

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission Ordered	)	
Investigation of an Elective Alternative	)	Case No. 00-1532-TP-COI
Regulatory Framework for Incumbent	)	
Local Exchange Companies.	)	
	)	
In the Matter of the Commission Ordered	)	
Investigation of the Existing Local	)	Case No. 99-998-TP-COI
Exchange Competition Guidelines.	)	
	)	
In the Matter of the Commission Review	)	
Of the Regulatory Framework for	)	Case No. 99-563-TP-COI
Competitive Telecommunications Services	)	
Under Chapter 4927, Revised Code.	)	

**EXECUTIVE SUMMARY  
OF REPLY COMMENTS OF AARP**

AARP is providing reply comments individually, and jointly with the other "Consumer Parties." This is a brief summary of the Reply Comments submitted by AARP individually in these cases: (1) Proposed Rules for Elective Alternative Regulation Plans (EARP) for Incumbent Local Exchange Companies (ILECs) (Case No. 00-1532-TP-COI), and (2) Proposal for Comprehensive Telecommunications Rule Reform (Case Nos. 99-998-TP-COI and 99-563-TP-COI).

The comments filed by other parties do not resolve the legal and procedural issues raised by AARP and the other consumer representatives, nor our opposition to the EARP and rules proposals. The proposed rules are unlawful, have not been proven to be necessary, and would more likely harm than help consumers. Moreover, ILECs have made allegations about whether there is competition and the best means to achieve more competition. It would be

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unreasonable and unjust to approve these rules without holding an evidentiary proceeding, including discovery and hearings, on the issues of fact and expert opinion.

In addition, the views of consumers have not been heard directly. AARP and other consumer representatives have requested public hearings. The Commission must give sufficient advanced notice to allow consumers to be able to appear. Finally, an opportunity should be provided to the parties to file comments on the public hearing testimony.

As to the positions of the ILECs, they want less regulation even though there is virtually no competitive choice for residential consumers. It is very troubling that even a company that has an existing alternative regulation plan, like Ameritech, could opt into EARP prior to the expiration of its plan; and Ameritech has stated that it plans to do just that. This is unacceptable, even if Ameritech's proposal for somehow merging the EARP with its current plan is accepted. Of major concern is the extent to which Ameritech would keep its commitments, like lifeline. If Ameritech opts into EARP, the rules as now proposed might "force" Ameritech to drop its USA program earlier than 2003. Moreover, Ameritech's USA program may disappear in 2003 in any case. It is wrong for the Commission to let Ameritech, or any other company, to reduce its commitments by entering EARP. It is also wrong for the Commission to accept a less beneficial lifeline program in EARP than Ameritech currently offers.

A standard for a statewide lifeline program should include: allowance of optional services, such as call waiting; allowance of additional lines in a lifeline home, as regular or lifeline service, if eligible; an income eligibility criterion of 200% of poverty is justifiable; automatic enrollment; self-certification; and advisory boards.

AARP once again urges the Commission to reject the rules and EARP proposed in these two proceedings. The Commission should instead pursue an investigation of how to best bring about more competition in the provision of local exchange services.

Respectfully submitted,

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**REPLY COMMENTS OF AARP**

**Introduction**

AARP provides this reply to the comments of other interested parties on the Staff's Proposed Rules for Elective Alternative Regulation Plans (EARP) for Incumbent Local Exchange Companies (ILECs) (Case No. 00-1532-TP-COI), and the Staff's Proposal for Comprehensive Telecommunications Rule Reform (Case Nos. 99-998-TP-COI and 99-563-TP-COI). AARP is also joining in the Reply Comments of the Consumer Parties in each of these dockets, which are being filed at the same time as these separate reply comments.

**General Comments on Case No. 00-1532-TP-COI  
and Case Nos. 99-563-TP-COI and 99-998-TP-COI**

There is nothing in the comments filed by other parties that in any way resolve the considerable legal and procedural issues that have led AARP, and all other consumer

representatives participating in this proceeding, to oppose the proposal for an EARP as well as the proposed new retail service requirements. In fact, the comments by other interested parties serve to highlight that the proposed rules are unlawful, have not been proven to be necessary, and would more likely harm than help consumers of telecommunications services. In addition, the comments by various players in the telecommunications industry demonstrate clearly that important facts are in dispute, as well as differences of opinions on the state of competition and the best means to achieve more competition, and thus it would be unreasonable and unjust to approve these rules without holding an evidentiary proceeding, including discovery and hearings, on the issues of fact and expert opinion. Finally, the most important views have not been heard from directly, those of consumers, despite the requests of multiple parties for comprehensive public hearings. Such hearings must be scheduled with sufficient time to give proper notice, and an opportunity should be given to the interested parties in these proceedings to file comments on the public hearing testimony, which will put the public comment into perspective and into a readily discernible format vis-à-vis the proposed rules.

### **A Level Playing Field – This is Not a Game**

Several ILECs commented that all they want is an even playing field, but they also ignore the facts as they exist today, and will continue to exist into the foreseeable future, when they go on to argue in favor of eliminating or severely reducing regulatory oversight for ILECs. Consumers do not object to an even playing field being created for the opportunity to compete, but consumers cannot be made the sod of that field, to be stomped upon as the ILECs play intra-squad games. Until there is a real “game” of competition in progress, oversight and regulation must continue. As AT&T stated, “the new rules would immediately allow the ILECs

almost unfettered pricing flexibility in relation to its retail services...As it stands, the ILECs do not merit such favorable treatment ... residential consumers, have little choice in their local provider.” (AT&T Comments at 3, also see Comments of Worldcom, Inc., “no increased price flexibility via less regulation without viable competition.”)

### **Companies Already with Alternative Regulation Plans – Commitments to Keep**

It is clear from Ameritech’s Comments (at Executive Summary), that its intention is to opt into EARP prior to the expiration of its current company specific alternative regulation plan. This is unacceptable, even if Ameritech’s idea of somehow merging the EARP and their current plan is accepted. To what extent Ameritech will honor its commitments when it does this, particularly its “lifeline” commitment, is not totally clear from its Comments. Ameritech seems to want to continue its current “lifeline” (i.e. its USA) program (at least until 2003) as it signs up for EARP, and its personnel have separately assured USA Advisory Board members that it will continue the program no matter what happens. But Ameritech does not state in its initial comments that it will not switch to EARP, with the more limited lifeline program it currently is proposed to include, even if the rules do not ultimately include the suggestions Ameritech has made in its comments about keeping its current commitments. Thus, if Ameritech opts into EARP, the rules as now proposed might “force” Ameritech to drop its USA program earlier than 2003. Moreover, Ameritech’s USA program may simply disappear in 2003 in any case, since the proposed lifeline commitment in EARP is not nearly as beneficial to low income consumers as is the USA program.

### **Lifeline Commitment**

Any lifeline program should include the following elements, which have been opposed in the initial comments of ILECs, or have been ignored by them and by the proposed rules:

1. Optional services, such as call waiting (which is included in the Commission's proposal), should be allowed for lifeline customers. Currently, Ameritech's Plan 2 allows optional services. The addition of Call Waiting in the proposed lifeline rule is a step in the right direction.
2. Additional lines in a lifeline home should be allowed, either at regular pricing or as lifeline service, if eligible. For example, older adult roommates, or an older family member living with a young family, may all be eligible and each party may have their own phone line that they pay for separately. Should one be allowed lifeline service and the other denied the benefit?
3. The proposed income eligibility criterion should be included, and not the criterion based solely on eligibility and participation in certain government programs for low-income people. As a tool for setting up lifeline programs the latter criterion has been useful. However, this criterion has not been effective in ensuring that poor people have phone service and retain phone service. Considering the comprehensive overhaul and elimination or reduction of government subsidy programs, and the limitations such programs presented from the very beginning, it is time for a lifeline eligibility criterion that is income based. Actually, setting the criterion at up to 200% of poverty is justifiable considering that the current poverty level is so woefully out of date and inaccurate, and that there are many other programs that use standards

that are higher than 150% of poverty. Ameritech's own "phonelessness" study completed at the end of 2000 concluded that lifeline programs are under-utilized, and recommended that an income-based eligibility provision should be employed.

4. Automatic enrollment is not only valuable as a tool to enroll those who are eligible and who already have phone service, it is essential. This has been proven with Ameritech and other companies with the existing lifeline programs. Nevertheless, it is not sufficient, but must be used with a simple, easy to use, and rapid application process and accompanying outreach plan. Ameritech has found with its USA program that it cannot use automatic enrollment with all of the eligibility programs, and it obviously will not work for those who do not currently have phone service.
5. Self-certification is needed and has been successfully used in Ohio. Though Ameritech raises the specter of fraud with self-certification, and points to California as "evidence" that fraud is problematic, they provide no study or expert opinion that corroborates their bald allegation. This is another example of "facts" at issue, when only an evidentiary process, through discovery and hearing, can elicit the truth and test such allegations fairly.
6. Advisory boards have been proven to be effective and essential in Ohio's lifeline experience. They benefit consumers and the companies.

#### **Where Real Competition Emerges – Only There Should Deregulation Follow**

Many of the proposals for the rules by the ILECs appear to be based upon their unproven, and completely misleading, assertion that there is already competition in the provision of local exchange service. Ameritech, for example, claims that "competitors are operating in



Ameritech Ohio's current service territory" (at p. 14), though it provides no evidence that there is anything more than nominal competition for residential customers. Ameritech then goes on to urge, as do other ILECs, that companies be permitted to remain in EARP indefinitely (at p. 9-10), with no rate of return regulation or earnings reviews (at p. 11), no complaints on earnings being allowed (at p. 11), and no cap on Tier 1 basic service rates, even without a showing that any residential customers have competitive choices (at p. 14). This would violate Ohio law as well as common sense.

### **Advanced Services**

Ameritech claims (at p. 5), without any evidence, that without EARP and ILECs opting into it, the deployment of advanced services will be delayed. This allegation (or threat) cannot be used as a factor supporting the approval of the rules without at least giving parties an opportunity to test it in an evidentiary proceeding.

### **Conclusion**

It is clear that the proposed rules and EARP program are not justified under current market conditions, and they are not just or reasonable for consumers. The Commission should reject the EARP proposal, and then determine which if any of the proposed new rules are needed at this time, with the modifications and caveats set forth in our initial and these reply comments, as well as those of the Consumer Parties, which are joined in by AARP.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Reply Comments of AARP has been served by electronic mail and first class mail, postage prepaid, to the following parties this 25<sup>th</sup> day of May 2001:

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