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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

TIME WARNER TELECOM OF
OHIO, L.P.,

Complainant,

v.

AMERITECH OHIO,

Respondent.

Case No. 98-1629-TP-CSS

REPLY BRIEF
OF TIME WARNER TELECOM OF OHIO, L.P.
PUBLIC VERSION

Respectfully submitted,

TIME WARNER TELECOM OF OHIO,
L.P.

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I. Introduction

If the parties agree on little else, the Initial Briefs make clear that Time Warner Telecom and Ameritech agree on the most important issue before this Commission: i.e., that it is the Interconnection Agreement, as informed by applicable state and federal law, that controls the resolution of this dispute. (TWTC Brief, 2; Amer. Brief, 11).¹ Both parties have identified the contract provisions they deem pertinent to this dispute, both parties have rendered their respective interpretations of those contract provisions, and it is now up to the Commission to decide the correct interpretation. The contract is not ambiguous. Parole evidence should not be entertained. Parole evidence by those

¹ Time Warner Telecom of Ohio, L.P. will be referred to herein as "Time Warner Telecom" or "TWTC." References to Time Warner Telecom's Initial Brief will be to "TWTC Brief" with the pertinent page number. Similarly, Ameritech Ohio will be referred to herein as "Ameritech," and references to Ameritech's Initial Post-Hearing Brief will be to "Amer. Brief" with the pertinent page number.

uninvolved in the formation of the contract is absolutely irrelevant. Nonetheless, TWTC can and must respond to the non-lawyer, non-participant interpretations of the contract provisions.

Time Warner Telecom anticipated that Ameritech would rely, as it did, on the language of ¶ 4.3.1 referring to a "single" SONET, the last sentence (to the exclusion of the first) of ¶ 4.4, and the "unnecessary facilities" language of ¶ 5.3 of the agreement,² to make its case. TWTC has argued its interpretation of all of these provisions in its Initial Brief, and will not spend undue time in this brief reiterating its previous arguments. Conspicuously lacking from Ameritech's Brief, however, is any mention of the PUCO's Local Service Guidelines or the FCC's First Report and Order³ implementing the Telecommunications Act of 1996 ("TA-96" or "Act").⁴ The absence of any mention of these provisions is telling. The Guidelines and the Act unequivocally support Time Warner Telecom's case and Ameritech knows it.

II. TWTC's Request for a Second, Fiber-Meet Method of Interconnection is Supported by the Terms and Conditions of the Interconnection Agreement and Applicable Law

As would be expected, Ameritech devotes a large portion of its Initial Brief (Section III) to the theory that this case is all about money, that Ameritech is not

² Lest Ameritech contort the language of the recent Supreme Court decision in *AT&T Corp. v. Iowa Utilities Board*, 1999 WL 24568 (U.S.) [hereinafter *AT&T Corp. v. Iowa Utilities Board*] on the FCC standards of "necessary and impair" regarding the availability of UNEs, TWTC hastens to note that: (a) the Supreme Court's decision pertains to §251(d)(2) of TA-96 and the FCC's implementation of that section, and not § 251(c)(2) which TWTC has previously cited in full, and (b) TWTC's interconnection request has not ignored other available alternatives. TWTC has engaged in ample self-help regarding the robustness of its network and has not petulantly demanded inefficiency or unnecessary duplication of facilities.

³ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (First Report and Order).

⁴ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

obligated to help finance TWTC's network design goals, and that TWTC has available to it other options, which do not cost Ameritech money, which TWTC should be forced to utilize. TWTC has in its Initial Brief addressed with specificity the FCC rules mandating cost-sharing. TWTC has also, while maintaining the position that the availability of other options is legally and wholly irrelevant, already explained why each of Ameritech's proposed alternatives is unsatisfactory. TWTC will not repeat all of those arguments here. Ameritech does raise a few points, however, which require further discussion.

First, Ameritech argues that if TWTC were to order interconnection trunks today, the existing joint SONET facility would carry the new trunks from TWTC's switch to the Columbus 11 office, at which point they would ride an interoffice SONET system that Ameritech has between the Columbus 11 office and the Worthington office. Ameritech maintains that this use of the joint SONET system in combination with Ameritech Ohio's interoffice SONET system is no different than Time Warner's use of multiple back-to-back SONET systems in its own network. (Amer. Brief, 10, n. 5). Ameritech also makes the point that riding SONET-to-SONET systems in series is common in the industry, and that the reliability of back-to-back SONET systems is not a concern. (Amer. Brief, 7, n. 4). These arguments miss the mark.

As indicated in TWTC's Initial Brief, the issue is not a general dispute about the inherent reliability of SONET-to-SONET facilities; a significant distinction is one of who owns, controls and maintains those facilities. In Ameritech's proposal, Ameritech owns, controls and maintains the interoffice facilities between the Columbus 11 office and the Worthington office. In TWTC's proposal, TWTC and Ameritech jointly own, control and maintain the facilities. If competition is to have any hope of flourishing,

CLECs must not remain at the mercy of the incumbents, their competitors. In fact, one of the goals of the Act was to "pave the way" for facilities-based competition, so competitors would not be solely reliant on an incumbent's network. (First Report and Order, ¶¶ 172, 4). The new paradigm is networks of networks, not one carrier dictating provisioning and service levels for all others. It is a hard concept for some incumbents to embrace.

Second, throughout this proceeding, Ameritech and TWTC have clashed over the meaning of "interconnection." Ameritech has argued that all TWTC has to do is order trunk groups to establish interconnection, and TWTC has emphasized the physical facilities underlying an interconnection. Ameritech's Brief inaccurately argues that TWTC's definition is confined to physical facilities. (Amer. Brief, 10). TWTC uses the definition of interconnection set forth in TA-96, the FCC's First Report and Order, and the PUCO's Local Service Guidelines. Ameritech's so-called "experts," on the other hand, have adopted their own unique definition of interconnection that is inconsistent with applicable law. Ameritech's witnesses define interconnection to be the establishment of trunk groups. (T. I, 193; T. II, 85). Both TA-96 and the Interconnection Agreement require Ameritech to establish trunk groups between TWTC and the new Worthington tandem. (See, for example, ¶ 4.4, second sentence, of the Interconnection Agreement). Ameritech's repeated attempts to refocus this dispute as simply a matter of establishing trunk groups are attempts to distract the Commission from the issue of physical interconnection facilities required by the Interconnection Agreement and TA-96. Mr. Crowell acknowledges that to establish interconnection between switches, to allow those switches to "talk" to each other, there must be trunk groups.

The real issue is whether TWTC has the right, under the Interconnection Agreement, to establish a second SONET transmission system, rather than use the existing facilities bridge between the two networks, to establish new points of interconnection. Ameritech argues that the language of ¶ 4.1, read in *pari materia* with Schedule 3.0, identifies precisely where the parties agreed to bridge their networks.⁵ However, the language of ¶ 4.2 directly contradicts such a reading. Paragraph 4.2 begins by stating: "For each Ameritech Central Office where TWC and Ameritech Interconnect, ...there shall be a Point(s) of Interconnection." This language clearly contemplates that TWTC could establish physical facilities paths to more than one office. Moreover, ¶ 4.2 does not mention, or refer to, Schedule 3.0. One portion of TWTC's Initial Brief bears repeating here: Ameritech witness DeBruin admitted that the Interconnection Agreement "does not forbid the second SONET system" requested by TWTC. (See Attachment 3 to TWTC's Initial Brief). Moreover, Mr. DeBruin admitted that, if the first SONET system reached exhaust, both parties would have to engage in a planning process to decide how to handle additional growth, and that one of the options Ameritech would consider for handling such growth would be to add a second SONET interconnecting with the Worthington tandem. (T. II, 36-38).

Having made these admissions, Ameritech backpedals in its Brief, raising the specter that competition will be inhibited if new entrant carriers were required to build multiple facilities paths to reach every incumbent local exchange company switch with

⁵ This argument follows Mr. Smith's (a non-lawyer's) testimony that the Interconnection Agreement and Schedule 3.0 contemplate facilities between only two points, and that, if those physical facilities reach exhaust, the only option available under the Interconnection Agreement is an augmentation of facilities between those two points. (T. I, 192). Neither Mr. DeBruin nor Mr. Smith (unlike Mr. Miracle) participated in the negotiation of the agreement in question, so their interpretations of contract language can only be viewed as self-serving.

which they desire to interconnect. Such is neither our case nor the point. New entrant carriers are not required to do any such thing. However, if a new entrant carrier, such as TWTC, has an Interconnection Agreement such as TWTC has, and also has the resources and the desire to build more than one facility path, it is clearly entitled to do so.

In a similar vein, Ameritech expresses exaggerated concern that TWTC will create a economic nightmare by attempting to establish new facility paths all over the place. (T. II, 45-47). This insults both the Commission's and TWTC's intelligence. It is unrealistic to think that new entrant carriers have the massive resources necessary to implement such a plan, or that they or TWTC would irrationally squander their limited resources. As the Supreme Court recently acknowledged,⁶ a competitor is unlikely in fact to do that which would be economically unjustifiable.⁷

Third, Ameritech argues that ¶ 4.4 most directly answers the complaint. (Amer. Brief, 13). However, Ameritech's quotation of ¶ 4.4 leaves out half of that provision. The first sentence of ¶ 4.4 addresses the issue in this case by allowing TWTC to interconnect with additional Ameritech tandem switches pursuant the terms and conditions outlined in ¶¶ 4.1 to 4.3. There is no dispute that ¶ 4.4 also requires the joint determination of trunk groups, but that is not the dispositive question. Ameritech's Brief argues that, had the parties intended for a second tandem to trigger the construction of separate joint SONET facilities to the new tandem switch, ¶ 4.4 would have so provided. The fact is that ¶ 4.4 provides just that by allowing TWTC such interconnection pursuant

⁶ *AT&T Corp. v. Iowa Utilities Board*, at 17.

⁷ Picture the absurdity of a TWTC strategy to provoke Ameritech's capital expenditures to Ameritech's exhaustion point. This idea is as silly as that of retaliatory competition in the "national/local strategy" "supporting" the SBC/Ameritech merger.

to the terms and conditions of the Interconnection Agreement, which terms allow for TWTC to require the joint SONET fiber-meet interconnection.

Finally, Ameritech argues, as anticipated, that the "unnecessary facilities" language in ¶ 5.3 precludes TWTC's request because the existing SONET is underutilized. Again, this argument was fully addressed in TWTC's Initial Brief. The salient points to be remembered here are that Ameritech admitted that capacity does not limit when and where Time Warner can interconnect with Ameritech's network (*see* Attachment 4 to TWTC's Brief), and that necessity for interconnection is not capacity driven. Ameritech suggests that traffic levels are the sole basis for determining whether an additional SONET will be constructed (*see* Amer. Brief, 14); however, this belated and opportunistic interpretation finds no support in the language of the Interconnection Agreement.

III. The Parity Obligations of TA-96 Support TWTC's Request

Ameritech claims that TWTC advances a "novel" theory of parity unsupported by the Act. Ameritech argues that the "equal in quality" standard embodied in § 252(c)(2)(C) does not ensure parity in overall network design. (Amer. Brief, 2). Ameritech argues that it satisfied the equal in quality standard by executing an Interconnection Agreement which allowed SONET technology to be deployed to link the two networks. Ameritech goes on to argue that its proposal to interconnect TWTC to the Worthington tandem via Ameritech's interoffice SONET has the effect of ensuring parity

between the two companies because the same SONET network would be utilized by both parties.⁸

The FCC's First Report and Order, ¶ 224, addresses the equal in quality standard:

We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself...[T]his duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks. Contrary to the view of some commenters, we further conclude that the equal in quality obligation imposed by section 251(C)(2) is not limited to the quality perceived by end users. The statutory language contains no such limitation, and creating such a limitation may allow incumbent LECs to discriminate against competitors in a manner imperceptible to end users, but which still provides incumbent LECs with advantages in the marketplace...(emphasis added).

This language makes clear that the equal in quality standard extends beyond merely providing a CLEC with the same type of facilities that an incumbent provides to itself. An ILEC is required to provide interconnection which is at least indistinguishable from that which it provides to itself. At least some of Ameritech's end offices have SONET

⁸ In the Background Facts section of its Brief (page 8), Ameritech states: "Should Time Warner agree to route its interconnecting trunk groups to the Worthington tandem over the joint SONET and then onto the Ameritech Ohio interoffice SONET system from Columbus 11 to Worthington, its decision would be entirely consistent with how Time Warner's trunk groups are carried over facilities today to the Columbus 11 tandem." This factual assertion is wrong. All traffic going from TWTC's Chambers Road office to Ameritech's Columbus 11 office travels over only a single SONET, not back-to-back SONETs. If Ameritech is attempting to draw in some intra-office SONET between the DACS and the tandem, this cannot possibly be deemed equivalent to the back-to-back interoffice SONET Ameritech is now proposing between TWTC and Columbus 11 and then Columbus 11 and Worthington.

systems running to both tandems, which SONET systems are not back-to-back: i.e., the interconnecting trunks travel over separate SONET facilities paths. (T. I, 129, 153-155). It should be no surprise that TWTC expects its switch to be treated **at least as well as** these Ameritech end-offices to gain the redundancy and increased routing capabilities that Ameritech provides to itself by this "normal trunk architecture." (T. I, 155, emphasis added). Having afforded such advantages to itself, Ameritech is obligated to afford them to its competitors: otherwise, it is discriminating against those competitors.

Second, Ameritech argues that TWTC's parity theory lacks credibility. According to Ameritech, TWTC would not have agreed to a single SONET system and subsequently leased MetroComm facilities at TWTC's sole expense if the Interconnection Agreement obligated Ameritech to jointly finance facilities. Such an argument is totally speculative and has no record support.⁹ The MetroComm facilities were already in place when the Agreement was executed. Furthermore, the argument overlooks certain "pricing" provisions in the contract. Under the Interconnection Agreement, TWTC pays Ameritech .007 cents/minute for taking traffic to an end office rather than the .009 cents/minute it would pay for taking traffic to a tandem. (Interconnection Agreement, Pricing Schedule, p. 3). If the volume of traffic is large enough, TWTC actually saves money by leasing facilities from MetroComm to deliver traffic to Ameritech end offices. That is, TWTC can create an economic advantage out of the incremental difference in cost (i.e., the .002/cents per minute) in the contract. Thus, there is nothing inconsistent or incredible about TWTC's actions.

⁹ Moreover, this "testimony on brief" by lawyers who had no involvement in the negotiation of the Agreement should not be given any credibility.

Third, Ameritech argues that the mere introduction of the second tandem does not impact the reliability of the existing joint SONET system. From there, Ameritech argues that the introduction of the new tandem cannot give rise to some obligation of Ameritech under the Act that did not previously exist. The first assertion *may* be true,¹⁰ but the second does not flow logically from the first. To begin with, Ameritech has **not** demonstrated that there is **no** previously existing obligation under the Act. More importantly, Ameritech should not be permitted to take unilateral action which solely benefits its own network, and then act in such a manner as to deny competitors the same advantage. The U.S. Supreme Court recognized that it "is well within the bounds of the reasonable for the [FCC] to opt in favor of ensuring against an anticompetitive practice."¹¹

As TWTC and the Attorney Examiner have already acknowledged, there is an existing "disparity in parity" between TWTC's network and Ameritech's. (T. II, 109-112). Ameritech's Brief sarcastically criticizes Time Warner and suggests that Time Warner's network should not be expected to function as well after a catastrophic loss of the Columbus 11 office as would "Ameritech's vast, multi-switch, SONET network." (Amer. Brief, at 15). Ameritech's Brief also notes that Time Warner's network would not be in parity even if the requested interconnection by joint SONET to the Worthington tandem is allowed. (Amer. Brief, 15-16). Ironically, Ameritech's experts testified under oath at the hearing that, in the worst case scenario, Ameritech's and Time Warner's networks are in "complete parity" with one another. (T. II, 90-91). One wonders if

¹⁰ There is unsettling testimony that Ameritech could be re-routing TWTC's traffic under the existing interconnection arrangement—the nature of which could, independent of, or in concert with, the introduction of the new tandem, be degrading the quality of TWTC's network reliability. (T. I, 184-185).

¹¹ *AT&T v. Iowa Utilities Board*, at 11.

Ameritech's experts were just saying what they thought would help them prevail in this matter, without regard to the accuracy of the testimony.

In any event, it should be clear to the Commission, as well as all of the parties, that Ameritech's facilities-based network is far more extensive than the facilities-based network Time Warner has been able to install in the short period of time that Time Warner has been authorized to provide competitive telecommunications services in Ohio. Ameritech's network was built by a government regulated monopoly funded by Ohio ratepayers. The purpose of TA-96 is to break free of the vestiges of this monopoly and encourage competition in local telecommunications markets. Ameritech, on the other hand, is doing everything it can to prevent competition and maintain its monopoly advantage.

Ameritech's experts acknowledged in their testimony that the introduction of a second tandem provides additional rerouting capability. (T. I, 199; T. II, 55). Ameritech claims, however, that it does not intend to use the trunking from end offices to both tandems for that purpose. Ameritech's claim that it will not utilize the additional rerouting capabilities afforded by the introduction of the second tandem typifies monopoly decision making. Ameritech continues to think the way it did as a monopoly. Ameritech is not concerned about improving customer service and reliability because Ameritech's experience has been gleaned from a market where customers had no alternative for telecommunications service. If Ameritech can prevent competitors like Time Warner from offering improved call rerouting capability and survivability to customers, then Ameritech does not have to concern itself with improving its own service to customers.

The fact that Ameritech is unwilling, however, to take advantage of capabilities that would benefit customers should **not** be a basis for preventing competitive companies from **improving** service to customers. TA-96 fundamentally restructures local telephone markets, and subjects incumbent LECs to a "host of duties" intended to facilitate market entry. Foremost among those duties is the LEC's obligation to share its network with competitors.¹² The goal of TA-96, thus, is to help CLECs become more competitive with the incumbents by allowing competitive LECs to utilize the incumbents' network and by forcing incumbents to accommodate, and under some circumstances share the cost of, interconnection and build-out associated with such interconnection between the incumbents and the CLECs.

The introduction of the second tandem brings with it the rehomings of certain Ameritech end offices to the Worthington tandem. Ameritech has acknowledged that the trunking from the rehomed offices to Columbus 11 remains in place. (T. I, 153-155). Thus, the rehomed offices have trunking to both tandems. Even if Ameritech were to take down the trunking that runs from the rehomed end offices to Columbus 11, Ameritech would have improved survivability over that available to Time Warner.

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¹² *AT&T v. Iowa Utilities Board*, at 4.

¹³ Mr. Crowell explained that a small amount of *one-way* traffic from Time Warner could survive over MetroComm facilities to a *few* Ameritech end offices. (T. I, 140).

other hand, if Time Warner's requested interconnection to the second tandem is granted, then Time Warner's traffic between end offices homed on the Worthington tandem would survive just like Ameritech's traffic. Such survivability would occur even without rerouting. The foregoing survivability features of the requested interconnection are in addition to the rerouting capabilities created by interconnection to the second tandem.

As Mr. Crowell testified, the goal of TA-96 is to narrow the parity "gap" between the network facilities available to incumbents and those available to competitors. (T. II, 112). Ameritech's concept of parity is much too narrow. The Commission can, and should, further the Act's competitive goal by allowing Time Warner the requested interconnection into the Worthington tandem through a jointly engineered, operated, constructed, financed, and managed fiber-meet.

IV. Ameritech's Unfair Characterizations of Testimony and Motive Must be Rejected

The reader cannot even get past the first paragraph of Ameritech's Brief before finding one of TWTC's witnesses quoted out of context. Ameritech attempts to raise the inference that, because TWTC did not submit ASRs for trunking back in September, 1998, TWTC must not truly care about interconnecting with the Worthington tandem. This characterization is just plain unfair. Ameritech has represented that, once TWTC places ASRs, Ameritech can interconnect TWTC with the Worthington tandem in less than 30 days. (Amer. Exh. 2A, 7).¹⁴ True, TWTC did not order ASRs back in September, but if trunk orders are able to be completed in 30 days, why should it have?

¹⁴ In fact, the Operational Guidelines (dated October 15, 1996) dictate a shorter time period: Section I.A.2 (on trunk provisioning intervals) states: "...Service will be implemented (trunks in service) within 20 business days of receipt of a valid ASR."

TWTC believed at that time, as it still does, that the contract entitled it to a fiber-meet method of interconnection. TWTC decided to pursue those contract rights, and to that end, as Ameritech and the PUCO Staff know, TWTC engaged in mediation efforts, over a period of months, but to no avail. Mr. Crowell's point was that, against that backdrop, having been told that the operational date of the tandem had been delayed to June 1999 (which, it turns out, was not completely true),¹⁵ knowing that it only took about 30 days to get trunk groups, and knowing that this complaint was being processed on an expedited basis, there was no imminent need to submit the ASRs. (T. I, 92). However, now that June is approaching, TWTC is in the process of preparing those ASRs. (T. I, 91). TWTC's actions are completely logical given the underlying facts.

Should TWTC have placed trunk orders in September or October for a February tandem activation given the discussion to secure the requested interconnection? No. Should TWTC have placed trunk orders in December 1998 for a June activation date? No. Should TWTC prepare trunk orders, starting January 6, 1999, knowing that Ameritech had misrepresented the tandem activation date? Perhaps. But TWTC had sought an injunction to preserve the *status quo* until the dispute was resolved. This Commission evidences every intent to issue a prompt decision in this case. Ameritech has already caused the damage.

Having produced no records of its own chronicling decisions regarding the second tandem, Ameritech unfairly characterizes an E-mail, memorializing a September 16,

¹⁵ As of the date of the "public discussion," January 6, 1999, Ameritech had, unbeknownst to TWTC, already rehomed its New Albany office to the Worthington tandem. Ameritech witness DeBruin acknowledged that he expected TWTC to be "surprised" to learn this. (T. II, 41). Mr. DeBruin said that he was the lead Ameritech representative in the many mediations addressing the issue through the months at the close of 1998.

1998 conference call, sent to Ameritech by a TWTC employee, Ms. Libby Hale. (Amer. Exh. 2A, Attachment 3). Ameritech claims that TWTC "agreed" in the conference call to perform certain tasks. The E-mail, itself, never uses the word "agree," but instead talks about actions that "will need" to be taken if TWTC agrees with Ameritech's proposed method of interconnection. What other choice remained for TWTC? As Mr. Crowell, who was a participant in the same conference call, testified, the first order of business on that call was Mr. Crowell asking Ameritech's Mr. Demko for interconnection to the new Worthington tandem via a joint fiber-meet, and Mr. Demko flatly refusing Mr. Crowell's request. (T. I, 82-84). Mr. Crowell asked the question because he knew a similar request had been denied in Indianapolis, so he was not necessarily surprised by Mr. Demko's answer. Rather than belabor the point, however, Mr. Crowell continued the call but considered all "subsequent conversations...provisional." (T. I, 83). Mr. Crowell's position was that TWTC would assess the situation and that TWTC was "not necessarily at that point agreeing to not having a fiber-meet in Worthington." (T. I, 83).

In its most blatant attempt to raise an unfair inference, Ameritech attempts to tie the Commission's denial of TWTC's request for emergency relief to the notion that TWTC has "unfounded concerns." (Amer. Brief, 9, 1). If there were two things that were clear the day that the Commission denied TWTC's request for emergency relief, the first was that the Commission was unhappy with Ameritech's "lack of communication" to TWTC regarding the timing of the rehomeing, and the second was that the Commission **did not** view its denial of TWTC's request for emergency relief as reflective of the merits

of this complaint.¹⁶ As Ameritech put it in its Brief, "the evidence has finally caught up with the allegations." (Amer. Brief, 1). The circumstances presented by Ameritech in the "public discussion" as to why the Commission should deny TWTC's request for emergency relief (i.e., exhaust, service outages by the end of April) were not as dire as Ameritech presented. (T. I, 226-228). If someone has "cried wolf" in this case, it is Ameritech. While representing to the Commission that call completion is at risk without the April 1999 completion of rehomings, Ameritech takes down no trunks, thereby exacerbating the very port exhaust that it portrays is its urgent concern. (T. II, 41-42).

The Commission should see Ameritech's attempts for what they are, transparent attempts to mischaracterize testimony, raise unfair inferences, or attribute improper motives to TWTC. Such attempts serve no proper purpose, are designed to mislead the Commission, and should not be countenanced.

V. Conclusion

Despite Ameritech's protestations to the contrary, TWTC has, since the inception of the contract, acted in a reasonable manner so as not to unduly burden Ameritech. While, technically, under TA-96, TWTC has the right to demand interconnection to every Ameritech end office, such a demand cannot be justified from an economic standpoint for a start-up company. TWTC has funded direct, one-way trunking to additional end offices without making any demand on Ameritech for funding. But this situation is different.

¹⁶ The possibility was even raised that the Commission might subsequently reconsider TWTC's request for emergency relief. TWTC respectfully reiterates its request for such relief. Ameritech is not reclaiming ports in its Columbus 11 tandem. (T. I, 234-238). Thus, activation of the Worthington tandem is "urgent" to Ameritech while TWTC's avoidance of further lack of parity is of no concern to Ameritech. The Commission could realign the interests with an injunction.

Interconnection by a joint SONET fiber-meet to a second tandem is TWTC's contractual right and entitlement, and it is consistent with the goals and policies embodied in applicable state and federal law. TWTC does not arbitrarily make its request just to overburden Ameritech merely as a matter of right. TWTC makes its request because it is the prudent thing to do, because TWTC's business requires it, because law and public policy support it. The contract fully justifies TWTC's reasonable request for interconnection via its chosen method.

In sum, and for all of the reasons contained both in TWTC's Initial Brief and this Reply Brief, TWTC asks that the Commission sustain its complaint and grant the prayed-for relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I hereby certify that the REPLY BRIEF OF TIME WARNER TELECOM OF OHIO, L.P. PUBLIC VERSION was served upon Ameritech Ohio's counsel by hand delivery to Columbus counsel, by hand delivery to the PUCO's counsel, and by overnight delivery to all others, this 2nd day of February, 1999:

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