

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 )  
Competitive Telecommunications ) Case No. 99-563-TP-COI  
Services Under Chapter 4927, Revised )  
Code. )

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MEMORANDUM  
OF AARP, APPALACHIAN PEOPLE'S ACTION COALITION, CITY OF TOLEDO,  
AND EDMONT NEIGHBORHOOD COALITION  
CONTRA APPLICATIONS FOR REHEARING

AARP, the Appalachian People's Action Coalition, the City of Toledo and the Edgemont Neighborhood Coalition, pursuant to Ohio Admin. Code § 4901-1-35(B), submit this Memorandum Contra the applications for rehearing of the November 21, 2002 Entry on Rehearing ("November 21<sup>st</sup> Entry") by Cincinnati Bell Telephone Company ("CBT"), the Ohio Telecom Association ("OTA"), SBC Ameritech Ohio ("Ameritech Ohio") and Verizon North Inc. and Verizon Select Services Inc. (collectively "Verizon").<sup>1</sup> The November 21<sup>st</sup> Entry addressed the applications for rehearing of the December 6, 2001 Opinion and Order ("December 6<sup>th</sup> Order") filed by eighteen parties, including the four parties filing this Memorandum Contra.

The allegations of error raised by the telecommunications industry are incorrect and should be rejected by the Commission. Despite the claims of the industry that the Commission is

<sup>1</sup> The Payphone Association of Ohio ("PAO") also filed an application for rehearing, to which we are not responding.

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over-regulating, the Commission had in its December 6<sup>th</sup> Order already “streamlined” its new “regulatory framework for those companies engaged in providing telecommunications services on a competitive basis” to such an extent so as to virtually eliminate any regulatory process and input by consumers. The four consumer parties filing this Memorandum along with the Office of Consumers Counsel and other consumer representatives, as part of a coalition of Consumer Parties, filed an application for rehearing asserting that many aspects of the December 6<sup>th</sup> Order and the new rules were unjust, unreasonable and/or unlawful. However, the November 21<sup>st</sup> Entry has corrected many of the problems pointed out by the Consumer Parties.

Yet now the ILECs are attempting to eliminate even the minimum consumer protections allowed under the Commission’s various orders authorizing ever-increasing deregulation and competitive freedom for ILECs. Most significantly, the ILECs propose to remove the requirement that the ILECs, which maintain even today their monopoly status in most of their territories for most customers, remain the carrier of last resort. The ILECs also propose to allow large ILECs to eliminate competition in neighboring areas by not requiring separate affiliates for large ILEC out-of-territory competition. The Commission should reject these extreme proposals that are unwarranted and potentially harmful to consumers.

The ILECs also challenge other portions of the new rules set forth as Ohio Administrative Code Chapter 4901:1-6. The Commission should reject these challenges.

A. The Commission Should Reject The Attempt to Eliminate The Carrier of Last Resort Obligation. (Rule 4901:1-6-09 (M) (2))

Ameritech Ohio opposes the Commission’s continuation of the longstanding obligation that ILECs such as Ameritech provide “stand-alone basic local exchange service upon request from any customer.” By applying for rehearing on Rule 4901:1-6-09(M)(2), in which

ILECs retain their carrier of last resort (“COLR”) obligation, Ameritech is trying to challenge a second time the same version of the Rule that the Commission approved in the December 6<sup>th</sup> Order. For this reason alone the Commission should reject Ameritech’s request for rehearing on this issue—since Ameritech has raised no new basis for the Commission to change its Rule.

Two of the arguments made by Ameritech supporting its application on this issue—that “end users may want a LEC other than the ILEC as their carrier,” and that “an exiting LEC may contract with a CLEC to assume its customers”—are not relevant, because the COLR obligation is not applicable unless there are no other LECs available to serve customers. In addition, the other reasons for a change in the Rule given by Ameritech may be addressed through applications for waivers, rather than the drastic action it proposes.

This proceeding has not provided the Commission with any factual or other basis on which it could find that the COLR obligation should simply be eliminated, or that there is any other reasonable, workable mechanism that should be adopted at this time to replace the existing precedent. The requirement that the ILECs remain the last resort for customers in this era of fledgling competition, and tenuous and tentative competitors, is the most reasonable and just conclusion for the Commission to reach. Ohio’s ILECs, including and especially Ameritech, have little to complain of considering that they have profited from and prospered under decades of monopoly dominance of their local markets.

B. The Commission Was Correct to Protect Consumers By Not Allowing the Large ILECs to Compete Outside Their Traditional Territory Without Using a CLEC Affiliate. (Rule 4901:1-6-08)

In the November 21<sup>st</sup> Entry, the Commission reversed its initial ruling to allow ILECs to compete outside their territory without a separate affiliate. Ameritech and OTA seek rehearing

on this issue. The Commission should deny rehearing, and maintain its carefully considered reversal based on the arguments of the Consumer Parties in their application for rehearing of the December 6<sup>th</sup> Order.

1. One attack on the ruling is that the Commission has not adequately explained its “departure” from its own precedent on this issue. Yet Ameritech acknowledges that the so-called precedent allowing the CBT pilot program was intended from the beginning to be “limited in duration and subject to the rules promulgated in this proceeding.” Ameritech Application for Rehearing, at p 14. The remainder of the “precedent” applies to small ILECs only. The Commission’s ruling is therefore neither unlawful nor unreasonable on this basis.

2. Ameritech also claims that the ruling violates Ohio public policy promoting competition. But Ameritech would have the Commission interpret State policy in only one way—to encourage flexible regulatory treatment as a means to greater competition. However, State policy is clearly intended to encourage the emergence of diversity of options in a balanced manner so as to protect consumers and avoid the re-mergence of unregulated monopolies.

3. A third complaint of Ameritech is that the Commission’s rule, in effect, erects a barrier to competition, violating 47 USC 253(a). However, while Federal law may not, as Ameritech asserts, require separate affiliates for providing local exchange service outside an ILEC’s territory, it also does not prohibit what the Commission has ordered. See for example, 47 USC 253(b). Certainly, Ameritech and the other ILECs have not presented sufficient evidence in this proceeding to demonstrate that the Commission’s Rule will create a barrier to competition, simply because the ILEC must create a separate affiliate to provide service outside its territory.

4. Ameritech also fumes that the Rule presents unacceptable risk that it will have

to provide the same interconnection that it gives its affiliate to other CLECs. Yet this very risk is one that enhances competition and diversity of options for consumers, thus fulfilling State policy.

5. Finally, Ameritech alleges that the Rule violates regulatory parity, by allowing SLECs to provide local exchange service outside their territories without creating a separate affiliate. These rules apply to ILECs subscribing to alternative regulation plans, which is an option, not mandatory, for the large ILECs. Thus, they may choose not to elect to operate under these rules. Moreover, other sections of the rules also distinguish between the large and small ILECs.

C. The Commission Should Reject the Remaining Requests for Rehearing.

1. Rule 4901:1-6-11 (A) (4). Ameritech objects to the requirement that notice of the withdrawal of a Tier 1 service be placed on the customer's billing statement beginning 60 days before withdrawal of the service. The Company fails to explain how this is burdensome, particularly considering the importance of protecting consumers with regards to Tier 1 services, the likely number of withdrawals of services being low and measured, and the likely low number of billings occurring in any 60-day period before a withdrawal.

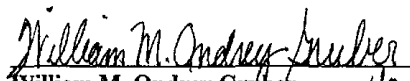
2. Rule 4901:1-6-12 (D). Ameritech's objection to limits on price increases for grandfathered services does not demonstrate that the Rule is either unlawful or unreasonable.

3. Rule 4901:1-6-17. Ameritech and OTA object to the bare minimum notice requirements set forth in the Rules, which are neither unreasonable nor unlawful. The ILECs spare no expense or space providing sales messages to customers when they want to sell a service. Here the Commission has required basic information that can hardly be called "burdensome."

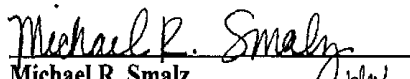
4. Rule 4901:1-6-21(C). Ameritech and OTA object to the requirement that unregulated services must be tariffed if they are packaged with regulated services. To do otherwise would have been unreasonable and unlawful, and nonsensical. The ILECs may choose whether to create such packages, and whether to opt for alternative regulation. This Rule simply requires that the regulated services remain tariffed, and prevents avoidance of this requirement by the packaging of such services with unregulated services.

Wherefore, AARP, the Appalachian People's Action Coalition, the City of Toledo and the Edgemont Neighborhood Coalition request that the Commission reject the Applications for Rehearing of its November Entry as set forth hereinabove.

Respectfully submitted,

  
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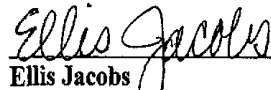
  
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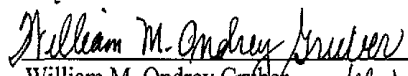
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra Applications for Rehearing was served via first class mail, postage prepaid to all the parties identified below this 6th day of January 2003.

  
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