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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues.	)	Case No. 95-845-TP-COI
And		
In the Matter of the Germantown Independent Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1200-TP-UNC
In the Matter of the Ottoville Mutual Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1295-TP-ATA
In the Matter of Telephone Service Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1312-TP-ATA
In the Matter of the Sherwood Mutual Telephone Association's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1313-TP-ATA
In the Matter of the Nova Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1314-TP-ATA
In the Matter of the Arthur Mutual Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll	)	Case No. 96-1315-TP-ATA

Presubscription Service Offering	)	
In the Matter of the Ayersville Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1316-TP-ATA
In the Matter of Frontier Communications of Michigan's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1320-TP-ATA
In the Matter of the Doylestown Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1321-TP-ATA
In the Matter of the Middle Point Home Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1323-TP-ATA
In the Matter of the Columbus Grove Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1327-TP-ATA
In the Matter of the Benton Ridge Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1328-TP-ATA
In the Matter of the Conneaut Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1330-TP-ATA

In the Matter of the Champaign Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1331-TP-ATA
In the Matter of the Orwell Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1332-TP-ATA
In the Matter of the McClure Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1333-TP-ATA
In the Matter of the Sycamore Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1334-TP-ATA
In the Matter of the Minford Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1335-TP-ATA
In the Matter of the Vaughnsvile Telephone Company Inc.'s Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1337-TP-ATA
In the Matter of the United Telephone Company of Ohio's Application to Amend its Tariff to Include an IntraLATA toll Presubscription Service Offering	)))))	Case No. 96-1341-TP-ATA
In the Matter of the Fort Jennings Telephone Company's	))	

Application to amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))	Case No. 96-1343-TP-ATA
In the Matter of the Glandorf Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1344-TP-ATA
In the Matter of the Farmers Mutual Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1345-TP-ATA
In the Matter of Alltel Ohio, Inc.'s Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	))))	Case No. 96-1351-TP-ATA
In the Matter of the Western Reserve Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1352-TP-ATA
In the Matter of the Chillicothe Telephone Company's Application to Amend its Tariff to Include an IntraLATA toll Presubscription Service Offering	)))))	Case No. 96-1355-TP-ATA
In the Matter of the Century Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1358-TP-ATA
In the Matter of the Kalida Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1360-TP-ATA

In the Matter of the New Knoxville Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1361-TP-ATA
In the Matter of the Ridgeville Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1362-TP-ATA
In the Matter of the Bascom Mutual Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1372-TP-ATA
In the Matter of the Arcadia Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1395-TP-ATA
In the Matter of the Continental Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1396-TP-ATA
In the Matter of the Little Miami Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1397-TP-ATA
In the Matter of the Vanlue Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)	Case No. 96-1398-TP-ATA
In the Matter of the Oakwood Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll	)	Case No. 96-1399-TP-ATA

Presubscription Service Offering	)	
In the Matter of the Wabash Mutual Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 96-1401-TP-ATA
In the Matter of the Buckland Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 97-132-TP-ATA
In the Matter of the Buckland Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 97-520-TP-ATA
In the Matter of the Pattersonville Telephone Company's Application to Amend its Tariff to Include an IntraLATA Toll Presubscription Service Offering	)))))	Case No. 97-846-TP-ATA

JOINT APPLICATION FOR REHEARING BY MCI TELECOMMUNICATIONS CORPORATION AND AT&T COMMUNICATIONS OF OHIO, INC.

Pursuant to Ohio Revised Code § 4903.10, AT&T Communications of Ohio, Inc. ("AT&T") and MCI Telecommunications Corporation ("MCI") hereby jointly file for rehearing of the Commission's October 8, 1998 Order in the above-referenced matters. AT&T and MCI seek rehearing of the Commission's order on the following grounds:

No. 1: The Commission's October 8th Order is unreasonable and unlawful as it improperly interpreted the plain terms of Local Service Guideline X.F. and is otherwise directly contrary to the Commission's interpretation of that rule at the time it was adopted. Nowhere in Local Service Guideline X.F., or in the Commission's voluminous orders adopting the Local Service Guidelines, did the Commission ever make the finding it does now: that "presubscribed" lines do not include the lines of captive incumbent local exchange carrier ("ILEC") customers. In fact, that finding is directly contrary to the Commission's construction of that guideline in its orders adopting it. Specifically, in its June 12, 1996 Order and November 7, 1996 Entry On Rehearing in Case No. 95-845-TP-COI, the Commission interpreted Local Service Guideline X.F. as including the recovery of the costs of intraLATA presubscription over <u>all</u> intraLATA minutes, including the minutes of incumbent local exchange carriers.

No. 2: The Commission's October 8th Order was inconsistent with LSG X.F., and thus, adopted a new rule for the cost recovery allocation to implement intraLATA presubscription. The Commission's newly adopted standard to exempt ILECs from the cost recovery of presubscription implementation is a "rule." Yet, the Commission failed to comply with the requirements of O.R.C. 111.15 when adopting this rule. The Commission's failure to comply with the adoption and filing requirements of O.R.C. 111.15 makes the implementation of the ILEC exemption from cost recovery of presubscription both unlawful and unreasonable. Further, the Commission erred when it denied the Motions to Intervene of MCI and AT&T, thus preventing their opportunity to provide input for this new rule.

No. 3: The Commission's improper construction of Local Service Guideline X.F. is otherwise unlawful and unreasonable as it ignores the important policy reasons for recovering the costs of intraLATA presubscription over all intraLATA minutes. First, the Commission's order improperly rewards ILECs for their ability to keep monopoly control of their markets. Furthermore, the Commission's order ignores the fact that intraLATA presubscription will benefit all carriers, including ILECs, and all customers of those ILECs. The Commission's Order allows ILECs and their customers to reap the benefits of competition without paying the price. Finally, the Commission's Order is contrary to both the FCC's and every other state Commission's holding in the Ameritech five state region. Both the FCC and these state Commission's have made it clear that the costs of intraLATA presubscription must be recovered on a competitively neutral manner over all intraLATA minutes, including the minutes of the underlying ILEC. The Commission's order violates the FCC's competitively neutral cost recovery mandate and unreasonably put Ohio at a disadvantage in comparison to other states in the Ameritech region.

WHEREFORE, AT&T and MCI respectfully request that the Commission grant rehearing and revise its October 8, 1998 Order to comply with the plain and original meaning of Local Service Guidelines X.F.

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JOINT MEMORANDUM IN SUPPORT

I. Introduction

On September 17, 1998, United Telephone of Ohio along with Sprint Communications Company, L.P. filed motions to intervene and suspend the intraLATA presubscription implementation cost recovery charges of all the ILECs listed in the above captioned UNC and ATA cases. Soon thereafter, AT&T and MCI filed similar motions. Sprint, AT&T and MCI all contend that the above-named ILECs were planning on recovering their cost of implementing intraLATA presubscription using only the switched intraLATA access minutes of the interexchange carriers (IXCs) in stark violation of the plain terms of Local Service Guideline ("LSG") X.F., which provides that:

> The incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne

> by providers of telephone exchange service and telephone toll service. Costs shall be recovered through a Commission-approved switched access per minute of use charge applied to all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service. Recovery of these costs shall not include recovery of costs incurred for PIC charges during the initial 90-day no-charge period.

On October 8, 1998, the Commission entered its order in this matter in which it approved the above-referenced tariff filings. The Commission found that "the exclusion of the LEC's intraLATA switched access MOUs in the calculation of the LEC's cost recovery rate to be a reasonable interpretation of [its] local service guidelines." Entry, p. 4. The Commission made this finding based on its present view that "the costs of implementing intraLATA toll presubscription are more equitably shared by assessing a MOU charge to the IXCs and requiring the LECs to absorb the lost revenues and PIC changes during the 90-day no-charge windows." The Commission apparently finds this policy to be "equitable" because, in the Commission's view, customers that have always been with a LEC are not "presubscribed."

The Commission's order represents an unreasonable, unlawful and wholly baseless change in position. Most importantly, the Commission's order is contrary to the plain terms of LSG X.F. and the Commission's construction of that rule in its 845 decisions. Moreover, the Commission's order fails to recognize that intraLATA presubscription benefits all carriers, including ILECs, and all customers of those carriers, by creating a competitive market for intraLATA toll service. Since all carriers and customers benefit from dialing parity, the only "equitable" distribution of its implementation costs are to spread them out on a competitively neutral basis among all competing carriers. That is exactly what LSG X.F contemplates as approved by the Commission in June of 1996. Any change in that rule absent a rulemaking procedure, with an opportunity for interested parties to participate, is both unreasonable and unlawful. Thus, the Commission also erred in denying intervention and input from MCI and AT&T on this new rule.

II. Argument

A. The Commission's Order Is Contrary To the Plain Terms of LSG X.F. and the Commission's Previous Construction Of That Guideline.

The plain terms of LSG X.F. unambiguously provide that the cost recovery for implementation of presubscription is to be borne by all local exchange and toll providers: "[t]he incremental costs directly associated with the introduction of 1+ intraLATA dialing parity shall be borne by providers of telephone exchange service and telephone toll service." Based on this fact, LSG X.F. further provides that the cost of intraLATA presubscription is to be charged to "all originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service." (Emphasis added.) Since all the lines of a LEC are subject to presubscription for intraLATA toll service, the plain language of LSG X.F. unambiguously provides that the cost of intraLATA presubscription must be spread over all such lines.

Importantly, nowhere in LSG X.F., or in the Commission's voluminous orders adopting the Local Service Guidelines, did the Commission ever make the finding it does now: that "presubscribed" lines somehow do not include the lines of captive ILEC customers. In fact, until the Staff recently hinted at a potential shift in position, it has been obvious to all the parties involved in the 845 Case that "presubscribed lines" include all lines subject to presubscription – i.e. all lines subject to intraLATA toll dialing parity -- which obviously include all ILEC lines.

Indeed, the Commission's interpretation of LSG X.F. in its decisions in the 845 Case is directly contrary to its present position. For example, on rehearing in that case, Sprint/United maintained that it would be "unreasonable to recover the costs of intraLATA toll dialing parity by spreading the costs over all minutes of use on an intraLATA basis rather then over combined interLATA and intraLATA minutes of use." November 7, 1996 Entry on Rehearing, p. 47. In making this argument, Sprint/United claimed that "while this recovery mechanism may seem fair on its face, the result will be that <u>the ILEC</u> will be forced to absorb the costs of implementing 1+ dialing parity while end users and interexchange carriers will benefit from this system." <u>Id.</u> (emphasis added). Put another way, Sprint/United was arguing that LSG X.F forces ILECs to absorb a disproportionate share of the intraLATA presubscription costs.

Sprint/United's argument, therefore, quite rightly presumed that LSG X.F dictates that all carriers, including ILECs, would pay for presubscription over <u>all</u> their intraLATA minutes. The issue of whether the cost of intraLATA presubscription should be recovered over intraLATA minutes alone, or intra and interLATA minutes combined, would be irrelevant if the Commission had found, as it now claims, that ILEC minutes were excluded from cost recovery. This is because if that were true, the interexchange carriers would already be paying the entire tab for intraLATA dialing parity. Consequently, the ILECs (including United) would have no basis to argue that they were paying a disproportionate share of the presubscription costs. Put simply, if LSG X.F. allows the

ILECs to pay nothing on a MOU basis, Sprint/United's rehearing application would make absolutely no sense.

And if this were true, as the Commission now claims, the Commission surely would have pointed this out to Sprint/United on rehearing. But the Commission did not do so. Instead, the Commission explicitly denied Sprint/United's rehearing application, holding that: "[t]his issue was adequately addressed in the June 12, 1996 Order." However, if the Commission's current construction of LSG X.F were true, there would be no need for the Commission to deny Sprint/United's application.

In fact, the Commission's June 12, 1996 Order makes it all the more clear that the Commission intended for the cost of intraLATA presubscription to be recovered over all intraLATA minutes. In that order the Commission dealt directly with Sprint/United's argument and found that "the most appropriate method of cost recovery is to spread the implementation costs over all minutes of use presubscribed on an intraLATA basis rather than over combining interLATA and intraLATA MOUs." June 12 Order, p. 56. As noted, Sprint/United's argument would not need to be addressed if the Commission had found, as it now claims, that "presubscribed" lines excluded captive ILEC customers. It is unreasonable and unlawful for the Commission now to engage in reinterpretation of LSG X.F..

In fact, until this Spring, when Staff first indicated a change in its position on this issue, the industry as a whole unanimously accepted the fact that the plain meaning of LSG X.F. dictated that the costs of dialing parity be spread over all intraLATA minutes. Indeed, GTE used its own minutes in the calculation of its cost recovery charge. It would be ludicrous to conclude that GTE voluntarily did so. Instead GTE, with every incentive to attempt to interpret LSG X.F in its favor, gave that rule the only meaning possible and concluded that intraLATA presubscription costs must be recovered over all intraLATA minutes.

The Commission itself has found that LSG X.F. is consistent with the cost recovery mechanism established by stipulation and approved by the Commission in the Western Reserve Telephone Company alternative regulation case, Case No. 93-230-TP-ALT and the Cincinnati Bell Telephone Company alternative regulation proceeding, Case No. 93-432-TP-ALT. Those stipulations required Western Reserve and CBT to spread the cost of dialing parity over all intraLATA MOU, including their own. Although the Commission now finds these cases to be "irrelevant," in its June 12, 1996 Order, the Commission found them highly relevant to the issue of whether LSG X.F disproportionately burdens ILECs. Specifically, the Commission held that: "Basing cost recovery solely upon intraLATA MOUs was approved by this Commission in *Cincinnati Bell*, Case No. 83-432-TP-ALT, Opinion and Order (May 5, 1994) and *Western Reserve*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994). Those two ILECs have not, to date, argued that a cost recovery mechanism based solely upon intraLATA MOU overburdened them." Entry, p. 56. If the Commission had decided to exempt ILECs from the MOU charges for dialing parity, why would the Commission feel it appropriate to reference those alternative regulation cases for examples of cost recovery mechanisms similar to LSG X.F? And why would the Commission now find those cases to be "irrelevant" after previously finding them to be highly relevant to its interpretation of LSG X.F?

The answer is simple: the Commission cannot square its October 8th Order with either LSG X.F. or the Commission's interpretation of that rule at the time it was implemented. The Commission's October 8th Order does not represent a further interpretation of LSG X.F. Put bluntly, that order represents an improper Commission attempt to amend that rule or adopt a new rule, while rewriting the clearly expressed intention of the rule. The Commission should grant rehearing and give LSG X.F its original and correct meaning.

B. The October 8, 1998 Order Unlawfully Implemented a New Rule

As demonstrated, the Commission's October 8th Order was inconsistent with LSG X.F., and thus, adopted a new rule for the cost recovery allocation to implement intraLATA presubscription. Based on the Commission's previous statements of intent and interpretation in its June 6, 1996 Opinion and Order and its November 7, 1996 Entry on Rehearing regarding the proper recovery of these costs, there can be no other conclusion. Further, based on the application of the new rule announced in its October 8th Order to the thirty-five ILEC tariff amendments under consideration, this determination already has been applied in a general and uniform manner.

As of June 1997, the General Assembly made clear that the Commission is subject to the requirements of O.R.C. 111.15 when adopting its rules. "Rule" as defined by the legislature is "any rule, regulation, bylaw or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency."

O.R.C. 111.15(A)(1). Whether the Commission's revised and newly implemented cost-recovery mechanism for implementation of intraLATA presubscription adopted in its October 8th Order is called a rule, regulation or standard, there is little doubt that it has a general and uniform operation, as applied.

The Commission's new standard to exempt ILECs from the cost recovery of presubscription implementation is a "rule."[1] Yet, the Commission failed to comply with the requirements of O.R.C. 111.15 when adopting this rule. By way of example, the Commission neither filed certified copies of this rule with the secretary of state and the director of legislative service, nor did it submit the rule to the joint committee on agency rule review to be subjected to legislative review and invalidation under O.R.C. 119.03. See, O.R.C. 111.15 (B) and (D).

The Commission's failure to comply with the adoption and filing requirements of O.R.C. 111.15 makes the implementation of the ILEC exemption from cost recovery of presubscription both unlawful and unreasonable. As important, the Commission's denial of MCI's and AT&T's intervention, which would have allowed the all-important public input for a new rule was unreasonable. The Commission must grant rehearing to address its failure to comply with these statutory requirements.

C. The Commission's October 8, 1998 Order is Otherwise Unlawful And Unreasonable.

Beyond the fact that the Commission's October 8th Order is contrary to the meaning of LSG X.F, the Commission's order is otherwise unreasonable. The

[1] In addition the definition of "rule" in O.R.C 111.15 includes any amendment or rescission of a rule. Whether an amendment of the Local Service Guidelines falls within this definition, however, does not need to be determined at this time, as there is little question that the requirement for cost recovery implemented by the Commission in its October 8th Order is a new Rule.

Commission's order unreasonably fails to consider the important policy reasons behind recovering the costs for intraLATA presubscription from all carriers on a competitively neutral basis.

By exempting ILEC MOU from the cost recovery equation, the Commission is implicitly rewarding those carriers for their success in keeping monopoly control of their markets. To the detriment of competitive carriers and Ohio consumers, those incumbent LECs have recouped monopoly revenues over the years solely because of their failure to open their markets. Despite this fact, the Commission now seeks to reward those ILECs by exempting them from paying their fair share to open their market. Such a result is unreasonable and contrary to this state's policy to further competition.

Moreover, the Commission's conclusion that intraLATA presubscription does not benefit ILECs is simply false. Indeed, as competition increases, ILECs will benefit from presubscription by being able to win back new entrants' customers. Without presubscription, ILECs would not be able to do so. Moreover, the increased competition that dialing parity will spur is a benefit to the entire industry, not just competitive carriers. The increased competition that dialing parity makes possible will also benefit the captive ILEC intraLATA toll customer. As prices decrease, the ILEC customer will directly benefit from competitive pricing. The Commission's order allows ILECs and their customers to benefit from competition without paying the price.[2]

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[2] As noted the Commission should not view the loss of market share as a price that these ILECs have paid for dialing parity. Loss of market share is the natural result of competition. The Commission's finding in this regard come dangerously close to accepting the ILECs' well-worn arguments regarding their rights to remain whole in the face of competition. However, such concepts are displaced in a competitive marketplace and have already been rejected by the Commission in its 845 rules and the Ameritech TELRIC case.

In fact, the Wisconsin Commission made just that conclusion, as this Commission initially did when implementing its LSG's that it is appropriate to spread the costs of intraLATA presubscription over all presubscribed lines, which included customers choosing to stay with the underlying ILEC:

> The Commission finds it inappropriate to load the costs of [intraLATA presubscription] on the customers who select a new intraLATA carrier in the period immediately following implementation. Moreover, all subscribers stand to benefit from the price competition in intraLATA toll service. Even customers who retain GTE intraLATA toll service will nonetheless receive some measure of rate reduction as GTE competes for market share in the intraLATA market. It is reasonable to apply the charge for implementing intraLATA equal access to the beneficiary of the change.
>
> The Commission therefore finds it is just and reasonable to direct GTE to recover the cost to implement intraLATA equal access from a surcharge on all presubscribed intraLATA-originating switched access minutes of use, without respect to which provider is selected as the presubscribed intraLATA carrier.

Finding of Fact and Conclusion of Law and Order, p. 21, Docket No. 2180-TI-109 (July 30, 1996). The Wisconsin Commission is right and so was this Commission in June 1996 and November 1996. New entrants and their intraLATA Ohio customers should not be forced to pay a disproportionate share for dialing parity that benefits the entire intraLATA market.

The FCC and every state Commission in the Ameritech five-state region has ruled that the cost of intraLATA presubscription should be recovered equally from ILECs and IXCs. Each state Commission, other than Ohio, has also found that presubscribed lines include lines of customer's that continue to subscribe to the incumbent.

In its Second Report and Order, the FCC explicitly found that cost recovery for dialing parity must be recovered in a competitively neutral manner. Specifically, the FCC held as follows:

> We determined that states could use several allocators, including gross telecommunications revenues, number of lines, and number of active telephone numbers, to spread number portability costs across all telecommunications carriers. Applying the same cost recovery principles to dialing parity, we conclude that LECs may recover the incremental costs of dialing parity . . . These costs must be recovered from all providers of telephone exchange service and telephone toll service in the area served by a LEC, including the LEC, using a competitively neutral allocator established by the state . . . States may use any of the allocators described in the Number Portability Order, or any other allocator that meets that criteria we have established.

Second Report and Order, CC Docket No. 96-98, ¶ 95. (rel. August 6, 1996). Thus, the FCC clearly envisioned that cost recovery for dialing parity would be recovered from ILECs and IXCs alike in a competitively neutral manner. The Commission's revised construction of LSG X.F. does just the opposite, as it recovers the cost of dialing parity disproportionately from only the IXCs. Importantly, none of the FCC's approved allocators (revenues, number of lines, number of active telephone numbers) envision any segregation of customers that have elected to stay with the ILEC.

Every state Commission in the Ameritech region has found that the cost of dialing parity must be spread equally over IXC and ILEC intraLATA minutes. Each of these Commissions has also found that the lines subject to presubscription include the underlying ILEC's lines. For example, the Illinois Commission ruled that a tariffed presubscription charge shall be applied to "all switched originating intra-MSA intrastate minutes of use subject to presubscription and originated by the LEC's customers, whether carried by the LEC or another IXC." Order, ICC Docket No. 94-0048 (October 5, 1995).[3]

By being the only state in the Ameritech region to strap competitive carriers with the entire costs of intraLATA presubscription, the Ohio Commission has placed a significant barrier to entry in Ohio that carriers do not face in other states. The Commission's order makes Ohio less attractive to new entrants, thereby putting Ohio consumers at a disadvantage. That result is certainly not reasonable or in the public interest.

CONCLUSION

AT&T and MCI urge the Commission to grant rehearing and give LSG X.F. its plain, original and reasonable meaning.

AT&T COMMUNICATIONS OF OHIO, INC.

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[3] Indiana Cause No. 40284, November 26, 1996 Order, p. 24 (costs of presubscription "should be applied to all switched originating intraLATA minutes of use subject to intraLATA toll dialing parity. The EARC [equal access recovery charge] should be applicable to such minutes of use of all intraLATA toll service providers, including the LECs."); Michigan Case No. U-10138, June 5, 1995 Order; Wisconsin Docket No. 2180-TI-109, July 30, 1996.

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DATED: November 9, 1998

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Application for Rehearing by MCI Telecommunications Corporation and AT&T Communications of Ohio, Inc. was served by regular U.S. mail on all parties listed on the attached service list this 9th day of November, 1998.

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