charge is to ensure that no reseller can offer service in competition with RTC without losing money.

Service Provisioning: Terms and Conditions

The difficulties AT&T has experienced with price are sufficient to ensure that resale competition will never occur in the RTC service area. The dismal record of competitive entry to date proves this. In addition, however, RTC has failed -- and often flatly refused -- to provide service to AT&T under terms and conditions that would allow customers to be served efficiently and to allow competition to proceed fairly. RTC's processes have been grossly inadequate, largely reflecting a total unwillingness by RTC to devote resources to provisioning wholesalers comparable to the resources it devotes to providing the same services at retail. RTC has also employed open and blatant discriminations against wholesalers in forms ranging from double-billing for the same service to imposing unreasonable commercial standards, not common in the telecommunications industry, designed to make service provisioning impossible.

3. Customer Information

When a customer comes to AT&T and asks to have its telephone service transferred from an existing RTC service, AT&T must be able to obtain from RTC all relevant information on the type of service the customer is currently receiving from RTC. It is routinely the case that customers do not know precisely how they are provisioned. This information is basic, and AT&T is plainly entitled to have it from RTC on a commercially reasonable basis. There can be no valid argument that such information is proprietary information belonging to RTC. To the contrary, the information belongs to the customer; it is a description of the customer's service. Clearly, the customer itself can demand of RTC a description of precisely what services it is subscribed to. When AT&T contacts RTC, AT&T is operating on behalf of the customer as its agent and, as a matter of basic commercial law, stands in the customer's shoes. AT&T is then entitled to receive all information the customer itself could receive.

RTC has either refused to provide AT&T with information which is the property of the customer or it has agreed to do so only after compelling AT&T to meet needlessly burdensome standards for documenting its agency status.

There is a long history in the interstate arena, including such areas as PIC selection and 800 RESPORG change, of encouraging responsible practices and procedures for telemarketing that include establishing agency authorization by third party and other forms of electronic verification. In the absence of evidence of misuse by a firm, these are widely and sometimes universally accepted practices. Telemarketing is a particularly important tool for seeking the business of small customers. Absent efficient marketing techniques, competition tends not to reach small customers, who suffer the inevitable consequences of higher prices and less choice.

Although RTC routinely accepts evidence from competing carriers of agency status obtained by means of electronic or third party verification in the interstate arena (and uses such practices itself) it has refused to accept AT&T's status as agent on behalf of resale customers except on receipt of signed agency agreements. RTC's refusal to accept in the local competitive markets practices that it accepts in the interstate arena is a further device used by RTC to increase the costs and delay the success of competitive marketing.

4. Credit Information

A particular form of customer information that Rochester has abused in several ways is information respecting a customer's credit history. AT&T has experienced an unusual upturn in the number of new applicants for AT&T local service from customers with poor payment histories with RTC. Some of these customers have informed us that RTC representatives have specifically recommended these customers select AT&T as their local carrier. If this is a deliberate effort on the part of Rochester to rid itself of customers with poor credit histories and to foist them on its competitor, that conduct is probably actionable at common law. It is certainly an unreasonable act and practice.

RTC has also refused to provide AT&T with information regarding customer credit history except upon the payment of $2 per subscriber. As with other forms of customer-specific information, however, such information is not proprietary to RTC; it is the property of the customer itself. If a customer wishes to receive from RTC a record of its credit history, it is entitled to do so. The customer can and many will appoint AT&T as their agent to receive that credit history on its behalf. In that event, the information has to be provided to AT&T at a price not greater than the cost of providing it and also not greater than the cost that RTC imposes on a customer seeking such information directly. Anything else would be unreasonable discrimination against a competitor.

5. <u>Wholesale Bill Reconciliation</u>

For six months, AT&T has paid RTC's wholesale bills without receiving documentation necessary to determine the accuracy of those bills, without receiving a right of audit and without receiving positive confirmation of the services being provided to the customer on a timely basis (i.e., until after the customer bill is rendered). All of these billing problems are plainly solvable, but RTC has refused to devote the needed resources to solve them. The audit problem is singularly noteworthy because RTC permits AT&T to audit other parts of RTC's business with AT&T and distinguishes only its wholesale charges from an audit and reconciliation process.

6. <u>Customer Service Levels</u>

Closely related to RTC's unwillingness to devote appropriate resources to billing is its unwillingness to provide appropriate resources related to customer service provisioning. Present customer service levels are unacceptable. Rochester Telephone has, for example, met its "Missed Appointments" commitment levels for its own retail customers in most areas of RTC's territory. However, for AT&T resale customers, RTC missed the PSC threshold level of 15.0 for May, June and July of this year. Indeed, the quality of service RTC has provided to AT&T's resale customers is so poor that RTC would be subject to PSC surveillance and customers would be entitled to a rebate. As noted above, Rochester has stated its explicit intention not to provide its wholesale customers -- or their retail customers -- with the same level of service that it provides to its own retail customers. This is patently discriminatory and is anticompetitive on its face. RTC should be required as a matter of law to provide precisely the same quality of service to its wholesale and retail customers, and should be required to report on its service quality provisioning separately so that the Commission can be certain that RTC is not destroying competition by discriminating against the customers of its resellers. In addition, wholesale competitors such as AT&T should be given additional discounts to compensate them for the degraded service quality they receive until the Commission is convinced that the service quality is equal. This is analogous to the 55% discount on access services given AT&T's interexchange competitors until equal access conversions were completed.

7. <u>Mechanization</u>

AT&T is severely disadvantaged due to the fact that RTC has failed to provide procedures for resellers to access the RTC databases for on-line queries needed to perform such basic service functions as scheduling customer appointments. RTC representatives, for example, can access information in real time, while a prospective customer is on the line, to schedule appointments or provide critical information. In contrast, AT&T must put customers on hold while AT&T representatives call RTC, or even worse, hang up on the customer and call back later with essential information. A result of this unsatisfactory process is that AT&T's resale customers always receive the worst possible installation delays. AT&T raised this issue with RTC even before AT&T initiated service. RTC has simply failed to devote resources sufficient to address these concerns.

8. <u>Thoroughfare Guide ("T-Guide")</u>

The T-Guide, which details street address, central office, and municipality information, is necessary in provisioning local service. This information is compiled by the incumbent LEC -- in this case RTC -- who then has the ability to assign new numbers and exchanges to any new developments in its service area. RTC uses this information when a retail customer comes to it for new or changed service. AT&T believes, therefore, that the provision of this service -- that is, the access to these data bases -- is part of the service that RTC is selling to AT&T, and its availability is already included in the wholesale price that AT&T pays to RTC. Now, however, RTC has filed a tariff proposing to charge AT&T a separate charge for access to this service. AT&T submits this is blatant double billing by RTC. There can be no doubt that RTC has justified its wholesale price as based upon all of the costs that it incurs in providing retail service minus any avoidable costs. Hence, all functions that RTC performs on behalf of its retail customers are functions that AT&T is paying for in its wholesale price. RTC should not, therefore, be allowed to break out any such function for a separate, additional charge.

CONCLUSION

For the reasons set forth above, AT&T requests the Commission immediately issue to RTC an Order to Show Cause why the relief sought in this petition should not be granted. Further, however, AT&T submits that the experience of the past year demonstrates that the OMP creates the wrong incentives for encouraging the development of genuine competition. AT&T therefore asks the Commission to put out a notice for comments from all interested parties on how the OMB should be modified to ensure that legitimate competition develops in the Rochester service areas.

Respectfully submitted,

AT&T COMMUNICATIONS OF
NEW YORK, INC.

OF COUNSEL:

Keith E. McClintock

By: Michael J. Morrissey
Harry M. Davidow

Its Attorneys
32 Avenue of the Americas
Room 2700
New York, New York 10013
212-387-5605

Dated: October 3, 1995
New York, New York

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on November 29, 1995

COMMISSIONERS:

Harold A. Jerry, Jr., Chairman [1]
Lisa Rosenblum
William D. Cotter
John F. O'Mara

CASE 93-C-0103 - Petition of Rochester Telephone Corporation [2] for Approval of a Proposed Restructuring Plan.

ORDER RECONVENING PARTIES TO THE OPEN MARKET PLAN AND DETERMINING PETITION FOR REHEARING AND DECLARATORY RELIEF

(Issued and Effective February 2, 1996)

BY THE COMMISSION:

In approving the Joint Stipulation and Agreement instituting the Rochester Telephone Corp. (RTC or the company) Open Market Plan (OMP), the Commission directed staff to monitor closely the development of competition in RTC's service territory and to review the wholesale rate structure established by the OMP. In particular, staff was to review the 750 minute cap on flat rate residence service purchased by resellers and the 5% differential between wholesale and retail rates. [3]

In October 1995, AT&T Communications of New York, Inc. (AT&T), filed a complaint and petition for declaratory judgment

[1] Chairman Harold A. Jerry, Jr., served as Chairman until December 6, 1995.

[2] Rochester Telephone Corporation changed its name to Rochester Telephone Corp.

[3] Opinion No. 94-25, Opinion and Order Approving Joint Stipulation and Agreement (issued November 10, 1994).

and for reconsideration of Opinion 94-25,[1] identifying eight specific barriers it alleges it has encountered in reselling RTC's service. AT&T contends RTC has provided service on unfair or unreasonable terms, and alleges negotiation with RTC to address these matters has been unsatisfactory. AT&T requested that the Commission issue a declaratory ruling that RTC provide the relief sought by AT&T and issue an Order to Show Cause why the remedies it sought should not be implemented by RTC, and that the Commission seek comments on modifications to the OMP aimed at improving the development of competition in Rochester. Southwestern Bell Mobile Systems, Inc. (SBMS), also submitted a letter regarding the level of the wholesale discount in Rochester.

RTC and Time Warner AxS of Rochester, L.P. (TW-R) responded in opposition to AT&T's petition.

In addition, in November 1995, staff submitted a status reported on a number of items related to the OMP, including the issues identified in the earlier order as related to the development of competition in the Rochester market and its analysis of the AT&T petition.

ISSUES

Wholesale/Retail Rate Differential

AT&T and SBMS emphasize that an adequate wholesale discount is crucial to the development of competition in the local exchange market in Rochester. AT&T suggests that the minimum discount that would permit resellers to break even in the Rochester market is 35%. SBMS asserts that RTC's actual avoided costs are likely to be higher than the 5% discount, and that if

[1] Contrary to Time Warner's assertion, AT&T's request for reconsideration is not untimely. AT&T had previously petitioned in December 1994 for rehearing of Opinion No. 94-25 in a timely fashion. On April 6, 1995, the Commission denied without prejudice AT&T's petition, without either accepting or rejecting AT&T's perspective.

this is true, the existing 5% discount provides a perverse incentive for RTC to provide service at wholesale rather than retail.

RTC responds that the discount was not intended to guarantee resellers a profit, and that steeper discounts would unfairly transfer profits from RTC to resellers. TW-R opposes AT&T's request, asserting that no reasonable basis exists for changing the resale discount structure, and that AT&T should negotiate a solution directly with RTC.

In approving the OMP, the Commission noted that the 5% wholesale discount should be viewed as a starting point which would begin the transition to a more competitive environment. As such, the Commission directed staff to review the pricing structure periodically. Staff's analysis indicates that RTC's 5% wholesale discount may have to be modified for meaningful resale competition to develop.[1]

Time Warner, a facilities-based competitor in the Rochester market, advises the Commission to proceed cautiously with respect to promoting resale opportunities.[2] However, a number of other potential competitors have made clear that they intend to develop their customer bases via the resale of service, and that it would not be economical for them to invest in facilities without first developing such a customer base.[3] Therefore, the issue of the appropriate wholesale/retail differential appears crucial to the development of competition in the Rochester area.

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[1] In Illinois, Ameritech has implemented, on a limited basis, a wholesale rate structure that generally discounts residence services by six percent and business services by ten percent, with larger discounts available in return for volume and time commitments on the part of resellers.

[2] Time Warner Response to AT&T Filing, pp. 9-10.

[3] TW-R is in a unique situation in that it has a cable network in place in Rochester, as well as an established customer base of cable subscribers.

Based on the experience under the OMP, viable resale competition has not developed under the current rate structure. Given this, and because there are no viable alternatives to RTC's wholesale service at this time, and RTC has been unable or unwilling to modify the existing discount structure, Commission intervention is necessary at this point.

750 Minute Flat Rate Cap

The OMP Agreement provides for resellers to purchase residential service on a bundled flat rate basis, with usage in excess of 750 minutes per month charged on a per-minute basis. This restriction was intended to remove any incentive to resellers to sell subsidized residential service to business customers.[1] The 750 minute threshold was based on estimates of numbers of calls and holding times of measured rate business customers, because at the time, RTC had no data on usage patterns of its flat rate customers.

AT&T asserts that this cap is having the effect of raising the wholesale rate from 5% below the comparable retail rate to substantially above it for residential service. RTC contends that the 750 minute cap is warranted both to deter resellers from selling residential service to business customers and to bring the rate for residential service closer to cost.

While we continue to be concerned about the resale of subsidized residential service to business customers, the 750 minute cap appears to be unreasonably impeding market growth. Moreover, it is not clear whether the 750 minute cap is fulfilling its intended purpose. At the time the 750 minute cap was approved, the Commission expressed the caveat that market experience would determine its effectiveness and the issue would

[1] The company also agreed to take a representative sample of telephone numbers purchased by resellers to establish the authenticity of the end users as residential customers. Resellers violating the prohibition on resale of residential service to business customers are subject to a penalty.

be subject to further review. This issue needs further examination now, including whether other approaches are available that would obviate the need for the 750 minute cap.

Network Databases

The OMP Agreement provides that carriers taking service from RTC can arrange for direct (electronic) access into RTC's customer records, order entry, and repair record databases. This feature is an important part of the overall resale structure, because it would allow resellers to provide a level of customer service virtually identical to that which RTC is able to provide its own retail customers. RTC was permitted to charge carriers, pursuant to tariff, for database access and maintenance, as well as for any necessary training. The company's initial compliance filing included tariffs for these services. However, the company subsequently indicated that it would be unable to provide this service at the outset of the OMP, and removed the applicable sections from its tariffs.

AT&T states that it is "severely disadvantaged" by RTC's failure to provide the electronic access to databases required by the OMP Agreement. Other current and potential competitors have also complained to both staff and the company about the lack of progress to date in implementing electronic access to the company's databases.

RTC replies that it has been hampered in its efforts to mechanize its systems by changes in AT&T's requirements. Further, it states that AT&T was aware of the delays in RTC's ability to allow mechanized access at the outset of the OMP, and AT&T chose to enter the market under these less-than-optimal conditions.

The lack of an electronic interface is forcing resellers to provide a cumbersome and more primitive interface with their customers than RTC is able to provide its own customers. An auxiliary problem has also arisen, in large part due to this deficiency. AT&T, in its petition, and other resellers, have expressed concern that, while they are subject to the same PSC service standards as RTC, these standards make no distinction between wholesale and retail providers, and simply do not address carrier-to-carrier standards. This issue has been raised in the Committee on Standards and Cooperative Practices (CSCP) as well, but has not been resolved.

Under the current standards, RTC is able to consume the entire allowed interval for installation and repair. In cases where RTC consume the entire interval, resellers may still have tasks to complete on the service orders and therefore cannot meet the applicable service standard. Any failure to meet service standards that occurs typically is charged against the reseller, even in cases where the reseller may not have been aware that a lapse occurred. Moreover, a service standard lapse likely means that the resellers' customers are not receiving the same quality of service as RTC's customers through no fault or control of the resellers.

It was reasonable to expect that the necessary modifications to the company databases would require some time to complete, but inasmuch as the OMP Agreement was signed in May 1994, it is reasonable to question why RTC has implemented only what is basically no more than an e-mail service by November 1995, and why its plans to deliver the full electronic product promised in the OMP Agreement remain tenuous. The Commission's intention is to have customers no worse off under the resale structure than they were under the monopoly structure. In other words, extending the service standard intervals would not be an option in formulating a solution to this problem.

Although this is the type of issue that the CSCP was formed to address, a resolution has not been forthcoming. Both the electronic access and service standard issues must be resolved in the process established by this order. While this process unfolds staff should continue to monitor the resellers' and RTC's performance under the service standards. Staff's ongoing monitoring efforts should include an investigation of whether RTC is providing a consistent level of service among its own and its resellers' customers.

Transfer of Customer Information

With the growth of resale competition in the Rochester market, the issue of the transfer of customer information has become an important one. Currently, resellers have to reply to an eight-page RTC service order form when a customer requests service, whether or not that customer is an existing RTC customer. Customers are often not aware of what service and features are currently on their lines, and resellers do not have access to this information. RTC will not release this information to the resellers without a written authorization from the customer, which resellers say imposes a significant impediment on them, creating, at best, a delay of several days in changing carriers.

In its petition, AT&T takes the position that this information belongs to the customer, not RTC, and the customer should be permitted to provide authorization for its release in a reasonable manner. AT&T notes that there is a long history of permitting verbal authorization for the transfer of service in the long distance arena, and in fact RTC itself permits this in processing primary interexchange carrier changes. In response, RTC states that its refusal to allow the release of customer information without written authorization stems from its concerns about "slamming."

In the long distance market, a customer can change providers with a simple phone call in a matter of minutes. Although customers should be aware of the services and features that they are purchasing from any carrier, and should be provided the opportunity to review and change these features when changing service providers, it does not appear reasonable to force customers to spend ten-to-twenty minutes on the phone with a reseller's service representative when the customers simply want to change from RTC to another carrier and keep the same level of service. Staff and the competitors have discussed this issue with RTC, and RTC has consistently declined to modify its order process.

Credit Information

AT&T states that the number of applicants for its service that have poor payment histories with RTC has increased. A significant number of these applicants informed AT&T that RTC recommended that they call AT&T for service. RTC refuses to provide AT&T with the credit history for these customers, but for $2 per customer RTC will inform AT&T of whether the customer was terminated for non-payment. RTC denies that it has recommended that its customers with credit problems take service from AT&T.

Credit information concerns will increase in significance as more competitors enter the market. As a result, it will become necessary for providers to develop a system for sharing customers' credit information. However, any such system must be developed in conjunction with staff, with particular consideration to protecting the privacy of customers.

The parties to the OMP should address this issue when they reconvene. In the meantime, the OMP Agreement specifically prohibits RTC from releasing to any other entity competitively sensitive information, which includes customer information, about a customer without permission of the customer.[1] Accordingly, RTC should provide customer credit history information to third parties only with the customer's consent.

[1] OMP Agreement, Section III. B., p. 42

Other Issues

AT&T's petition also raises issues with respect to RTC's wholesale bills and the lack of any means to verify the accuracy of the bills, as well as RTC's filed tariff for its Thoroughfare Guide (T-Guide)[1] and the requirement that a reseller must pay a separate fee for the T-Guide. AT&T asserts that any additional T-Guide charge is "blatant double billing by RTC," because the T-Guide is part of the basic service for which resellers are charged 95% of the retail rate. Other companies have filed, or indicated their intention to file, complaints on this tariff as well. These matters also need to be addressed here, and in the interim, the Commission has approved RTC's T-Guide tariff on a temporary basis, subject to refund.[2]

DISCUSSION

The complaints filed by AT&T and SBMS, the responses of RTC and TW-R, staff's discussions with resellers, and staff's analysis of these issues, make it clear that the competition framework in the Rochester market needs further exploration. However, the issues need further development before a final determination can be made. In addition, as competition has developed on a resale level, it has become evident that the procedures in place for the transfer of customer information between providers must be reviewed.

To provide a basis for further discussion and review, within 30 days of the issue date of this order, RTC should fully demonstrate in a written response:

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[1] A T-Guide is used by both facilities-based carriers and resellers to confirm street address and municipality information, particularly for E-911 databases.

[2] Case 95-C-0725, Ordinary Tariff Filing of Rochester Telephone Corp. to introduce Thoroughfare Guide database product, Approved as Recommended and so Ordered (issued December 14, 1995).

1) why the 5% wholesale/retail differential should not be modified, using long-run avoided cost and other appropriate factors as a basis for establishing the proper discount;

2) why the 750 minute flat rate cap should not be eliminated;

3) why the company should not implement the full electronic interface originally provided for in the Agreement, or further increase the wholesale discount to reflect the lesser grade of service provided to resellers; and

4) why customers should not be given the option of transferring, intact, their existing package of services and optional features when changing from RTC to a reseller.

The parties to the Open Market Proceeding shall be reconvened to consider RTC's response to this order as well as the other issues discussed herein, including carrier-to-carrier standards, customer credit information, wholesale bill reconciliation, and RTC's T-Guide tariff, and attempt to resolve the issues collaboratively within ninety days of the issue date of this order. Given the time frame, pending RTC's submission, an Administrative Law Judge shall convene the parties to establish a schedule for the collaborative process. If resolution is not reached within ninety days of the issue date of this order, the outstanding issues shall be litigated on an expedited basis before an Administrative Law Judge.

In addition, AT&T requested reconsideration of Opinion No. 94-25, adopting the OMP.[1] The process implemented by this order will provide a forum in which to resolve the issues underlying AT&T's request for reconsideration; therefore, AT&T's request is granted to the extent it is consistent with the actions taken herein. AT&T's request for a declaratory ruling is denied.

The Commission orders:

1. Rochester Telephone Corp. shall submit a filing that responds to the issues defined in the order within thirty days of the issuance date of this order.

2. The matters raised in this order are referred to an Administrative Law Judge to commence the process described in this order.

3. AT&T's petition for a declaratory ruling is denied.

4. AT&T's request for reconsideration of Opinion No. 94-25 is granted to the extent it is consistent with this order, and in all other respects denied.

5. Rochester Telephone Corp. shall provide customer information to third parties only with the customer's consent.

6. This proceeding is continued.

By the Commission,

(SIGNED) JOHN C. CRARY
Secretary

[1] AT&T's request for reconsideration is timely, despite the fact that the Commission's Rules of Procedure require requests for reconsideration of a Commission order within thirty days of service of the order (see 16 NYCRR section 3.4). On April 6, 1995, the Commission denied without prejudice AT&T's timely-filed petition for rehearing of Opinion No. 94-25, without either accepting or rejecting AT&T's perspective.