not be held as an insurer of AT&T's facilities. In sum, Revolution concurs in the Commission's finding that AT&T's single-line billing for TT27 charges is unsupportable and contrary to the interconnection agreement.

- (21) According to AT&T's testimony, it retains DUF records for a period of 45 days. After that period, the records undergo a natural process of aging off the system. Nearly two years after an initial billing, AT&T discovered an error in its billing system. It recognized that it had not charged for TT27. AT&T

issued bills for TT27 traffic to Revolution and other telecommunications providers.

The problem in this case is that AT&T billed Revolution for TT27 *after the DUF records had aged off the system*. Thus, the records essential for audit and verification were unavailable to Revolution. Although AT&T may suggest that Revolution should have retained its DUF records for some undetermined length of time, it certainly would not comply with any standard of fairness for AT&T to require a CLEC to retain DUF records for a longer period than AT&T retains the records itself. Assuming that AT&T had provided DUF records with its initial billing, we find that AT&T's billing for TT27 nearly two years later as a line-item is unacceptable. Moreover, we find that AT&T's billing of over 21,000,000 traffic transactions after two years as a line-item without records to audit or verify the billing is unreasonable. It is particularly unreasonable given a history of numerous billing mistakes, corrections, and adjustments over several years. Accordingly, having found the circumstances of the TT27 backbilling to be unreasonable, and absent any basis in the record for us to substantiate the TT27 charges, we must invalidate AT&T's charges billed to Revolution. We, therefore, uphold our finding that it is appropriate to award the funds held in escrow, with accrued interest, to Revolution.

- (22) AT&T requests that the Commission clarify its order with respect to the disbursement of funds from the escrow account. AT&T points out that the terms of the escrow agreement provide that funds shall not be disbursed until ultimate disposition of the issues in the case. Specifically, AT&T refers to the language in Section Five of the Escrow Agreement which, in dealing with competing claims, provides as follows:

In the event of any disagreement or the presentation of adverse claim(s) or demand(s) in connection with this Escrow Agreement and funds escrowed pursuant hereto, Escrow Agent shall refuse to comply with any such claim(s) or demand(s) until all the rights of the adverse claimants have been finally adjudicated by the relevant state public utilities commission(s) or a court having jurisdiction of the parties and of the

subject matter, or until the parties address their differences and provide written evidence of same to Escrow Agent, whichever occurs first.

Because AT&T has sought rehearing, there is no final adjudication until the Commission issues an entry on rehearing and any appeal is concluded. AT&T wants clarification that the Commission did not intend to modify the terms of the escrow agreement.

- (23) Revolution contests AT&T's request for clarification of the order with respect to entitlement to funds held in escrow. Likewise referring to Section Five of the Escrow Agreement, Revolution reveals that both parties must sign for the release of funds and that AT&T refuses to sign for the release of funds. Claiming that it agreed to Section Five under duress, Revolution believes that the agreement is inconsistent with the law and the Order in this case. Specifically, Revolution believes that the provision is inconsistent with Section 4903.10, Revised Code, which reads in pertinent part as follows:

If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed. An order made after such rehearing, abrogating or modifying the original order, shall have the same effect as an original order, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order prior to the receipt of notice by the affected party of the filing of the application for rehearing.

Revolution believes that AT&T is attempting to do by private contract what Section 4903.10, Revised Code, prohibits. It is Revolution's position that the Commission has rendered a final adjudication. If there is an appeal, the parties will be AT&T and the Commission, not Revolution. Revolution requests an order from the Commission directing AT&T to sign for the release of escrow funds to Revolution.

- (24) In our reading of Section Five of the Escrow Agreement we conclude that Revolution should be awarded the funds held in escrow. Release of the funds is contingent upon final adjudication. Because AT&T is unclear whether this matter has been finally adjudicated, AT&T requests that the Commission clarify its order.

We find that this matter has been finally adjudicated as contemplated by Section Five of the Escrow Agreement. Section Five provides that final adjudication may be rendered by either a state commission or a court. Contemplating further appeal, AT&T would have final adjudication occur after the exhaustion of all appeals. However, it is necessary to point out that the provision for final adjudication in Section Five is written disjunctively. Final adjudication may be rendered alternatively by a commission or a court, not both. It follows, then, that this Entry on Rehearing is a final adjudication, notwithstanding that AT&T may exercise a right of further appeal to the Ohio Supreme Court.

AT&T reads Section Five conjunctively, as if final adjudication must be rendered by both a commission and a court. That is not a proper reading of Section Five. It should be noted that our conclusion does not involve a modification of the terms of the Escrow Agreement. It is merely a matter of proper interpretation. AT&T should sign for the release of escrow funds to Revolution.

It is, therefore,

ORDERED, That AT&T's application for rehearing is denied in its entirety. It is, further,

ORDERED, That, in accordance with Finding (24), AT&T's request for clarification is granted and that AT&T should sign for the release of escrow funds to Revolution within 30 days of this Entry on Rehearing. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon the parties, their counsel, and all interested persons of record.

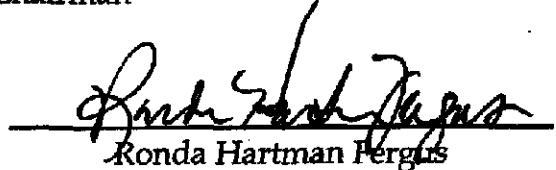
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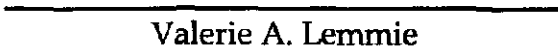
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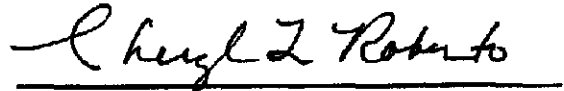
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