

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of AT&T)
Communications of Ohio, Inc.'s Petition for)
Arbitration of Interconnection Rates, Terms)
and Conditions and Related Arrangements) Case No. 96-752-TP-ARB
With Ohio Bell Telephone Company dba)
Ameritech Ohio.)

ENTRY ON REHEARING

The Commission finds:

- (1) On January 15, 1997, the Commission issued its Opinion and Order (Order) in this proceeding, approving the interconnection agreement between Ameritech Ohio (Ameritech) and AT&T Communications of Ohio, Inc. (AT&T). In that Order, the Commission, among other things, clarified its Arbitration Award, issued on December 6, 1996, that end-user contracts shall be available for resale at the full wholesale discount off the contract rate. In doing so, the Commission indicated that contracts offered by Ameritech to its end users should be provided for resale in a similar fashion to how Ameritech is required to make available promotional offerings that are for a period greater than 90 days. On February 14, 1997, Ameritech filed an application for rehearing of the Order and on February 24, 1997, AT&T filed a memorandum contra the application for rehearing.
- (2) On March 11, 1997, the Commission issued an entry on rehearing in this matter clarifying the Commission's policy on the resale of contracts and on the application of the full wholesale discount to contracts for resale. The Commission noted that, although this policy may alter the way in which Ameritech enters into contracts in the future, a uniform discount which would apply to the resale of contracts serves the public interest. We also noted our concern that Ameritech's ability to offer special contract arrangements which may impact economic development in the state of Ohio could be impeded by such a blanket requirement. Therefore, we stated that we would consider allowing Ameritech to demonstrate upon filing that a particular contract has been specifically entered into for the purpose of economic development in the state of Ohio, and that the contract rate for such

contract reflects certain avoided costs which would offset the wholesale discount to be applied to the contract.

- (3) On April 11, 1997, Ameritech filed an application for rehearing of our March 11, 1997 Entry on Rehearing. Ameritech contends that the Commission's policy regarding resale of contracts is unclear. Ameritech first argues that a reseller should not be able to purchase an end user contract that Ameritech has with an existing customer and then resell that contract to the same customer, with the additional avoided cost discount. Ameritech requests that the Commission clarify its order to state that AT&T's ability to offer the end user contracts is limited solely to the unique class of similarly situated customers and that existing Ameritech end user contract customers are not within that class. Ameritech also contends that the fresh look provisions (fresh look) of Section VI.J. of the Commission's Local Service Guidelines should not apply to an Ameritech end user contract customer in situations where a new entrant carrier (NEC) seeks to offer the same contract on a resale basis to that customer. Ameritech requests that the Commission clarify that fresh look should not allow an existing end user customer of Ameritech to terminate its contract in order to take the same contract on a resold basis from AT&T.

Ameritech also contends that the Commission has erroneously concluded that it would be overly difficult to determine, in a timely manner the actual avoided costs of individual end user contracts and the public interest is best served by applying the uniform 20.29/25 percent wholesale discount to end user contracts purchased for resale by AT&T. Ameritech claims that the premise that more accurate discounts cannot be efficiently determined consistent with the timely provision of such contracts in the resale market is incorrect. Ameritech states that its preliminary analysis indicates several significant respects in which the wholesale percent discounts substantially and uniformly overstate the discount for end user contracts. Ameritech contends that the public interest will be disserved if end user contracts are discounted by amounts that are substantially in excess of their actual avoided costs.

- (4) On April 18, 1997, AT&T filed a memorandum contra to Ameritech's application for rehearing. AT&T argues that Ameritech's first claim for rehearing does not address matters

determined in the rehearing entry and, therefore, was not timely filed pursuant to Section 4903.10, Revised Code. AT&T argues that Ameritech contends the entry is confusing with respect to customers to whom AT&T could offer end user contracts purchased at wholesale from Ameritech, but AT&T contends that the rehearing entry makes no mention of customers to whom AT&T can resell end user contracts and, thus, created no basis for Ameritech's asserted rehearing. AT&T claims that the Order was very specific on the customers to whom AT&T could resell end user contracts. AT&T contends that the "similarly situated customer" language about which Ameritech complains in its current application for rehearing is not found in the rehearing entry. AT&T further contends that, if Ameritech had concerns regarding the language proposed in the Order, those concerns should have been raised no later than February 14, 1997. AT&T claims that since Ameritech failed to raise those concerns within that time, such claims are barred now.

AT&T also argues that Ameritech is raising arguments in its application for rehearing on the application of fresh look to end user contracts purchased at the wholesale rates which were not raised in this arbitration proceeding. AT&T contends that any dispute Ameritech has with this issue should have been raised in the Commission's docket in Case 95-845-TP-COI, and is not timely filed now, and should be denied.

Finally, AT&T contends that Ameritech raises an identical issue for which the Commission denied rehearing in its March 13, 1997 Entry on Rehearing. AT&T argues that the Commission denied in its entry on rehearing Ameritech's request for an opportunity to demonstrate that application of the full wholesale discount to end user contracts is unlawful and unreasonable. AT&T contends that the Commission was not convinced by Ameritech's arguments that, in general, contracts which may already recognize certain avoided costs in their rates should not be further discounted by the entire wholesale discount rate. AT&T argues that Ameritech has presented no new arguments for its position, and this ground for rehearing should be denied.

- (5) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a proceeding may apply for a rehearing with respect to any matter determined in the proceeding by filing an application within 30 days of the entry of the

order in the Commission's journal. The Commission may grant and hold rehearing if, in its judgment, sufficient reason appears. Ameritech's application for rehearing has been timely filed in accordance with Section 4903.10, Revised Code.

- (6) The Commission finds that, with respect to the issues raised by Ameritech regarding whether a reseller may purchase an end user contract that Ameritech has with an existing customer and then resell that contract to the same customer, the entry on rehearing was not clear, that AT&T's request to deny rehearing for purposes of clarification on this ground should be denied, and that we should grant Ameritech's request for clarification on this issue. In our February 20, 1997 Opinion and Order in this case, we stated that "We believe that AT&T should be afforded the opportunity to purchase contracts in their entirety from Ameritech and to resell them to similarly situated customers..." Nevertheless, our use of the term "similarly situated customers" has created for Ameritech some uncertainty as to whether AT&T may resell an existing contract between Ameritech and an end user contract customer to that same customer. Further, Ameritech claims the order is unclear as to whether AT&T could resell the same contract to an Ameritech end user contract customer during the time the fresh look provisions would be effective.

We clarify that it was not our intent that AT&T or any reseller would purchase an existing individual contract, (i.e. a contract actually effectuated between Ameritech and an individual customer) at the wholesale discount, for the purpose of reselling that exact same contract to the exact same customer. Rather, we used the term "similarly situated customer" to mean a customer similar to, but other than the same customer.

With respect to the resale of contracts during the fresh look period, we have notified all interested parties that, on May 14, 1997, the Commission will conduct a workshop on the fresh look issue. Therefore, until the completion of the workshop, we are deferring ruling on this aspect of the rehearing. Accordingly, we clarify our entry on rehearing to the extent discussed above, and grant rehearing for the limited purpose of affording the Commission more time to consider the issues related to fresh look.

- (7) With respect to the third ground for rehearing, we find that Ameritech is merely rehashing the same argument that contracts, which may already recognize certain avoided costs in their rates, should not be further discounted by the entire wholesale discount rate. We examined this issue and decided that the uniform discount which would apply to the resale of all end user contracts serves the public interest. We also stated that it would be difficult for both the Commission's staff as well as AT&T to determine in a timely manner to what extent costs are avoided for each of the numerous contracts which would need to be analyzed. Upon review, we find that Ameritech's arguments in its application for rehearing do not raise any new substantive issues which the Commission did not previously examine in making its determination that the wholesale discount does apply to contracts. Accordingly, Ameritech's third ground for rehearing should be denied.

It is, therefore,

ORDERED, That the Commission's entry on rehearing is clarified, as set forth herein, and in all other respects, Ameritech's application for rehearing is granted, in part, and denied, in part. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

SEF/pdc