

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application  
of The Ohio Bell Telephone Company  
for Approval of an Alternative  
Form of Regulation.

Case No. 93-487-TP-ALT

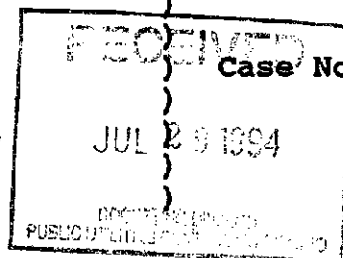
In the Matter of the Complaint of the  
Office of the Consumers' Counsel,

Complainant,

v.

The Ohio Bell Telephone Company,

Respondent.



Case No. 93-576-TP-CSS

AMERITECH OHIO'S  
MEMORANDUM CONTRA TIME WARNER AXS'  
APPLICATION FOR ISSUANCE OF SUBPOENAS

Ameritech Ohio submits this Memorandum Contra to the Application for Issuance of Subpoenas filed by Time Warner AXS (Time Warner). No good cause to issue the requested untimely subpoenas has been shown by Time Warner as required by the Commission's rules. O.A.C. § 4901-1-25(E). In addition, the issuance of the subpoenas would be unreasonable.

Time Warner claims, without any affidavit or verification, that a phone conversation between Mr. Coy of Metrocomm and Ms. Scheff concerning Metrocomm's physical collocation arrangements is relevant to Ameritech's policies on physical collocation and competition. Metrocomm is not a party to this case nor has any evidence been presented concerning the specific collocation arrangements of Metrocomm. In fact, the

allegations in the Application read more like a complaint than the policy challenge claimed by Time Warner. Time Warner allegedly seeks to offer Ms. Scheff's testimony to contradict the sworn testimony of Ameritech's witnesses concerning "Ameritech's willingness to foster fair and full competition. . . ." Time Warner at 3.

No good cause exists and it would be unreasonable to issue a subpoena for a policy matter that has already been clearly established in the record. Ameritech has not disputed that its policy on physical collocation is accurately represented by the Time Warner Exhibit 13 (a copy of which is attached). During the hearings, Ameritech Ohio witness Ms. Hermerding testified extensively on the policy in response to cross examination by Time Warner's counsel. (Tr. XIII, pp. 87-89, 95-98, 116, and 117; copies of the transcript pages are attached). The record is clear that Ameritech's policy does not support physical collocation and that some action can be expected by the Federal Communications Commission (FCC) to consider the future of physical collocation options in the Company's tariffs.

Ms. Hermerding also testified that it is Ameritech's policy to continue to honor existing tariffed options until such time as they are changed. (Tr. XIII, pp. 95, 96, 97, and 116.) She also testified that she was not aware of any specific conversations with companies requesting physical collocation. (Tr. XIII, pp. 95, 97, and 98.) Thus, Ameritech's policy has been clearly established and requiring the attendance of two more

Ameritech witnesses concerning the exact same policy is unreasonable and should not constitute good cause under the rules. No purpose will be served except to extend the hearing and inconvenience out-of-state Ameritech employees.

The application is also defective since it seeks to establish good cause based on the statements of a non-party about the specific factual circumstances surrounding Metrocomm. The two Ameritech witnesses are being requested to testify concerning a conversation that has not been previously presented in the record. The specific circumstances surrounding Metrocomm are irrelevant to this proceeding and, as shown by the transcript, cannot contradict Ms. Hermerding's testimony since she was unaware of any conversations as alleged by Time Warner. Time Warner has a direct way of establishing this conversation if it so chooses - - bring Mr. Coy in to testify.<sup>1</sup> As it stands now, Ameritech Ohio will have no opportunity to cross examine Mr. Coy concerning this conversation.

In addition, the allegations by Metrocomm through Time Warner are more in the nature of a complaint. As stated above, Ameritech's policy has already been established. Specific allegations concerning the application of that policy as it relates to a non-party should properly be the subject of a complaint proceeding where Ameritech can respond to allegations that are directly presented. This alternative regulation

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<sup>1</sup> Presumably if good cause exists through Time Warner's application, then other persons, including Mr. Coy, will be made available through the same subpoena process.

proceeding should not be used to circumvent the evidentiary and burden of proof requirements of a complaint case.

Even if called, Ms. Scheff would testify concerning the same Ameritech policy that has been established and that the same policy was conveyed to Mr. Coy. Ms. Scheff would also testify that she told Mr. Coy that Ameritech would honor its existing tariffs but that no position had been developed concerning the impact a tariff change would have on existing physical collocation arrangements. Such testimony does not further any issue in this case and merely duplicates matters that are not in dispute in the record.

The proper forum for Metrocomm to raise these issues is through a complaint at the FCC or through participation in the FCC proceeding dealing with physical collocation in light of the Court's decision. Any tariff change and the impact on existing arrangements would be the topic of FCC proceedings in which Metrocomm could fully participate. No good cause exists under these circumstances to allow these issues to be litigated in this case.

As to Ms. Dora Ross, Time Warner merely states that she has communicated with Metrocomm concerning its collocation request. No other facts concerning the conversations or how they are in any way relevant to this case have been presented. Time Warner does not even present the dates of the conversations to establish its inability to timely apply for a subpoena. The one sentence set forth in Time Warner's Application concerning Ms.

Ross does not establish good cause, nor does it constitute a reasonable basis to require the attendance of this additional Ameritech witness.

Ameritech Ohio requests that the Application for Issuance of Subpoenas be denied. Time Warner has failed to demonstrate good cause or any reasonable basis to require the attendance of additional Ameritech witnesses.

Respectfully submitted,

AMERITECH OHIO

By:

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**Ameritech**

July 7, 1994

Thomas B. O'Connor  
Director - Federal Relations

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554

Re: Ex Parte Statement  
Docket 91-141, In The Matter of Expanded  
Interconnection with Local Telephone  
Company Facilities

Dear Mr. Caton:

On June 10, 1994, the United States Court of Appeals issued an order vacating the mandatory requirement for physical collocation. Ameritech's position on the treatment of expanded interconnection arrangements in the context of that ruling is as follows:

- Ameritech supports efficient interconnection arrangements as a means of promoting competition. We have consistently advocated this position in the context of our Customers First Plan.
- Ameritech will honor its existing tariffs until they have been modified or withdrawn, but as a policy matter will not offer physical collocation.
- The Commission should not mandate any specific interconnection arrangement, but rather should set general standards. The choice of specific interconnection arrangement alternatives to physical collocation should be left solely to the LEC's discretion.
- Collocation arrangements should be limited to transmission equipment only.

- Ameritech may change, modify or withdraw existing interconnection arrangements at its discretion. However, Ameritech is committed to an orderly transition to the deployment of alternative interconnection arrangements.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris O'Connell".

cc: Richard Metzger  
Kathleen Levitz  
Jim Schlichting  
Greg Vogt

1 Q. Okay. Have you seen that document before today?

2 A. I've seen copies of these, yes.

3 Q. Now, Time Warner Exhibit 13 is a copy of  
4 Ameritech's ex parte filing with the FCC in Docket No.  
5 91-141, isn't it?

6 A. Yes, it is.

7 Q. And it was submitted to the FCC after the DC  
8 circuit court of appeals decision overturned the FCC's  
9 decision in Docket No. 91-141, wasn't it?

10 A. Yes.

11 Q. And the letter dated July 7, 1994 from Ameritech  
12 to the FCC states, does it not, that as a policy  
13 matter, Ameritech will not offer physical colocation?

14 MR. MULCAHY: I'm going to object  
15 to the basis of relevance.

16 EXAMINER PIRIK: Objection overruled.

17 THE WITNESS: The letter states  
18 that Ameritech supports efficient interconnection  
19 arrangements as a means of promoting competition, and  
20 that this is consistent with positions that we have  
21 taken for -- for a long time, specifically in the  
22 context of our Customers First plan.

23 It does also mention that as a policy  
24 matter, we will not offer physical colocation.

25 BY MR. ROSENBERRY:



1 Q. Okay. And that policy represents a change from  
2 the policy of Ameritech as of December 1993, at least,  
3 doesn't it?

4 A. As of December 1993, the FCC's physical  
5 colocation order had not been overturned by the courts.

6 Q. And would I be correct that at least in December  
7 of 1993, Ameritech was offering virtual optical  
8 interconnection service in Ohio, Wisconsin and Indiana?

9 A. Yes.

10 Q. And I guess based on the FCC order in 91-141,  
11 Ameritech was proposing in December to file  
12 modifications to its FCC docket that would add what it  
13 called Central Office interconnection as a service  
14 offering in Ohio, Wisconsin and Indiana which would  
15 have permitted physical colocation, right?

16 A. I'll take your word on the date.

17 Q. Now, you indicate here in your testimony at Page  
18 3 -- I'm sorry, at Page 1, that between 1990 and 1993  
19 you were -- one of your responsibilities was  
20 development of policies relating to state regulatory  
21 issues, correct?

22 A. Was among my duties.

23 Q. Did -- Did that responsibility include  
24 development of policies to be implemented in Ohio with  
25 respect to competition?

1 A. I'm not sure what you mean by the question.

2 Q. Okay. Does, to your knowledge, Ameritech Ohio  
3 have a corporate regulatory policy with respect to  
4 competition in the State of Ohio; what the Company's  
5 reaction would be to competition?

6 A. I would expect that Ameritech Ohio's reaction to  
7 competition would be the same reaction that we have  
8 throughout Ameritech, which is that we support fair,  
9 full competition.

10 Q. And when you define "competition" in that sense  
11 as being fair and full, what does that imply?

12 A. It implies that the various participants have a  
13 fair chance to provide services that are attractive to  
14 customers and, thereby, attract business.

15 Q. And is there any implication in the use of your  
16 words "fair and full competition" for Ameritech Ohio,  
17 for example, to have access to the interLATA market?

18 A. Certainly it is Ameritech's position that, and  
19 Ameritech Ohio's position, that access to the interLATA  
20 market is an important element of being able to compete  
21 effectively with other companies that do have access to  
22 the interLATA market.

23 Q. Is it the position of Ameritech Ohio that if  
24 granted interLATA authority, Ameritech Ohio will, on  
25 the date that such authority is granted, also unbundle

1           The basis for my interest was because at that  
2 same time we did have the petition for waiver that I  
3 previously mentioned describing Ameritech Customers  
4 First plan. That plan had already been described.

5           And I wanted to be comfortable that the -- the  
6 manner of disaggregation that was being proposed here  
7 was at least consistent with things that we would be  
8 talking about in -- in that plan.

9           Q.     Going back to colocation for a minute, are you  
10 aware of whether or not Ameritech Ohio, beginning in  
11 December 1993, began offering physical colocation and  
12 discussing colocation with potential competitors?

13          A.     I would not know when we discussed it.

14          Q.     And you similarly would not know whether or not,  
15 after the issuance of the DC circuit court of appeals  
16 decision, there were any discussions by Ameritech Ohio  
17 with competitors withdrawing agreements to physically  
18 colocate?

19          A.     We have federal tariffs and tariffs in Ohio right  
20 now, they are still in effect. And as we stated in the  
21 letter to the FCC in Docket 91-141, we will honor those  
22 tariffs.

23          Q.     Until they're withdrawn or modified; is that  
24 right?

25          A.     That's correct.

1 Q. Is it -- Is it Ameritech's intention to withdraw  
2 any tariffs permitting physical colocation?

3 A. I don't know.

4 Q. Who would know? If not you --

5 A. I don't know that anybody would know at this  
6 point.

7 Q. Why not?

8 A. The -- The letter that you refer to was sent July  
9 7th; that was about a week ago. The -- The DC circuit  
10 court order came out only very recently.

11 It's likely that the FCC will take some action to  
12 either respond to the -- to the court order, or to  
13 implement an order on its own.

14 And until we know what the various parameters are  
15 that we're operating in, I really couldn't predict what  
16 our specific actions will be.

17 Q. Now, when you said that the Company -- I'm sorry,  
18 when you said that Ameritech would continue to honor  
19 its existing tariffs, that would be true except with  
20 respect to any requests for physical colocation, right?

21 A. Physical colocation is still in our tariff.

22 Q. Well, then why does the letter say as a policy  
23 matter we will not offer physical colocation?

24 A. Immediately preceding that it says Ameritech will  
25 honor its existing tariffs until they have been

1 modified or withdrawn.

2 Q. Okay. Now, are you saying that Ameritech will,  
3 if it had -- since it has a tariff permitting physical  
4 colocation, honor that tariff and requests for physical  
5 colocation?

6 A. My understanding of our policy is that we will  
7 honor our tariffs until they have been modified or  
8 withdrawn.

9 Q. And so that anybody who is in the process of  
10 implementing physical colocation in Ohio, for example,  
11 will be permitted to continue that process and conclude  
12 with physical colocation in Ameritech Ohio facilities;  
13 that's your understanding?

14 A. My understanding is we will honor our tariffs.

15 Q. Are you aware of whether or not, beginning in  
16 December of 1993, there were potential competitors who  
17 began discussing with Ameritech Ohio the means and the  
18 costs associated with physical colocation?

19 A. I would not be aware of any of those discussions.

20 Q. And you would not be aware of any specific  
21 discussions between Ameritech Ohio representatives and  
22 representatives of potential competitors which withdraw  
23 or indicate that the Company will not offer physical  
24 colocation in Ohio?

25 MR. MULCAHY: Objection. Asked and

1 answered.

2 EXAMINER PIRIK: Objection overruled.

3 THE WITNESS: I'm sorry, could you  
4 repeat it?

5 MR. ROSENBERRY: Would you mind  
6 rereading it?

7 THE WITNESS: Thank you.

8 (Question read back as requested.)

9 THE WITNESS: I'm not aware of any  
10 specific discussions.

11 BY MR. ROSENBERRY:

12 Q. Now let me direct your attention to Page 4 of  
13 your testimony; and in particular, Question 6.

14 Is it your understanding that competitors must  
15 have certificates to offer local exchange service?

16 A. That is generally the case.

17 Q. Are you familiar with whether or not the Company,  
18 that being Ameritech Ohio, is presenting an argument to  
19 the Ohio Supreme Court that the Company has an  
20 exclusive service area right to provide service to  
21 customers in Ohio?

22 A. I'm aware that our position is that we do have an  
23 exclusive franchise in Ohio, and that we have also  
24 agreed that within the context of Customers First, for  
25 example, we would waive that.

1 respect to physical colocation.

2 As I understand what you said this morning, the  
3 Company will honor existing tariffs with respect to  
4 physical colocation, right?

5 A. Until they are either modified or withdrawn.

6 Q. And as I recall an earlier response, you didn't  
7 know whether or not Ameritech intended to modify or  
8 withdraw those tariffs, right?

9 A. I don't know of any specific plans.

10 Q. Then -- And those tariffs do offer physical  
11 colocation as an option to competitors, do they not?

12 A. That is what is in the tariffs right now.

13 Q. Okay. And then how or why is Ameritech saying to  
14 the FCC that it will not offer physical colocation if  
15 it intends to honor its tariffs?

16 A. We are legally obligated to honor our tariffs.

17 Q. Okay.

18 A. Would be my expectation.

19 What we are saying is, is that as a policy  
20 matter, we are not going to offer physical colocation.  
21 I interpret this as some point in the future, when our  
22 tariffs are either modified or withdrawn; but what I  
23 told you was I didn't know if our specific plans for  
24 either modifying or withdrawing them.

25 Q. Then at least as of today, those tariffs have not

1 yet been withdrawn or modified; is that right?

2 A. Unless something has happened since I was in the  
3 office last.

4 Q. And when were you there last?

5 A. Friday.

6 Q. Okay. Now, would you look at Page 13 of your  
7 testimony, please? And if you know, can you indicate  
8 the identity of any competing access providers in Ohio  
9 that have filed to become full local service providers?

10 A. I don't know whether -- I don't know whether any  
11 have filed to become full local service providers in  
12 Ohio.

13 There are companies who have at least filed to  
14 become providers in Ohio who have either indicated  
15 their intent at some point in the future to become a  
16 full service provider, for example, Time Warner AxS I  
17 would consider among those, they have been very public  
18 in their statements that they intend to become a full  
19 local service provider; Metropolitan Fiber Systems has  
20 filed a petition in Illinois for certification as a  
21 full local service provider.

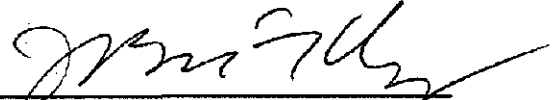
22 Q. But you know of none that have actually filed to  
23 become full local service providers in Ohio as of the  
24 last time you were in the office?

25 A. I don't know of any.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served upon counsel for the parties as shown on the attached service list, by prepaid first class U. S. mail, this 29th day of July, 1994.

  
\_\_\_\_\_  
Jon F. Kelly

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CASE NO. 93-487-TP-ALT

CASE NO. 93-576-TP-CSS

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