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October 13,1 998

***VIA HAND DELIVERY***
Ms. Daisy Crockron
Chief of Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

***Re:*** ***In the Matter of Benton Ridge Telephone Company's Memorandum Contra Motions of MCI Telecommunications Corporation and AT&T Communications of Ohio, Inc. to Intervene and Suspend the Benton Ridge Telephone Company's Presubscription Implementation Charge***
***Case No. 96-1328-TP-ATA***

Dear Ms. Crockron:

Enclosed for filing is an original and ten (10) copies of a memorandum contra to the motions of MCI Telecommunications Corporation and AT&T Communications of Ohio, Inc. to intervene and suspend the Benton Ridge Telephone Company's presubscription implementation charge.

Please call me if you have any questions regarding this matter.

Very truly yours,

Gerald A. Cooper
GAC/glm
Enclosures
cc: Kim Horne
Scott Potter
J. Raymond Prohaska, Esq.
Thomas E. Lodge, Esq.

**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|---|
| In the Matter of Benton Ridge Telephone Company to Add IntraLATA Presubscription. | ) | CASE NO. 96-1328-TP-ATA |

**BENTON RIDGE TELEPHONE COMPANY'S MEMORANDUM CONTRA MOTIONS OF MCI TELECOMMUNICATIONS CORPORATION AND AT&T COMMUNICATIONS OF OHIO, INC. TO INTERVENE AND SUSPEND THE BENTON RIDGE TELEPHONE COMPANY'S PRESUBSCRIPTION IMPLEMENTATION CHARGE**

## I. BACKGROUND

Pursuant to the entry of this Commission approving the Company's intraLATA presubscription tariffs (the "Entry"), the Company is to file its proposed 1+ intraLATA presubscription incremental cost recovery minutes of use (MOU) rate on December 16, 1998. In accordance with the Entry, the MOU rate will become effective on the 31st day thereafter, unless the Commission takes action to the contrary.

On September 24, 1998, and October 5, 1998, MCI Telecommunications Corporation ("MCI") and AT&T Communications of Ohio, Inc. ("AT&T"), respectively, filed motions to intervene in this case and to suspend and/or investigate the MOU rate. MCI and AT&T allege that the Company's proposal will violate Section X.F. of the Local Service Guidelines promulgated by this Commission in Case No. 95-845-TP-COI (the "Guidelines") if it includes only switched access minutes of interexchange carriers ("IXC") in its MOU rate calculation. Since the Company has not filed its MOU rate, and is not required to do so until December 16, 1998, MCI's and AT&T's motions are premature and should be denied on that ground alone. Furthermore, for the reasons set

forth below, MCI's and AT&T's motions are without merit and should be denied. Finally, the Company notes that MCI's and Sprint's motions were denied by the finding and order entered by this Commission on October 8, 1998 (the "Finding and Order") with respect to other companies that have already filed their MOU rates. The Finding and Order was entered in the 95-845-TP-COI docket and the respective dockets of the companies that have filed their MOU rates.

## II. ARGUMENT

Section X.F. of the Guidelines provides :

> 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. (emphasis supplied)

During implementation of intraLATA equal access, the Company's customers were allowed to select an intraLATA carrier. If they did not do so, then they remained assigned to their "default" carrier, the primary carrier that had existed before intraLATA equal access. Thus, as implementation progressed, each access line either became presubscribed or it did not. When the Company calculates its MOU rate, the Company will include all switched access minutes generated on lines that are presubscribed for intraLATA service. Contrary to MCI's and AT&T's allegations, whether a carrier is an IXC or a local exchange company will not be a factor in determining which minutes are included; rather, in accordance with the Guidelines, the determining factor will be whether the minutes were on presubscribed lines.

As used in the Guidelines, the term "presubscribed" must refer to those lines for which the customer has affirmatively chosen an intraLATA carrier to handle 1+ intraLATA toll calls; as a result, the term cannot include those lines which, by default, remained with the existing carrier that

handled 1+ intraLATA calls prior to implementation of dialing parity. As a linguistic matter, MCI's and AT&T's readings of the Guidelines -- that all originating intraLATA switched access minutes must be included in the calculation -- would render the phrase "generated on lines that are presubscribed for intraLATA toll service" superfluous.

Furthermore, the Company's assertion that "presubscribed" does not include lines of those customers who remained with the default carrier is the only fair and reasonable interpretation of Section X.F. of the Guidelines. The cost of intraLATA presubscription implementation should be borne by those for whose benefit the costs were incurred; indeed, such is the very reason why the Commission adopted a cost recovery mechanism. The carriers that benefit from the implementation of 1+ intraLATA dialing parity are those that, by virtue of this implementation, are able to "presubscribe" customers that they otherwise would not be able to presubscribe. But for the implementation of 1+ intraLATA dialing parity, the new carriers would not have intraLATA toll customers in the Company's exchange area. By contrast, the existing intraLATA carrier, in this case the Company, does not have its intraLATA toll customers because of the implementation of 1+ intraLATA dialing parity, rather it has them *in spite of* the implementation of 1+ intraLATA dialing parity.

Accordingly, because the Company does not benefit from the implementation of 1+ intraLATA presubscription, the Company should not pay for it. The Company has gained nothing from the implementation of dialing parity. In fact, the only result has been that it has lost intraLATA toll customers to other companies. It is entirely unreasonable to suggest that one company must pay the costs necessary to allow a second company to erode the first company's customer base. Furthermore, as set forth in the Finding and Order, the Company has shared in paying cost of implementing 1+intraLATA equal access by foregoing the $5.00 change charge during the first 90

days after implementing equal access and by accepting its loss of toll revenue as a result of equal access.

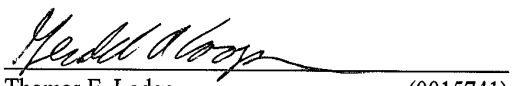
Basic business principles also dictate agreement with the Company's interpretation of Section X.F. of the Guidelines. The 1+ intraLATA presubscription implementation costs are costs of entering the intraLATA toll market and should be borne by those carriers that have chosen to enter the market. The Company did not "enter" the market when 1+ dialing parity was implemented; it was already there. Just like any other costs carriers would incur in entering a new market, the entering carriers should bear the costs of 1+ intraLATA presubscription implementation. Plainly, no-one would suggest that the Company pay for the advertising, equipment, labor or other costs associated with another carrier entering the intraLATA toll market. There is no reason to view the presubscription implementation costs any differently.

## III. CONCLUSION

Based on the foregoing, and on the Finding and Order, the Company respectfully requests that the Commission find that MCI's and AT&T's motions are not well taken and deny the same.

Respectfully submitted,

BENTON RIDGE TELEPHONE COMPANY

By: 

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Its Attorneys

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *Benton Ridge Telephone Company's Memorandum Contra Motions of MCI Telecommunications Corporation and AT&T Communications of Ohio, Inc. to Intervene and Suspend the Benton Ridge Telephone Company's Presubscription Implementation Charge* was served upon the following by regular U.S. Mail, postage prepaid, this 13 day of October, 1998.

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