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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of Numerous Applications of )  
Ameritech Ohio for Approval of a Contract ) Case No. 96-389-TP-AEC, et al.  
Or other Arrangement Between Ameritech )  
Ohio and Various of its Customers. )

**AT&T's MEMORANDUM CONTRA TO AMERITECH OHIO'S  
APPLICATION FOR REHEARING**

AT&T Communications of Ohio, Inc. ("AT&T") hereby files its Memorandum  
Contra to Ameritech Ohio's Application for Rehearing. For the reasons set forth below,  
AT&T urges the Commission to deny Ameritech's Application for Rehearing in its  
entirety.

**I. Introduction**

The Commission should reject Ameritech's Application for Rehearing based on  
the arguments set forth in the Ohio Telecommunications Industry Association's  
("OTIA") Application for Rehearing. Specifically, AT&T supports the basic premise of  
OTIA's application: that by effectively modifying a provision of the Ohio Administrative  
Code in the context of a company-specific case, the Commission has unlawfully engaged  
in a rulemaking absent notice to the carriers affected by that rulemaking. For that very  
reason, AT&T opposes Ameritech's application for rehearing, which is an attempt to  
expand the class of carriers affected by the Commission's unlawful ruling to IXC's -  
carriers that also were not given any notice of the Commission's contemplated change in  
rules.

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## **II. Background**

In its Entry on Rehearing in this case, the Commission changed the rules by which NECs and ILECs must file customer service contracts with the Commission. In doing so, the Commission also effectively modified Rule 4901-1-24 by limiting LECs' and NECs' ability to obtain a protective order to make effective use of this rule. Essentially, the Commission has prejudged, without evidence, what is and is not confidential information under Rule 4901-1-24. By its Application, Ameritech now seeks to extend the Commission's new rules to all IXCs, in addition to LECs and NECs.

## **III. Argument**

As correctly noted by the OTIA, the Commission's modification of its contract filing requirements and Rule 4901-1-24 in a company-specific case, without notice to affected carriers, is unjust, unreasonable and unlawful. The Commission has essentially prejudged what is and is not confidential under Rule 4901-1-24. In doing so, the Commission has gutted the terms of that rule. Nothing in that rule allows the Commission to unilaterally decide what is and what is not confidential information in the abstract. The Commission's action begs the question why Rule 4901-1-24 would establish a procedure by which carriers can request confidential treatment of certain information if the Commission was empowered to decide, before ever seeing that information, whether or not that information is "confidential." The end result of the Commission's action here is that carriers no longer are able to take full advantage of the procedures in Rule 4901-1-24.

Fundamental concepts of due process dictate that the Commission cannot use company-specific cases to generate new, or amend existing, rules unless the affected

carriers are given notice and an opportunity to participate in those cases. The Commission's rulemaking process is intended to address these very due process concerns and should have been followed in this case. Revised Code § 111.15.

AT&T recognizes the potential precedential affect of Commission rulings. However, what is not appropriate is for the Commission to make blanket rules for all carriers in cases, like this one, that are so obviously directed at facts specific to just one carrier. The effect of the Commission's practice in this regard is that carriers are effectively blindsided by the Commission's rulings without any ability to comment or object. AT&T does not object to the Commission's ruling as it applies to Ameritech. But AT&T does object to the Commission's policy of unilaterally making that ruling apply to all carriers.<sup>1</sup>

Ameritech's Application is simply an attempt to extend the Commission's improper action to IXCs. Thus, for the same reasons stated above, and more fully in OTIA's application for rehearing, Ameritech's application should be denied.

#### CONCLUSION


For the foregoing reasons, and the reasons stated in OTIA's application for rehearing, AT&T urges the Commission to deny Ameritech's application and grant OTIA's application for rehearing.

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<sup>1</sup> In fact, the Commission's penchant for such ad hoc rulemaking is directly contrary to its consistent denial of interventions in carrier-to-carrier complaint cases. By engaging in such rulemaking, the Commission is encouraging needless interventions in carrier-to-carrier and other company-specific cases.

Respectfully submitted,

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Dated: June 11, 1998

**CERTIFICATE OF SERVICE**

Case No. 96-389-TP-AEC, et al.

The undersigned hereby certifies that a copy of the foregoing AT&T Memorandum Contra to Ameritech Ohio's application for Rehearing on behalf of AT&T Communications of Ohio, Inc. ("AT&T") was served by regular U.S. mail, postage prepaid, this 12th day of June, 1998 upon the following parties of record.

  
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