

September 7, 1994

1
2 **REBUTTAL TESTIMONY OF STEPHEN LEVINSON**
3

4 **Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

5 A1. My name is Stephen B. Levinson, and my business address is 295 N. Maple
6 Avenue, Basking Ridge, New Jersey, 07920.
7

8 **Q2. BY WHOM ARE YOU EMPLOYED?**

9 A2. I am employed by AT&T as a District Manager in the Regulatory Policy Analysis
10 Group in the Government Affairs organization.
11

12 **Q3. ARE YOU THE SAME STEPHEN LEVINSON WHO FILED DIRECT**
13 **TESTIMONY IN THIS DOCKET?**

14 A3. Yes, I am.
15

16 **Q4. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

17 A4. I am filing rebuttal testimony to respond to the imputation proposal introduced
18 and sponsored by staff witness Roger Montgomery. The purpose of my rebuttal
19 testimony is to address the critical flaws in Mr. Montgomery's imputation proposal which
20 if not corrected will make the imputation safeguard ineffectual and allow Ameritech Ohio
21 the opportunity to thwart the development of competition through unreasonable
22 discriminatory pricing.
23

24 **Q5. WHAT PORTIONS OF STAFF'S IMPUTATION PROPOSAL NEED TO**
25 **BE MODIFIED?**

26 A5. There are four key issues that must be addressed and amended in the staff
27 proposal. These are the principles and issues related to the alternative method of

1 imputation, the demonstration that is required to utilize the alternative method, the
2 exclusion of revenues and costs associated with toll traffic that originates outside of
3 Ameritech Ohio's service territory, and the enforcement procedures for the imputation
4 safeguard. These issues are found in the following sections of Mr. Montgomery's
5 Attachment 4 (Staff Ex. 30, RGM Attachment 4): Section IV.The Imputation
6 Methodology, Section VI.Enforcement, and Section VII.Confidentiality.

7
8 **Q6. WHAT ARE AT&T'S OBJECTIONS WITH REGARD TO THE**
9 **ALTERNATIVE IMPUTATION METHODOLOGY FOUND IN SECTION**
10 **IV.B OF STAFF'S PROPOSAL?**

11 A6. The methodology discussed in section IV.B of staff's proposal is problematic and
12 inappropriate. As I discussed in my direct filed testimony, AT&T does not seek to deny a
13 local exchange carrier ("LEC") the efficiencies that it might derive from the self-supply
14 of access. But to substantiate such claim of economic efficiency, the LEC must be
15 required to supply to the Commission clear and convincing documentation of such cost
16 savings and also provide an opportunity for other interested parties to review this
17 documentation.

18
19 While the staff proposal allows for a demonstration of cost differences in the self-supply
20 of a noncompetitive component (IV.B1) and notice to the Commission and other
21 interested parties, it does not define what demonstration is required and how the process
22 would proceed if interested parties had a concern with or an objection to Ameritech
23 Ohio's methodology. Some type of criteria or guidelines must be established to actually
24 implement and administer this process. Furthermore, the Staff proposal is deficient in
25 outlining how the Commission would proceed if a problem or an objection is identified in
26 the alternative methodology and what Ameritech Ohio's service rate in the interim would
27 be until resolution of that objection.

1
2 **Q7. DOES AT&T HAVE OTHER OBJECTIONS TO SECTION IV.B. OF THE**
3 **STAFF'S PROPOSAL?**

4 A7. Yes. The ability of Ameritech Ohio to utilize an alternative methodology based
5 on the circumstances and demonstration outlined in IV.B2 is a critical deficiency in the
6 staff's proposal. Not only is it vague, undefined and open to abuse in application, the
7 concept is fundamentally flawed.

8
9 The premise that drives the imputation adjustment to a service's price floor is the fact that
10 both the incumbent LEC and a competitor use the noncompetitive components of the
11 LEC's network to provision their services. The Ohio alternative regulation rules outline
12 the standards and criteria that must be met before a service is classified as fully
13 competitive and placed in Cell 4 {see Ohio Rules for Alternative Regulation of Large
14 Local Exchange Companies section XII.E}. Once a service or service component has
15 passed the criteria needed for Cell 4 classification, then it is justifiably competitive and
16 will no longer need to be included in the imputation test. Staff's introduction of a
17 different criteria or demonstration to gauge the competitiveness of Ameritech Ohio's
18 access services allowing them to justify an alternative imputation adjustment as outlined
19 in section IV.B2 is inappropriate based on the Ohio alternative regulation rules.

20
21 Section IV.B2, suggests that Ameritech Ohio would be given the opportunity to
22 "demonstrate that a competitor would in all likelihood purchase a different service in
23 serving some or all end users". The problems with this phrase are numerous: What
24 would be a sufficient Ameritech Ohio demonstration on this issue? Is staff
25 recommending a different standard for judging competitiveness deviating from the
26 alternative regulation rules? Which competitor is Ameritech Ohio allowed to pick for
27 this demonstration? Which service is Ameritech permitted to select? Why introduce

1 such a unstructured, undefined and LEC-controlled framework for assessing competition
2 for these noncompetitive inputs? Why would such a potential for abuse be permitted for
3 a safeguard that is agreed to be essential to preclude leveraging the bottleneck into other
4 markets? In contrast with this vagueness and potential for watering-down enforcement
5 through complexity is the straightforward undertaking Ameritech has pending before the
6 federal government in its Customers First plan: Ameritech will sell access to itself on the
7 same basis as it sells access externally. In its quest for federal regulatory relief,
8 Ameritech has not found it necessary to inject similar complications, vague standards,
9 complaints about "efficiency penalties", or benchmarking against various competitors
10 suggested in staff's proposal. The strong suspicion arises here that these new items are
11 merely obstacles to preclude effective enforcement of imputation in Ohio.

12
13 Equally troublesome, the staff has overlooked the key economic and discrimination
14 principles of imputation. The LEC must impute the rates (or the LRSIC plus the
15 contribution) for the access service or functionality actually used in provisioning the LEC
16 service. What form of access a competitor purchases from the LEC is irrelevant. Until
17 the access service is deemed competitive under the alternative regulation rules, Ameritech
18 Ohio must impute the rates for the access that it uses. To do otherwise, as Mr.
19 Montgomery admitted during his cross examination, would result in discriminatory
20 pricing for identical services. There is no judgment or assessment needed to determine
21 what access services one of its many potential competitors may be using to serve some or
22 all of their customers. This interpretation of the imputation safeguard also supports and
23 coincides with the imputation adjustment language in the alternative regulation rule:

24
25 The amount of the adjustment in the minimum price shall be the difference
26 between the priced charged the competitor for the service less the costs of the
27 self-provisioned other service included in the LRSIC. (Alternative Regulation
28 Rules, Section XII.A.4.)

1

2 **Q8. ARE THERE OTHER PROBLEMS WITH SECTION IV.B2**
3 **SPECIFICALLY?**

4 A8. Yes. Related to some of the comments noted in response to question 7, AT&T is
5 equally concerned by the second phrase in IV.B2 that further discusses Ameritech Ohio's
6 assessment of competition for access services. The language related to a competitors
7 likely use of "the services of a different provider to serve some or all of its end users"
8 through a Competitive Access Provider (CAP) or Alternative Exchange Carrier is
9 incongruent with this Commission's policies. Once again, this language appears to
10 abandon the alternative regulation rules and institute a lesser definition of competition
11 than is provided in those rules. The existence of a CAP in a particular area of Ameritech
12 Ohio's territory is irrelevant until evidence has been provided to the Commission which
13 demonstrates that the noncompetitive access input has become fully competitive. This
14 issue cannot be isolated from the alternative regulation rules and left to Ameritech Ohio
15 to assess and demonstrate.

16

17 **Q9. WHY MUST THESE SECTIONS BE AMENDED?**

18 A9. As discussed in my direct filed testimony, imputation is one of the necessary steps
19 to ensure that competition can develop and be sustained in the marketplace. The
20 imputation proposal as presented in Attachment 4 of Roger Montgomery's testimony, will
21 not provide an adequate safeguard to preclude Ameritech Ohio from discriminatory
22 behavior. The problems identified in section IV.B will allow Ameritech Ohio to leverage
23 its position in the marketplace by disadvantaging other providers who use Ameritech
24 Ohio's noncompetitive service elements. Without the appropriate imputation safeguard,
25 competition is thwarted through either potential or actual discriminatory pricing.
26 Additionally, imputation provides an incentive for Ameritech Ohio to reduce its access

1 rates driving them closer to their LRSIC floor which would also provide further benefits
2 to end users.
3

4 **Q10. YOU MENTIONED THE ISSUE OF TOLL TRAFFIC THAT**
5 **ORIGINATES OUTSIDE OF AMERITECH OHIO TERRITORY AS**
6 **ANOTHER AREA OF STAFF'S PROPOSAL THAT MUST BE**
7 **CORRECTED. WHAT IS AT&T'S OBJECTION TO SECTION IV.C.?**

8 A10. Section IV.C allows Ameritech Ohio to exclude the revenues and costs associated
9 with the toll traffic that originates outside Ameritech Ohio's local exchange service area
10 for a period of up to 18 months. AT&T opposes that exemption on two grounds: (1)
11 these costs are not part of the imputation adjustment and therefore should not even be
12 addressed in the Staff's imputation proposal; and (2) such an exemption has the affect of
13 obviating the purpose for the LRSIC price floor and is inconsistent with Ohio's
14 alternative regulation rules with regard to LRSIC.
15

16 The Ohio alternative regulation rules establish a LRSIC price floor standard for LEC
17 service in Cells 2, 3 and 4 and for individual contracts. LRSIC can be defined as the
18 difference between the company's total cost with and without service X. LRSIC also
19 replicates the costs that a new entrant would have to incur if he were to provide the same
20 services as the incumbent. Furthermore, LRSIC is the cross-subsidy standard where if
21 the total revenue for a service is greater than or equal to its LRSIC then there is no cross-
22 subsidy. The imputation methodology comes into play where the particular LEC service
23 is competitive, yet contains a noncompetitive input. In those circumstances, the LEC
24 imputes to itself the tariffed rate for the noncompetitive input rather than the incremental
25 cost of that input (i.e., it sells itself the noncompetitive input on the same rates, terms and
26 conditions as it sells that input to its competitors.) The access costs associated with the
27 independent company ("ICO") traffic that originates outside Ameritech Ohio's local

1 exchange service areas are not related to or part of the imputation adjustment. The
2 dollars paid to these other local exchange carriers are actual costs that become part of
3 Ameritech Ohio's LRSIC price floor for its services just as the access expenses AT&T
4 pays out to the LECs, including Ameritech Ohio, become part of AT&T's cost structure.
5 The access charges paid to other LECs are part of Ameritech Ohio's cost of providing
6 long distance services. This exception has nothing at all to do with imputation
7 adjustment. Rather, if there is a problem at all, it would be where the revenues for ICO
8 originated toll do not exceed the actual incremental costs for that service in violation of
9 the Ohio alternative regulation rules (although Mr. Montgomery was adamant that no cost
10 studies have been done which substantiate that possibility). No matter how you describe
11 it, the LRSIC for a service, and in this case Ameritech Ohio's long distance service must
12 include the cost Ameritech Ohio incurs for traffic that originates in ICO territory. No
13 exemption should be granted. Ameritech Ohio's service prices must recover their costs.

14
15 When establishing telecommunications policies to promote competition and safeguard
16 against discrimination and cross-subsidization, this Commission should not begin by
17 adopting and implementing an exemption that is contrary to the policy and that will
18 compromise its effectiveness. The exemption of the ICO access costs for only Ameritech
19 Ohio would prejudice the competitive nature of the intraLATA marketplace. If this
20 Commission has concerns or issues with the access rates of the small independent
21 telephone companies in this state, then that needs to be separately identified and
22 addressed. That problem should not to be introduced into Ameritech Ohio's imputation
23 policy or handled as a special and exclusive adjustment to its LRSIC studies.

24
25 **Q11. WHAT ARE AT&T'S OBJECTIONS RELATED TO THE**
26 **ENFORCEMENT OF THE IMPUTATION PROPOSAL?**

1 A11. First, AT&T is unclear about the limiting nature of the initial sentence in section
2 VI.A. Enforcement which reads that "A telecommunication's provider may, within 30
3 days following a reduction in rates by Ameritech Ohio for tariffed services subject to this
4 Policy, file with the Commission an objection to the reduction on the basis that it is in
5 violation of this Policy". A telecommunications provider or any interested party must
6 also have the option to file an objection for any of Ameritech Ohio's actions that would
7 trigger an imputation test including the introduction of a new service or a new contract or
8 an increase in the price of a Cell 1, Cell 2 or Cell 3 service. Without a modification to
9 expand the opportunities to file objections, competitive providers are precluded from their
10 right to investigate any concerns they may have about discriminatory pricing and
11 potential violations of the imputation safeguard.

12
13 Furthermore, the enforcement language that outlines what Ameritech Ohio must do if it is
14 found to be in violation of this imputation policy should clearly state that Ameritech Ohio
15 shall change the price(s) {either by increasing the end user price or by reducing the price
16 of the noncompetitive input component} so that the service - not the category- would
17 meet the imputation test or cease to offer those services which cause the non-compliance.
18 The imputation test and its enforcement must be administered on a service specific basis
19 in order to be effective as noted in my direct filed testimony. The use of the term
20 "category" here in the enforcement section is inconsistent and inappropriate with the
21 purpose of imputation and the rest of the staff's proposal.

22
23 Another concern related to enforcement is the issue of access to information and the cost
24 studies filed by Ameritech Ohio when they perform the imputation tests. The
25 enforcement section allows a competitive provider to file a good faith complaint with the
26 Commission if it suspects that Ameritech Ohio is not abiding by the imputation policy. It
27 would be very difficult for a competitive provider to have a proper basis for a good faith

1 complaint if there has been no opportunity to see or review any of the cost studies filed to
2 support the rate change. As the staff proposal currently is written, only the Commission
3 will have access to those studies. Other interested parties must also have the opportunity
4 for timely review of that information.

5
6 **Q12. HOW DOES CONFIDENTIALITY RELATE TO ENFORCEMENT?**

7 A12. The staff's proposal addresses confidentiality in section VII. The staff's proposal
8 must be amended to allow other parties to have access to the imputation tests and
9 associated cost studies. As staff witness Mr. Montgomery appropriately noted, this
10 information may be of a proprietary nature; he suggested that a process be devised which
11 recognized and protected the proprietary nature of the information. AT&T agrees with
12 Mr. Montgomery, but believes this issue must be addressed and resolved now in order to
13 ensure parties appropriate access to this information. The staff proposal contained no
14 resolution of this issue. Upon establishment of the imputation policy, appropriate
15 confidentiality agreements should be developed, standardized and implemented for this
16 process to allow efficient and explicit review by other parties.

17
18 **Q13. WHAT DOES AT&T RECOMMEND WITH REGARD TO**
19 **IMPUTATION?**

20 A13. Much of the staff's imputation proposal supports the imputation methodology and
21 principles I outlined in my direct filed testimony with the exceptions that I have identified
22 in this rebuttal testimony. The imputation safeguard that is adopted by this Commission
23 for Ameritech Ohio must have the modifications that I addressed or the safeguard will be
24 nullified as a practical matter. This Commission has already established safeguards such
25 as LRSIC price floors and imputation to ensure against discrimination and cross-
26 subsidization in the establishment of the alternative regulation rules for large LECs. Any

1 imputation policy adopted for Ameritech Ohio as part of its request for alternative
2 regulation should supplement and exemplify the already existing rules and their intent.

3

4 **Q14. DOES THIS CONCLUDE YOUR TESTIMONY?**

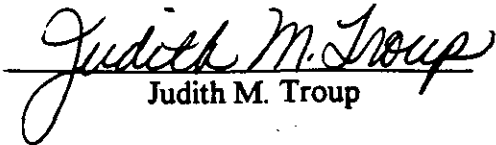
5 A14. Yes, it does.

6

CERTIFICATE OF SERVICE

Case Nos. 93-487-TP-ALT
93-576-TP-CSS

The undersigned hereby certifies that a copy of the foregoing Rebuttal Testimony of Stephen B. Levinson on Behalf of AT&T Communications of Ohio, Inc. was served by regular U.S. mail, postage prepaid, this 7th day of September, 1994 upon the following parties of record.


Judith M. Troup

Michael T. Mulcahy, Esq.
William H. Hunt, Esq.
Ohio Bell Telephone Company
45 Erieview Plaza, Room 1400
Cleveland, OH 44114

Joseph P. Meissner, Esq.
Director of Urban Development
For Greater Cleveland Welfare Rights
Organization, Inc.
1223 West Sixth Street
Cleveland, OH 44113

Robert Hegler, Esq.
Swidler & Berlin
For Metropolitan Fiber Systems
3000 K Street, NW
Suite 300
Washington, DC 20007

Kathy Hobbs
Alltel/Western Reserve Tele. Co.
Thompson, Hine and Flory
180 West Broad Street, 8th Floor
Columbus, OH 43215

Judith B. Sanders, Esq.
For IXC Coalition (Allnet/LDDS/LCI)
Bell, Royer & Sanders Co., L.P.A.
33 South Grant Avenue
Columbus, Ohio 43215-3927

Helen L. Liebman
Jones, Day, Reavis & Pogue
LCI International Telecom Corp.
1900 Huntington Center
41 South High Street
Columbus, Ohio 43215

Mary A. Hull, Esq.
Sprint Communications Company L.P.
8140 Ward Parkway, 5E
Kansas City, MO 64114

Sally W. Bloomfield
Bricker & Eckler
For Cablevision Lightpath, Inc. & New Par
100 South Third Street
Columbus, OH 43215

David C. Bergmann, Esq.
Andrea Kelsey, Esq.
Office of the Consumers' Counsel
77 South High Street
Columbus, OH 43266

William A. Clark
William A. Clark & Associates
8538 Chateau Drive
Pickerington, OH 43147

Ann E. Henkener, Esq.
Asst. Attorney General Section
Public Utilities Commission of Ohio
180 East Broad Street, 7th Floor
Columbus, Ohio 43266-0573

Douglas W. Trabaris, Esq.
Marsha Franklin, Esq.
MCI Telecommunications Corporation
205 North Michigan Avenue, Suite 3200
Chicago, Illinois 60601

Douglas W. Kinkoph
James D. Heflinger
LCI International Telecom Corp.
4650 Lakehurst Court
Dublin, OH 43017

Gena M. Doyscher
Enhanced TeleManagement, Inc.
730-2nd Avenue S.
Suite 1200
Minneapolis, MN 55402-2467

William M. Ondrey Gruber
Chief Assistant Director of Law
City of Cleveland
Room 106 - City Hall
601 Lakeside Avenue
Cleveland, OH 44114

Sammuel C. Randazzo
J. Richard Emens
Emens, Kegler, Brown, Hill & Ritter
For Time Warner AxS
65 East State Street, Suite 1800
Columbus, Ohio 43215

Kerry Bruce
City of Toledo
Dept. of Public Utilities
One Government Center
Suite 1520
Toledo, Ohio 43604

Dennis K. Muncy
Meyer, Capel, Hirschfield, Muncy,
Jahn & Aldeen
Athenaeum Building
306 West Church Street
Champaign, IL 61826-6750

Robert N. Kittel
Chief, Regulatory Law Office
Office of the Judge Advocate General
Dept. of Army Litigation Center
901 North Stuart Street
Arlington, VA 22203-1837

Frank T. Gardella, Manager
Legislative and Regulatory Affairs
LDDS Communications, Inc.
2800 River Road, Suite 490
Des Plaines, IL 60018

Karin W. Rilley
Assistant Attorney General
Office of the Attorney General - Education Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43266-0410

Randy J. Hart
Counsel for the Ohio
Public Communications Association
3300 BP America Building
200 Public Square
Cleveland, OH 44114

Joseph M. Patchen
Carlile Patchen & Murphy
Co-Counsel for MCI
366 East Broad Street
Columbus, Ohio 43215

William S. Newcomb, Esq.
Stephen M. Howard, Esq.
Sheldon A. Taft, Esq.
Vorys, Sater, Seymour & Pease
For Ohio Cable TV Assoc./ONA/OH Library Council
52 East Gay Street
Columbus, Ohio 43216-1008

James E. Armstrong, Esq.
Cecil O. Simpson, Jr.
Office of the Judge Advocate General
Department of the Army
901 North Stuart Street, Room 400
Arlington, VA 22203-1837

William A. Adams, Esq.
Arter & Hadden
for Bell Communications Research, Inc.
10 West Broad Street
Columbus, OH 43215

Bruce Weston, Esq.
Attorney for AARP
169 West Hubbard Avenue
Columbus, OH 43215

Ellis Jacobs, Esq.
William A. Thorman, III, Esq.
Legal Aid Society of Dayton
For Edgemont Neighborhood Coalition, Inc.
333 West First Street, Suite 500
Dayton, OH 45402

Gregory J. Dunn, Esq.
Be, Brown, Jones, Potts & Schmidt
For City of Columbus
500 South Front Street, Suite 1200
Columbus, OH 43215

John C. Klein, III, Esq.
Assistant City Attorney
109 N. Front Street, Suite 405
Columbus, OH 43215

Jodie Donovan
TCG America, Inc.
C/o Teleport Communications Group, Inc.
One Teleport Drive
Staten Island, NY 10311

Kathryn Bamberger, Esq.
For ODVN
861 South Fifth Street
Columbus, OH 43206

Daniel A. Malkoff, Esq.
Assistant Attorney General
For ODAS
30 E. Broad Street, 26th Floor
Columbus, OH 43215-3428

Patrick McMahon, Esq.
Sprint Communications Company L.P.
8140 Ward Parkway, 5E
Kansas City, MO 64114

John W. Bentine, Esq.
Chester, Hoffman, Willcox & Saxbe
For City of Columbus
17 South High Street, Suite 900
Columbus, OH 43215

Madelon Kuchera
TCG America, Inc.
C/o TC Systems - Illinois, Inc.
233 South Wacker, Suite 2100
Chicago, IL 60606

Janine L. Migden, Esq.
Maureen R. Grady, Esq.
Randy J. Hart, Esq.
Hahn Loeser & Parks
For ODVN, OPCA & City of Mentor
431 East Broad Street
Columbus, OH 43215

Robert A. Ganton, Esq.
Regulatory Law Office
U.S. Army Litigation Center
901 N. Stuart Street, Suite 400
Arlinton, VA 22203

Ellen A. D'Mato
Sprint Communications Company L.P.
8140 Ward Parkway, 5E
Kansas City, MO 64114