

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of)
Jeanette Studer and Numerous Other)
Subscribers of the Neapolis Ex-)
change of ALLTEL Ohio, Inc.)
)
Complainants,)
)
v.) Case No. 88-481-TP-PEX
)
ALLTEL Ohio, Inc., The Ohio Bell)
Telephone Company, United Tele-)
phone Company of Ohio, and GTE)
North Incorporated,)
)
Respondents,)
)
Relative to a Request for Two-Way,)
Nonoptional Extended Area Service)
Between the Neapolis Exchange of)
ALLTEL Ohio, Inc., on the one hand,)
and the Holland, Maumee, Perrys-)
burg, and Toledo Exchanges of The)
Ohio Bell Telephone Company, the)
Swanton and Waterville Exchanges of)
United Telephone Company of Ohio,)
and the Grand Rapids Exchange of)
GTE North Incorporated, on the)
other hand.)

ENTRY ON REHEARING

The Commission, considering its supplemental opinion and order issued August 2, 1990, the application for rehearing filed by the complainants on August 20, 1990, and the three memoranda contra the application for rehearing filed by three of the respondents between August 23, 1990 and August 28, 1990, issues its entry on rehearing.

- 1) On November 21, 1989, the Commission issued an opinion and order in this case which denied the complainants' request for two-way, nonoptional, flat-rate extended area service (EAS), or any other form of EAS, between, on the one hand, the Neapolis Exchange of ALLTEL Ohio, Inc. (ALLTEL) and, on the other hand, the Maumee, Perrysburg, and Toledo exchanges of The Ohio Bell Telephone Company (Ohio Bell), the Waterville Exchange of United Telephone Company of Ohio (United), and the Grand Rapids

Exchange of GTE North Incorporated (GTE). The Commission made no determination in its initial opinion and order regarding the requested EAS between the Neapolis Exchange and either United's Swanton Exchange or Ohio Bell's Holland Exchange, pending receipt of further information.

- 2) On August 2, 1990, the Commission issued a supplemental opinion and order which denied the complainants' request for two-way, nonoptional, flat-rate EAS, or any other form of EAS, between the Neapolis Exchange and either the Swanton Exchange or the Holland Exchange.
- 3) On August 20, 1990, the spokesperson for the complainants filed an application for rehearing of the August 2, 1990 Supplemental Opinion and Order. Within the application for rehearing, the complainants recite particular types of daily calling needs which, they argue, cannot be met by Neapolis subscribers "without calling long distance". The complainants further contend, in their application for rehearing, that the Neapolis area is undergoing growth and development which, along with concerns for convenience, economics, and fairness, warrants having the Commission now reopen the case and grant the requested service. In support of these contentions, the application for rehearing refers to calling statistics allegedly compiled more recently than those submitted of record in this case, as well as to other information outside of the record in this case. The complainants also argue that, because the public hearing was not held in the evening, the public was not given a sufficient opportunity to be heard. Next, the complainants complain that the price of existing local service in the Neapolis Exchange is expensive compared with that provided in surrounding exchanges. Finally, upon noting that the Commission has considered how EAS would affect the respondents' revenues, the application for rehearing points out that establishment of EAS between Neapolis and each of the Swanton and Holland exchanges would have no impact on such revenues as are attributable to long-distance calling conducted between Neapolis and other surrounding exchanges (besides Holland and Swanton), such as the Maumee, Perrysburg, and Grand Rapids exchanges.

- 4) On August 23, 1990, Ohio Bell filed a memorandum contra the complainants' application for rehearing. On August 23, 1990, United filed its memorandum contra. ALLTEL filed its memorandum contra on August 28, 1990. Within its response, ALLTEL prayed for alternative relief if rehearing is to be granted. Arguing that the application for rehearing does not identify with sufficient clarity the specific grounds on which the complainants consider the supplemental opinion and order to be unreasonable or unlawful, ALLTEL requests that, if the Commission grants rehearing on any specific grounds, then the parties should be afforded a further opportunity to address these grounds specifically, once they have been identified by the Commission. All three respondents argue that the application for rehearing should be denied for its failure to raise any issues not already adequately considered and treated by the Commission.
- 5) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a proceeding may apply for a rehearing with respect to any matter determined in the proceeding by filing an application within 30 days of the date of the entry of the order in the Commission's journal. The Commission may grant and hold a rehearing on matters specified in the application if, in its judgment, sufficient reason appears.
- 6) The complainants' application for rehearing has been timely filed as required by Section 4903.10, Revised Code.
- 7) The Commission finds that the complainants' application for rehearing fails to raise any facts, issues, or arguments which warrant rehearing, and should be denied. Rather, all matters raised by the complainants have been given proper and adequate treatment in the August 2, 1990 Supplemental Opinion and Order. Nevertheless, the Commission will briefly address the concerns raised by the complainants in the application for rehearing.

In support of their arguments on rehearing the complainants have relied, to a degree, on unsubstantiated facts, not of record in this case. The Commission, in each case, is bound to make its determination based on the record

before it, and a complete record was established in this case before the Commission made its determination. The Commission carefully considered the record as a whole, and specifically discussed the evidence in light of the factors relevant to any EAS case, as set forth in Rule 4901:1-7-04, Ohio Administrative Code.

The application for rehearing essentially expresses only disagreement with the conclusions drawn by the Commission from the record, but does not establish that the Commission erroneously construed or analyzed the evidence of record. At the hearing which was held on July 21, 1988, the complainants' had, and indeed utilized, a fair and complete opportunity to present evidence regarding the type and degree of community of interest which exists between the involved exchanges. All the submitted testimony pertaining to community of interest was carefully reviewed, and those factors which were discussed by the Commission in both the November 21, 1989 Opinion and Order and the August 2, 1990 Supplemental Opinion and Order, suffice to demonstrate that the conclusion reached by the Commission is amply supported by the record considered as a whole.

The complainants' argument that the public was not given a fair opportunity to participate in these proceedings because the public hearing was not held in the evening is without merit. The decisions to hold the public hearing in Neapolis, during normal business hours, and to publish in advance of the hearing, in local newspapers, notice of its date, time, and location, reflect a fair, reasonable, and adequate attempt by the Commission to encourage local participation at the hearing by affected subscribers. Besides, the complainants have presented no substantive support for their contention that public participation might have been enhanced had the hearing begun at the dinner hour, rather than during the course of a business day.

Likewise without merit is the complainants' contention that the Commission's decision in this case should be affected by the character of, or price for, local telephone service as established within exchanges surrounding the Neapolis Exchange. Such considerations are simply irrelevant to a proper Commission

determination of whether the record in this case is sufficient to support a grant of EAS.

The respondents' revenues derived from calls placed between Neapolis and exchanges other than the Swanton and Holland exchanges are, likewise, of no relevance to the issue which the Commission properly addressed in its supplemental opinion and order, i.e., whether EAS, in any form, should be established between the Neapolis Exchange and either the Holland or Swanton exchanges.

- 8) The Commission finds, therefore, that the complainants have failed to raise any facts, issues, or arguments which warrant a rehearing in this case. Since all of the matters raised have been given proper and adequate consideration by the November 21, 1989 Opinion and Order, the August 2, 1990 Supplemental Opinion and Order, as well as in this entry on rehearing, the application for rehearing must be denied.

It is, therefore,

ORDERED, That the application for rehearing, filed by the complainants on August 20, 1990, is denied. It is, further,

ORDERED, That copies of this entry on rehearing be served upon the spokesperson for the complainants, counsel for the complainants, ALLTEL Ohio, Inc. and its counsel, The Ohio Bell Telephone Company and its counsel, United Telephone Company of Ohio and its counsel, GTE North Incorporated and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Polynn Barry Butler
Polynn Barry Butler, Chair

J. Michael Biddison
J. Michael Biddison

Ashley C. Brown

Richard M. Fanelly
Richard M. Fanelly

Lenworth Smith Jr.
Lenworth Smith Jr.

DEF:geb

Entered in the Journal
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A True Copy

Gary E. Vigorito
Gary E. Vigorito
Secretary