

FILE

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application)
of The Ohio Bell Telephone Company)
to Revise its Exchange and Network)
Services Tariff, PUCO No. 1,)
in Compliance With Finding and)
Order, Case No. 88-314-TP-AEC, to)
Establish New Centrex Service With)
Monthly Rates for Centrex Exchange)
Access Which Are Not Distance)
Sensitive and Which Include a)
Component for Direct Inward)
Dialing (DID) and Touch-Tone.)

Case No. 89-718-TP-AT/

In the Matter of the Application)
of The Ohio Bell Telephone Company)
to Revise its Exchange and Network)
Services Tariff, PUCO No. 1 to)
Establish Regulations, Rates, and)
Charges for Several New Centrex-CO)
Features and Have Such Optional)
Services Determined to be Com-)
petitive Offerings.)

Case No. 89-719-TP-ATA

In the Matter of the Application)
of The Ohio Bell Telephone Company)
for Pre-Approval of Contractual)
Arrangements for Competitive)
Telecommunications Services.)

Case No. 89-720-TP-AEC

FINDING AND ORDER

The Commission finds:

- (1) On March 1, 1988, The Ohio Bell Telephone Company (Ohio Bell) filed an application with the Commission in Case No. 88-314-TP-AEC, requesting approval of an arrangement that would enable it to negotiate and execute individual contracts with business customers for Centrex services without prior Commission approval of each contract. In conjunction with its application, Ohio Bell filed a motion seeking protected status for a

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detailed cost study that was the foundation for its proposed arrangement. By Commission Entry of May 17, 1989, Ohio Bell was directed to file the cost study associated with its Centrex proposal directly with the Commission's telecommunications staff by no later than May 24, 1989. It was further ordered that such information would be treated as confidential and proprietary, and would not be disclosed to anyone other than the Commission and its staff, until such time as the Commission determined otherwise.

- (2) On April 25, 1989, the Commission issued its Finding and Order in Case No. 88-314-TP-AEC, rejecting various aspects of Ohio Bell's proposal. More specifically, the Commission found it inappropriate to permit contract pricing flexibility for Centrex where monopoly services, such as access and access-equivalent elements, are combined with competitive offerings; where such access elements are priced on a distance sensitive basis; and where certain Centrex features remain untariffed and are available only in a contract environment. To remedy this situation, the Commission ordered Ohio Bell to file an amendment to its tariffs within 45 days of the Finding and Order, making the Centrex features proposed in the contract process available pursuant to tariff. The Commission indicated that, if Ohio Bell wished to pursue the contract process for Centrex services, it should submit a new application in which a Centrex access tariff is developed; that the access tariff not be distance sensitive; and that Centrex intercom and other essential features be offered as individual stand-alone elements within its contract pricing arrangements.
- (3) On May 8, 1989, The Ohio Bell Telephone Company filed three separate, but related applications in response to the directives contained in the Commission's April 25, 1989 Finding and Order in Case No. 88-314-TP-AEC. The three applications are described as follows:
 - (a) In Case No. 89-718-TP-ATA, Ohio Bell requests approval to revise its Exchange and Network Services Tariff to establish new monthly rates for Centrex Exchange Access Service which are not distance sensitive and which include a component for Direct Inward Dialing and Touch-Tone. The proposed tariffed rates are to be used for Centrex access when Centrex intercom and Centrex features are provided to customers pursuant to contract pricing flexibility arrangements;

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- (b) In Case No. 89-719-TP-ATA, Ohio Bell, pursuant to the guidelines for competitive service offerings established by the Commission in its Opinion and Order in Case No. 84-944-TP-COI (944), seeks approval to revise its Exchange and Network Services Tariff to establish regulations, rates, and charges for several Centrex features which were originally proposed to be made available only through the contract process. These Centrex features are the identical features previously submitted by Ohio Bell and investigated by the Staff in Case No. 88-314-TP-AEC;
- (c) In Case No. 89-720-TP-AEC, Ohio Bell, pursuant to the provisions of Section 4905.31, Revised Code, and the Commission's August 2, 1988 Finding and Order issued in Case No. 86-1144-TP-COI (1144), requests pre-approval of a contractual arrangement for competitive telecommunications services. If approved, the arrangement would enable Ohio Bell to negotiate and execute individual contracts with business customers for Centrex services. The Centrex cost catalog supporting this application is essentially the same detailed cost study filed under Case No. 88-314-TP-AEC, but as further modified by the company to comport with the Commission's April 25, 1989 Finding and Order in Case No. 88-314-TP-AEC.
- (4) With respect to the application for a flexible pricing arrangement as set forth in Case No. 89-720-TP-AEC, it should be pointed out that such contractual arrangements are permitted pursuant to certain guidelines established in 1144. In the Finding and Order issued on August 2, 1988 in that case, the Commission indicated that it would consider the pre-approval of individual contracts filed in conjunction with a flexible pricing arrangement for competitive telecommunications services, provided that the involved telephone utility obtained prior authorization of the terms and conditions contained in the proposed arrangement, as well as the criterion for the rates applicable to the services covered by such arrangement. Once the criterion for the rates, terms, and conditions are approved by the Commission, individual contracts falling within those parameters would be allowed to take effect immediately upon their filing with the Commission.
- (5) Any contracts submitted pursuant to the process delineated in 1144 filed with the Commission may incorporate only those terms and conditions, and rates



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and charges for services within the parameters that have been previously approved by the Commission. The contract shall be filed with the Commission in the docket under which the arrangement was pre-approved and shall be accompanied by a separate affidavit signed by a representative of the parties to the contract, verifying that the contractual arrangement falls within the previously approved parameters. Should the Commission determine later, after reviewing any such pre-approved arrangement, that it does not fall within the previously approved parameters, the Commission will take whatever action is necessary, including revoking its approval of the contract or adjusting retroactively the company's rates. Consequently the Commission directs the company to file its contracts for Commission approval in a timely manner and prior to when the contracted services are actually provided to the individual subscriber.

- (6) After considering the factors enumerated in the Commission's Order in 944, we find that the services involved in the applications filed by Ohio Bell in Case Nos. 89-719-TP-ATA and 89-720-TP-AEC, should be classified as competitive. Accordingly, those applications would, pursuant to the guidelines outlined in the Commission's Orders in 944 and 1144, be subject to automatic approval within the established timeframes. However, since Ohio Bell's application in Case No. 88-314-TP-AEC involved essentially the same services and was subject to considerable staff analysis and Commission review, the Commission considers the applications in Case Nos. 89-719-TP-ATA and 89-720-TP-AEC as merely an extension of Ohio Bell's application in that case. Therefore, under these unique circumstances, the Commission deems it appropriate to waive the timeframes that would otherwise apply under 944 and 1144.
- (7) After a thorough review of the two applications contained in Case Nos. 89-718-TP-ATA and 89-719-TP-ATA, Staff agreed with the proposals and, therefore, recommended their approval by the Commission.
- (8) Staff has reviewed, in depth, the rates, terms, and conditions of the proposed special flexible pricing arrangement contained in Case No. 89-720-TP-AEC, as well as the supporting cost documentation submitted in conjunction with this application. Based on such review, Ohio Bell's flexible pricing arrangement for Rentrex service was determined to be in compliance with the guidelines set forth in 1144. Staff believed that

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the proposed contractual arrangements appeared to be reasonable and, therefore, recommended that this application be approved by the Commission.

- (9) These applications have been duly filed pursuant to Section 4909.10, Revised Code, and the Commission finds, as Ohio Bell alleges, that they are not for an increase in any rate, joint rate, toll, classification, charge, or rental, do not appear to be unjust or unreasonable, and should be approved. Therefore, the Commission finds it unnecessary to hold a hearing in these matters.
- (10) Ohio Bell has requested that the protective order granted in Case No. 88-314-TP-AEC, be extended to apply to the cost study submitted in Case No. 89-720-TP-AEC. The cost studies filed in each of these cases are identical and, therefore, Ohio Bell maintains that the protected status afforded the study by virtue of the Commission's May 17, 1988 Entry in Case No. 88-314-TP-AEC, should be extended to cover the document as resubmitted in Case No. 89-720-TP-AEC.

The Commission would note that the protective order issued in the above-mentioned Entry was not granted on the merits of the information contained in the cost study, but rather, was issued in order to facilitate the filing of the cost study with the Commission's Staff so that the study could be reviewed by the Staff and a determination could be made with respect to the then-pending motions to intervene in Case No. 88-314-TP-AEC. Since, in the April 25, 1989 Finding and Order in that case, the Commission determined that Ohio Bell's proposal should be denied, intervention was not granted and accordingly, the issue of the outstanding protective order was not addressed. However, since Ohio Bell has now resubmitted that same cost study, and has raised the issue of its protected status, the Commission finds it appropriate to consider the question of extension of the previously imposed protective order.

In its original motion for protective order, Ohio Bell argued that Centrex service is clearly a competitive offering, as the Commission has previously recognized and, therefore, the cost study which it has compiled, containing detailed information regarding the cost for each rateable component of Centrex service would, in the hands of its competitors, place Ohio Bell at an extreme competitive disadvantage. Should these competitors, specifically unregulated PBX vendors, have

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access to Ohio Bell's underlying cost data, they could, so argues the company, configure their competitive offerings accordingly and achieve an enormous, unfair advantage over Ohio Bell in the marketplace.

Rule 4901-1-24(A)(7), Ohio Administrative Code, provides that a protective order may be granted in order that a trade secret or other confidential research or information not be disclosed. Clearly, the release of the information contained in the cost study submitted for purposes of Case No. 89-720-TP-AEC, would place Ohio Bell at an extreme competitive disadvantage with regard to the marketing of its Centrex service. Therefore, the Commission shall grant protected status to the cost study submitted in Case Nos. 86-314-TP-AEC and 89-720-TP-AEC, as well as to the cost elements of the individual contracts entered into as a result of those cases.

- (11) Our approval of this contracting arrangement does not constitute state action for the purposes of the anti-trust laws. It is not our intent to insulate the applicant or any other party to a contractual arrangement authorized by this Finding and Order from the provisions of any state or federal law which prohibit the restraint of trade.
- (12) In approving this contracting procedure the Commission makes no finding in regard to the treatment of the differences in revenue derived from the contracts and the revenue that would have been derived had the services been provided at tariffed rates. This issue will be evaluated in subsequent rate case proceedings. Applicant should track and document any shortfall resulting from the contracts so that necessary information will be available upon request by Commission Staff and for review in Ohio Bell's next rate case.

It is, therefore,

ORDERED, That Ohio Bell's May 8, 1989 applications in Case Nos. 89-718-TP-ATA, 89-719-TP-ATA, and 89-720-TP-AEC are approved. It is, further,

ORDERED, That Ohio Bell's request for an extension of the May 17, 1989 protective order is granted in accordance with Finding (10). It is, further,

ORDERED, That Ohio Bell is authorized to file in final form three complete printed copies of tariffs consistent with the findings of the Finding and Order and to cancel and withdraw its

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superceded tariffs. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than both the date of this Finding and Order and the date upon which three complete printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That the arrangement contained in the May 8, 1989 application submitted by Ohio Bell in Case No. 89-720-TP-AEC should be and hereby is approved. It is, further,

ORDERED, That any amendment, modification, assignment or termination to the arrangement referred to herein must receive prior Commission approval. It is, further,


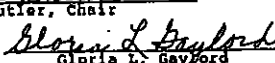
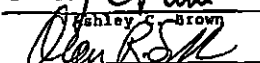
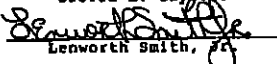
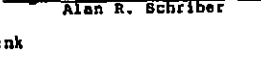
ORDERED, That any future individual Centrex contractual arrangement shall be filed with the Commission under Case No. 89-720-TP-AEC and shall be accompanied by a separate affidavit signed by a representative of the parties to the contract, verifying that the contract arrangement falls within the previously approved parameters. It is, further,

ORDERED, That Applicant shall document the information as detailed in Finding (12) to be available upon request by Commission Staff and for review in its next rate case. It is, further,

ORDERED, That nothing herein contained shall be deemed to be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That a copy of this Finding and Order be served upon Ohio Bell.

THE PUBLIC UTILITIES COMMISSION OF OHIO

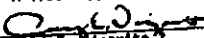
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E. Vigorito
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