



Attorney General
Betty D. Montgomery

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February 11, 2000

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Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Suite TW-A325
Washington, D.C. 20554

RE: Comments of the Public Utilities
Commission in File No. NSD-L-00-06
and CC Docket 96-98.

Dear Ms. Salas:

Enclosed please find the original and 5 copies of the above referenced document. Please return one time-stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jodi J. Bair".

Jodi J. Bair
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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
AT&T Corp. Petition for Declaratory) CC Docket No. 96-98
Ruling that Ameritech Ohio's Dialing) File No. NSD-L-00-06
Parity Cost Recovery Mechanism)
Violates 47 C.F.R. § 51.215.)

COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

I. BACKGROUND

On January 14, 1999, the Public Utilities Commission of Ohio (PUCO) approved Ameritech Ohio's (Ameritech) tariff application to recover costs directly associated with the implementation of intraLATA presubscription. Ameritech's proposal based recovery on a minutes of use (MOU) charge applied to originating intraLATA switched access minutes. The PUCO directed Ameritech to track actual implementation costs and MOUs of intraLATA toll traffic for 12 months from the date of intraLATA presubscription implementation. *In the Matter of the Application of Ameritech Ohio to Revise its Ameritech Tariff, PUCO No. 20, To Add IntraLATA Presubscription*, PUCO Case No. 96-1353-TP-ATA (Opinion and Order at 2) (January 14, 1999) (Attachment A).

Over the last year, Ameritech has been collecting this data and filed an MOU rate with the PUCO on February 1, 2000. *Id.* (Tariff) (February 1, 2000). On February 11, 2000, AT&T filed a motion with the PUCO, requesting that the PUCO suspend implementation of Ameritech's February 1, 2000 tariff pending the outcome of a declaratory

ruling petition filed by AT&T at the Federal Communications Commission (FCC). *Id.* (Motion) (February 11, 2000). The PUCO Staff supported this suspension because of the pending FCC declaratory action. Although the PUCO has not yet ruled on the suspension request, the PUCO will forward that ruling to the FCC as soon as it is issued.

In approving the Ameritech tariff, the PUCO concluded that the calculation of the MOU rate using only the intraLATA switched access minutes of the IXC's was in compliance with the FCC's rule.¹ The PUCO reasoned that Ameritech absorbing the costs associated with the 90-day no-charge period was a mechanism that was competitively neutral and required both Ameritech and IXC's to share in the costs. The PUCO found that the calculation of Ameritech's cost recovery rate was a reasonable interpretation of the FCC requirement that any cost recovery mechanism be competitively neutral. The PUCO submits that the Ameritech cost recovery tariff violates neither the Telecommunications Act of 1996 nor the FCC's Rule 215 (47 C.F.R. 51.215).

¹ In the Ameritech tariff proceeding (96-1353-TP-ATA) (Entry on Rehearing at 4) (March 18, 1999) (Attachment B), the PUCO did not repeat all of its reasoning regarding these arguments, but referred to the October 8, 1998 and December 9, 1998 decisions in Case Nos. 95-845-TP-COI where the PUCO found this cost recovery mechanism to be consistent with the guidelines and also consistent with the FCC's requirement that recovery be competitively neutral. All of these PUCO orders are attached to AT&T's petition.

II. DISCUSSION

A. The PUCO's decisions regarding Ameritech's cost recovery for 1+intraLATA dialing parity implementation are consistent with the FCC's rule on cost recovery.

The Commission's rule on the cost recovery for dialing parity states that "[t]he LEC must recover such costs from all providers of telephone exchange service and telephone toll service in the area served by the [Local Exchange Carrier (LEC)] LEC, including that LEC." 47 C.F.R. § 51.215 (West 1999) (emphasis added). AT&T argues that Ameritech's tariff "imposes all of Ameritech's incremental costs of implementing dialing parity on Ameritech's competitors." AT&T Petition at 10. AT&T further asserts that Ameritech's tariff cannot be reconciled with the FCC's directive that the costs be recovered from all providers of telephone exchange service and telephone toll service. *Id.*

AT&T overlooked the PUCO's orders that expressly direct the LEC to share in the implementation costs. The LEC must forego recovery of costs incurred for Primary Interexchange Carrier (PIC) changes during the initial 90-day no-charge period. This is a significant expense to Ameritech. And by this 90-day waiver, Ameritech directly shares the cost of dialing parity implementation. AT&T has yet to address Ameritech's waiver of this fee. AT&T has not challenged the waiver as a disallowable implementation expense because it is an obvious cost incurred as part of the 1+ intraLATA dialing parity. By foregoing the PIC change charge, Ameritech's tariff follows the rule's requirement that the LEC *share* in the costs of implementation.

As the FCC stated in the *Second Report and Order*, the costs associated with dialing parity implementation should be recovered in the same manner as the costs of

interim number portability.” *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order*, FCC CC Docket 96-98 at ¶ 83 (August 8, 1996). AT&T argued in its petition that “imposing the full incremental cost of interim number portability solely on new entrants would place them at an ‘appreciable, incremental cost disadvantage relative to another service provider when competing for the same customer’ and would, therefore, violate the first criteria of the competitive neutrality mandate.” AT&T Petition at 7. AT&T again ignores any costs associated with the expenses that an incumbent LEC incurs by waiving the PIC charge for 90 days. This waiver of the PIC charge constitutes a real, substantial cost to Ameritech that AT&T overlooks. This cost clearly constitutes a sharing of implementation costs on behalf of the LEC and does not, as AT&T claims, impose the full costs solely on IXCs.

In addition to the cost-sharing requirement, Rule 215 provides that “[t]he LEC shall use a cost recovery mechanism established by the state.” 47 C.F.R. § 51.215 (West 1999). Thus, state commission's were left to formulate the specific cost recovery mechanisms. The parameters that the FCC provided in this regard are (1) that the LEC and the other telephone providers share in the costs of dialing parity implementation and (2) that the cost allocation *established by the state* be competitively neutral. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order*, FCC CC Docket No. 96-98 at ¶ 92 (August 8, 1996).

The PUCO followed this FCC standard when it approved the proposed tariffs in which Ameritech and the IXCs share the costs in a competitively neutral manner. The FCC did not dictate the mathematical formula that had to be used in making this allocation. In fact, the FCC established a broad guideline for states to follow. This guideline provided no rigid formulaic cost recovery methodology. Had the FCC intended to pre-

scribe the exact allocation, the rule should have provided such a methodology. The FCC did not.

What the FCC did do was direct *the states to establish* this methodology. The PUCO made a reasonable approximation that the 90-day no charge period would be a significant cost to Ameritech and the IXC's cost would be calculated based on their usage of the LEC's system. In this manner, both the LECs and the IXCs share in the costs. They simply assimilate the costs differently.

What the FCC did provide was a broad rule that not only allowed the state to establish the cost recovery mechanism, but also provided the states with guidance when developing the methodology. The FCC's rule did not want the state to adopt a mechanism that: (1) Gives one service provider an appreciable cost advantage over another service provider; or (2) Has a disparate effect on the ability of a competing provider to earn a normal return on their investment. 47 C.F.R. 51.215 (b) (West 1999).

AT&T made no argument that it will not be able to make a normal return on its investment. AT&T has simply stated that the method is not competitively neutral. AT&T has not cited any specific examples of how this type of cost recovery, where Ameritech is sharing in these costs, is not competitively neutral. The goal of the 1+ intraLATA dialing parity cost recovery is to get intraLATA competition up and running. One of the most important aspects of intraLATA competition is to get the customer to actually make the PIC change. There is an expense to the incumbent carrier in switching that customer to another carrier for intraLATA traffic. Ameritech is going to forego collecting that expense for the first 90 days of the change. Payment of the PIC change fee otherwise serves as a practical barrier to customer choice. Ameritech's tariff makes it easier for customers to switch long distance carriers and, thus, promote competition.

The PUCO reasoned that this constitutes LEC sharing in a competitively neutral manner.

Consistent with both the FCC and the PUCO's orders on cost recovery, both the LECs and the IXCs are sharing the costs associated with 1+ intraLATA dialing parity. The companies simply absorb these costs in a different form. Ameritech must absorb the costs associated with the 90-day no-charge PIC changes; whereas, the IXCs pay a charge for each minute of use generated by customers who presubscribe with the IXCs. Through this method of cost allocation, Ameritech's shares in the cost of intraLATA presubscription implementation.

B. If the FCC does conclude that Ameritech's tariff violates Rule 215 (contrary to the PUCO's position), then the FCC should merely issue a narrow declaratory ruling and not attempt to impose any specific relief in this case.

As it was ordered by the PUCO to do, Ameritech tracked actual dialing parity implementation costs and MOUs for 12 months and filed this information with the PUCO on February 1, 2000. *In the Matter of the Application of Ameritech Ohio to Revise its Ameritech Tariff, PUCO No. 20, To Add IntraLATA Presubscription, PUCO Case No. 96-1353-TP-ATA (Ameritech Tariff Filing) (February 1, 2000).* If the FCC believes that the Ameritech's recovery mechanism violate Rule 215 (despite the PUCO's position that it does not), the PUCO — not the FCC — should be the entity that actually calculates and approves a modified cost recovery mechanism. In this docket, the FCC *need only determine whether Ameritech's tariff violates Rule 215.* Indeed, this is the only request made in AT&T's petition for a declaratory ruling and the FCC must be careful not to exceed the scope of this proceeding in its ruling. No issue has been raised relative to

other Ohio carriers and the requested relief is purely declaratory in nature relative to Rule 215.

On February 10, 2000 (after the petition was filed to initiate the FCC proceeding), AT&T filed a request that the PUCO suspend Ameritech's pending tariff for eight months pending the FCC's decision in the instant docket. *Id.* (Motion to Suspend) (February 10, 2000). The PUCO Staff recommended that the PUCO grant this suspension. (Letter) (February 10, 2000). Given the timing of those filings, the PUCO has not yet ruled on AT&T's suspension request. Since the PUCO's ruling on AT&T's suspension request could affect the timing of the FCC's decision in this docket, the PUCO will forward a copy of its ruling to the FCC when that decision is made.

If the FCC does conclude that the method proposed by Ameritech and approved by the PUCO is not in compliance with Rule 215 (contrary to the PUCO's position), then the FCC should merely issue its declaratory ruling and not attempt to impose any specific relief against the PUCO or address the particular facts pending before the PUCO. The formulation of cost recovery mechanisms for dialing parity implementation was left to state commissions, both by the 1996 Act and by the FCC's Rule 215. Further, attempting to dictate specific requirements to the PUCO regarding the factual details of Ameritech's proposed tariff would unduly interfere with the PUCO's management of its own proceedings and would likely increase the likelihood that the PUCO would challenge the FCC's decision.

As a related matter, the PUCO questions the FCC's ability to impose strict requirements on state commissions regarding dialing parity cost recovery mechanisms. Although 47 U.S.C. § 251(e) grants the FCC special authority over recovery of numbering administration and number portability costs, Congress did not do so relative to dialing parity. Moreover, because Rule 215 does not dictate a rigid mechanical formula,

any new ruling in this docket that creates a mechanical or inflexible result would be subject to challenge at this time.

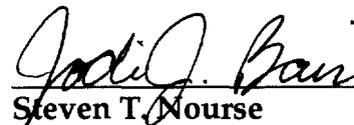
At most, should the FCC conclude that the method proposed by Ameritech and approved by the PUCO is not in compliance with Rule 215, the FCC could request that the PUCO recalculate Ameritech Ohio's cost recovery mechanism in accordance with the FCC's declaratory ruling. Given that Ameritech's final cost recovery mechanism has not been approved or implemented, and since the PUCO has only recently received all of the pertinent data to do so, the PUCO is procedurally postured to order Ameritech to formulate its cost recovery mechanism under either method (subject to any decision by the PUCO to challenge such an FCC ruling).

III. CONCLUSION

Based on the foregoing, the FCC should reject AT&T's request for declaratory relief and endorse the PUCO's approval of Ameritech's dialing parity cost recovery mechanism.

Respectfully submitted,

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Ameritech Ohio to Revise its) Case No. 96-1353-TP-ATA
Ameritech Tariff, PUCO No. 20,)
To Add IntraLATA Presubscription.)

FINDING AND ORDER

The Commission finds:

- (1) Section 251(b)(3) of the Telecommunications Act of 1996 (1996 Act) requires all local exchange carriers (LECs) to implement dialing parity. On February 20, 1996, the Commission, in Case No. 95-845-TP-COI (local service guidelines), ordered LECs except Ameritech Ohio (Applicant) to implement intraLATA toll dialing parity by June 12, 1997. Ameritech Ohio was directed to have implemented dialing parity on an intraLATA basis for all of its subscribers at such time that it receives approval of the federal competitive checklist for Bell Operating Companies pursuant to Part III, Section 271(c)(2)(b) of the 1996 Act, or by February 9, 1999, which ever occurs sooner.
- (2) On December 12, 1996, the Applicant filed its original proposed tariff in the above captioned case pursuant to Case No. 95-845-TP-COI. On November 7, 1997, the Applicant amended its application with a proposed revised tariff pursuant to Staff recommendations.
- (3) The Applicant's proposed tariff and implementation plan adheres to the Commission's local service guidelines. The plan includes appropriate customer and carrier notices. The Applicant intends to notify customers no later than 60 days after the implementation of intraLATA presubscription. The Applicant will give customers, no less than, 90 days in which to make an initial, no-charge presubscription selection. The proposed tariff includes a presubscription customer charge of \$5.00 for the first line and \$1.50 for each additional line presubscribed at the same time.
- (4) The Commission's local service guidelines (X.F.) state that the incremental costs directly associated with the implementation of intraLATA toll presubscription shall be borne by providers of telephone exchange service and telephone toll service through a Commission-approved switched access per minute of use (MOU) charge applied to all originating intraLATA switched access minutes generated on intraLATA presubscribed lines. The FCC in its Second Report and Order

ORDERED, That, in accordance with the above findings, with the exception of the implementation cost recovery MOU rate, the application of the Applicant to revise its tariff to add intraLATA presubscription is approved. It is, further,

ORDERED, That, in accordance with the Applicant's proposed tariff and Finding (6) above, the Applicant file in this case, its proposed MOU rate for cost recovery no later than 12 months and 15 days after the implementation of intraLATA toll presubscription. The recovery mechanism will automatically become effective on the 31st day after filing, unless otherwise acted upon by the Commission. It is, further,

ORDERED, That this case should remain open until the MOU rate for cost recovery is effective. It is, further,

ORDERED, That Applicant is authorized to file in final form, three complete printed copies of its final tariffs consistent with this Finding and Order. Applicant should file its tariffs, under one cover letter, which references both this case number, and its "TRF" case number. 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 nothing in this Finding and Order shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That nothing in this Finding and Order constitutes state action for the purpose of the antitrust laws. It is not our intent to insulate the Applicant from the provision of any state or federal law which prohibits the restraint of trade. It is, further,

ORDERED, That a copy of this Finding and Order be served upon the Applicant and its counsel.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Craig A. Glazer, Chairman

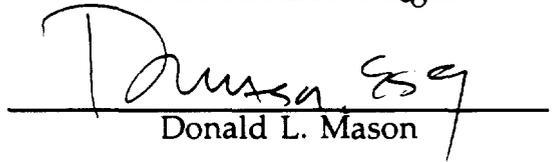
Jolynn Barry Butler



Judith A. Jones

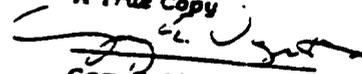


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Gary E. Vigorito
Secretary

in CC Docket No. 96-98 also allows for the recovery of incremental costs strictly necessary to implement dialing parity.

- (5) The proposed tariff of the Applicant includes a mechanism for the recovery of the incremental costs directly associated with the implementation of intraLATA presubscription based on a MOU charge applied to originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service. The Applicant proposes that the cost recovery charge would become effective one year and 45 days after the implementation of intraLATA presubscription. The Applicant will track actual implementation costs and minutes of use for 12 months from the date of intraLATA presubscription implementation. No later than 12 months and 15 days after the date of implementation, the Applicant will file with the Commission an actual MOU rate in the above-captioned case. The Applicant's proposed MOU cost recovery charge will become effective on the 31st day after filing, unless otherwise acted upon by the Commission, and will remain in effect for a period of three years.
- (6) The introduction of intraLATA toll presubscription will provide end-users with more choice in and control of the design of their telecommunications services. IntraLATA presubscription also provides for more competitive opportunities in the opened market.
- (7) No one has sought intervention or otherwise raised objection in this case.
- (8) The Staff of the Consumer Services Department has reviewed and approved the proposed customer notice.
- (9) After a thorough review of this application, Staff agrees with the proposed tariff and plan for implementation and, therefore, has recommended approval of the application by the Commission.
- (10) This application was filed pursuant to Section 4909.18, Revised Code, and the Commission finds, as the Applicant alleges, that the application is not for an increase in any rate, joint rate, toll, classification, charge, or rental and does not appear to be unjust or unreasonable and should be approved. Therefore, the Commission finds it unnecessary to hold a hearing in this matter.

It is, therefore,

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
 Ameritech Ohio to Revise its Ameritech)
 Tariff, PUCO No. 20, To Add IntraLATA) Case No. 96-1353-TP-ATA
 Presubscription.)

ENTRY ON REHEARING

The Commission finds:

- (1) On January 14, 1999, the Commission issued a finding and order approving Ameritech Ohio's (Ameritech) proposed tariff and implementation plan for intraLATA toll dialing parity as consistent with the local service guidelines adopted in *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI (95-845), entry on rehearing issued February 20, 1997.

Ameritech's proposed tariff included a mechanism for the recovery of the incremental costs directly associated with the implementation of intraLATA presubscription based on a minutes-of-use (MOU) charge applied to originating intraLATA switched access minutes generated on lines that are presubscribed for intraLATA toll service. In order to develop an appropriate MOU charge, Ameritech proposed to track actual implementation costs and MOUs for 12 months and then file, within 12 months and 15 days of the implementation of presubscription, an actual MOU rate in this case. Ameritech's proposed MOU cost recovery charge would then become effective on the 31st day after filing, unless otherwise acted upon by the Commission, and will remain in effect for a three-year time frame. In approving Ameritech's application, the Commission found that no one had sought intervention or otherwise raised an objection in this case.

- (2) On February 16, 1999, AT&T Communications of Ohio, Inc. (AT&T) and MCI Telecommunications Corporation (MCI)¹ filed a joint application for rehearing and a motion for leave to intervene in this proceeding. In support of the motion for leave to intervene, AT&T/MCI argue that Section

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¹ AT&T and MCI shall jointly be referred to throughout as AT&T/MCI or movants.

4903.10, Revised Code, affords interested persons an opportunity to seek to intervene in cases at the rehearing stage provided that the parties' failure to enter an appearance prior to the issuance of the order was due to "just cause" and that the interests of the applicants were not adequately considered. AT&T/MCI maintain that their appearance at this stage of this proceeding satisfy both criteria set forth in Section 4903.10, Revised Code.

In support of the movants' argument that their failure to enter an appearance prior to an issuance of the order was due to just cause, AT&T/MCI argue that, on its face, the Ameritech tariff filing complies with local service guideline X.F. as AT&T/MCI understood that guideline and 47 C.F.R. §51.215. Thus, neither the original tariff proposal nor the revision would have given rise to a request for intervention and a hearing by AT&T or MCI. Movants also contend that the United States Supreme Court ruling in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721 (1999), was issued after the Commission's January 14, 1999 order in this case so AT&T/MCI had no opportunity to bring that decision to the Commission's attention prior to the rehearing stage of this case. As a final matter, AT&T/MCI aver that, similar to Case Nos. 95-845-TP-COI *et al.*,² AT&T/MCI had no notice that the Commission was going to interpret local service guideline X.F. and approve a cost recovery mechanism for Ameritech that is both unreasonable and unlawful. In support of the argument that the movants' interests were not adequately considered, AT&T/MCI assert that, as interexchange carriers, their interests were not considered in the Commission's decision making process.

- (3) Ameritech filed a memorandum contra the joint application for rehearing of AT&T/MCI on February 26, 1999. Ameritech argues that the movants have done nothing more than parrot the statutory language found in Section 4903.10, Revised Code, rather than make the specific showings called for by that language. Ameritech also observes that the movants' application for rehearing should likewise

² By finding and order issued October 8, 1998 and entry on rehearing issued December 9, 1998, the Commission, in a number of consolidated cases hereafter denoted as Case Nos. 95-845 *et al.*, previously approved the presubscription cost recovery tariffs and rates for the implementation of intraLATA dialing parity for most of the small and independent incumbent local exchange carriers (ILECs).

be denied because the application for rehearing addresses issues that were not decided in the finding and order and because the movants seek relief that is not appropriate in this case.

- (4) Before the Commission has the authority to address the substantive arguments raised by the movants on rehearing, the Commission must determine that we have the jurisdiction to hear those arguments. The movants have argued that the Commission has the jurisdiction, pursuant to Section 4903.10, Revised Code, to consider the substantive arguments made on rehearing. In order to establish that the Commission has the jurisdiction to consider the substantive arguments made by AT&T/MCI on rehearing the Commission must find, pursuant to Section 4903.10, Revised Code, that:
- (a) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,
 - (b) The interests of the applicant were not adequately considered in the proceeding.

At the outset, we note that we are disappointed that AT&T and MCI did not make their concerns regarding Ameritech's presubscription implementation costs not being recovered on a competitively neutral basis known to us sooner. Ameritech's tariff filing was initially made on December 12, 1996 and revised on November 7, 1997. Additionally, the Commission notes that, for most of the remaining incumbent local exchange carriers (ILECs) in Ohio, the Commission did rule on the applicability of those carriers' tariff language as well as their proposed cost recovery mechanism in consolidated Case Nos. 95-845-TP-COI *et al.* That ruling was issued on October 8, 1998, with an entry on rehearing being issued on December 9, 1998. Thus, the Commission is greatly concerned with the chronology of how these arguments have been put before us. In addition to their other arguments, however, The movants also rely heavily on the recent decision of the United States Supreme Court in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999), issued on January 25, 1999.

The second standard an entity must satisfy in order to justify being granted leave to intervene to file an application for rehearing under Section 4903.10, Revised Code, is that the interests of the applicant were not adequately considered in the proceeding. In support of their argument, the movants posit that the interests of AT&T and MCI, as interexchange carriers who will bear the brunt of the presubscription implementation charges, were not considered in the Commission's decision-making process. The Commission notes that, while we did not consider the interests of AT&T and MCI individually, we did consider the interests of interexchange carriers generally as the primary entities effected by the MOU cost recovery mechanism.

- (5) Notwithstanding the concerns addressed above on the timing of the movants' application for rehearing, the Commission finds that AT&T/MCI should be granted leave to file an application for rehearing in this matter. AT&T and MCI have satisfied us that there is just cause presented to warrant granting the movants' intervention in order to protect their interests in this matter.
- (6) Having determined that AT&T/MCI should be granted leave to intervene at this stage of this matter; it is now appropriate to address the movants' substantive arguments. Many of the arguments AT&T/MCI make in their application for rehearing were fully considered and addressed in consolidated Case Nos. 95-845-TP-COI involving most of the other incumbent local exchange carriers in Ohio. AT&T/MCI fully participated in those consolidated cases including seeking rehearing of the October 8, 1998 Finding and Order which was issued on December 9, 1998. Neither AT&T nor MCI have argued that Ameritech's tariff language approved in our January 14, 1999 Finding and Order, and which is the subject of this rehearing petition, varies in any appreciable respect from the tariff language we approved in consolidated Case Nos. 95-845-TP-COI *et al.* Those consolidated cases are currently on appeal to the Ohio Supreme Court in Case No. 99-0290 filed by AT&T on February 5, 1999. To the extent the Commission has already considered many of those arguments on rehearing and because movants have raised nothing new, other than the argument addressed below, the Commission finds that the movants application for rehearing should be denied.

- (7) The remaining assignment of error by AT&T/MCI is that the Commission's January 14, 1999 Finding and Order in this matter is inconsistent with the FCC's determinations in 47 C.F.R. §51.215 and the Second Report and Order *In the Matters of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, *et al.* Rehearing is denied on this assignment of error as well.

The reinstatement of 47 C.F.R. §51.215 by the United States Supreme Court does not change either this Commission's reasoning or its outcome. This Commission has acted in a manner consistent with the applicable FCC orders in establishing a competitively neutral cost recovery mechanism. We have repeatedly made that determination throughout the various orders in Case No. 95-845-TP-COI. The movants do not argue, nor can they, that this Commission has in any way, through this case, adopted, amended, or even applied local service guideline X.F. differently than was spelled out in our previous decisions in Case No. 95-845-TP-COI. Therefore, because we believe our intraLATA 1+ cost recovery mechanism is consistent with our past orders and with all applicable FCC rulings, the movants arguments on rehearing are denied.

- (8) Having found that nothing in the movants application warrants rehearing, the application for rehearing filed by AT&T and MCI on February 16, 1999 is denied.

It is, therefore,

ORDERED, That the motion seeking leave to intervene in order to file an application for rehearing filed by AT&T Communications of Ohio, Inc. and MCI Telecommunications Corporation is granted as set forth herein. It is, further,

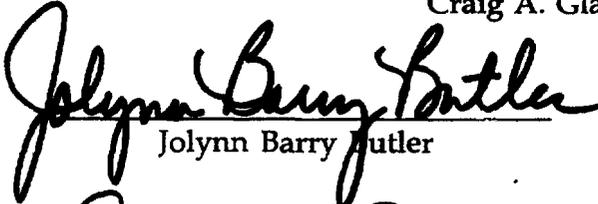
ORDERED, That the application for rehearing filed by AT&T Communications of Ohio, Inc. and MCI Telecommunications Corporation is denied as set forth herein. It is, further,

ORDERED, That this case should remain open until the intraLATA presubscription MOU cost recovery rate is effective. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon AT&T Communications of Ohio, Inc., MCI Telecommunications Corporation, Ameritech Ohio, their respective counsel, and any other interested person of record.

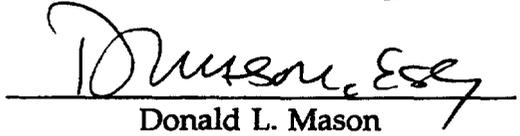
THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman


Jolynn Barry Butler


Ronda Hartman Fergus

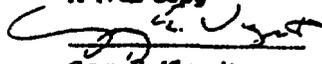

Judith A. Jones


Donald L. Mason

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Gary E. Vigorito
Secretary