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DOCKETING DIVISION
PUBLIC UTILITIES COMMISSION OF OHIO

Case No. 93-487-TP-ALT

Case No. 93-576-TP-CSS

v.

Ohio Bell Telephone Company,
Respondent.

Without addressing Ameritech's characterization of the two appeals, Time Warner finds Ameritech's response to the Motion very disturbing. Ameritech states that "a motion to enforce the Stipulation is not the appropriate procedural vehicle to enforce the Commission's Orders that have been issued." *Memorandum Contra* at 5. Ameritech claims that the Stipulation was not adopted in these cases. *Id.* While Ameritech may not like the alleged modifications to the Stipulation that the Commission made, the Stipulation was in fact adopted (*See, Opinion and*

Order issued November 23, 1994 at 76). The Commission found that the Stipulation submitted by the signatory parties was reasonable and in the public interest and should be adopted. *Order* at 76. Thus, Ameritech's claim that Time Warner's Motion is procedurally defective is without merit.

Ameritech recommends that the more appropriate "remedy" is for Time Warner to file a complaint in these proceedings against Ameritech Ohio for failure to comply with the Commission's Orders. It is fully expected that Ameritech would move to dismiss that complaint by arguing that a nonsignatory party may not file a complaint for noncompliance with a Stipulation to which it was not a party. Ameritech could have committed not to resist that complaint on those grounds but chose not to do so, although Time Warner would not thereby be protected from that argument by other signatory parties. Nonetheless, the complaint process is protracted and would not be resolved in a fashion timely enough to make enforcement of this provision of the Stipulation of the value it should be. Time Warner has requested, through its Motion, that the appeals be dropped **NOW**. In fact the appeals should have been dropped in November 1994 pursuant to the Stipulation and the language in the Commission's Order approving the Stipulation. No party to this case should have to endure the time and expense of a complaint case to enforce a provision of a Stipulation.

There are other aspects of Ameritech's Memorandum Contra that are particularly troubling. For example, Ameritech claims that there are several provisions of the Stipulation (or as Ameritech states "contained in the Commission's Orders") which must be implemented over a period of years. According to Ameritech, there is no reason why dismissal of the appeals cannot be handled in the same manner. *Memorandum Contra* at 4. Is Ameritech implying that

it is not required to dismiss the appeals until year six of its alternative regulation plan when presumably all features of the plan will be implemented fully? If that is in fact the case, then Ameritech essentially gave up nothing when it agreed to dismiss the appeals, since waiting six years to dismiss the appeals will render that provision of the Stipulation meaningless. While Time Warner was excluded from the negotiations that led to the Stipulation, it is hard pressed to believe that any of the negotiating parties intended to wait until all aspects of the alternative regulation plan were implemented completely for Ameritech to dismiss its appeals. In addition, other provisions of the Stipulation may be such that Ameritech does not believe it needs to implement them until all aspects of the Plan are implemented fully.

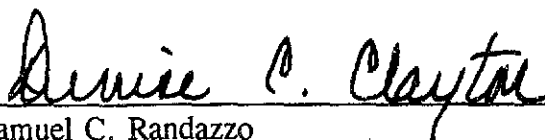
Another disturbing aspect of Ameritech's Memorandum Contra is the inference it makes that the Commission has the ability and the authority to make Ameritech whole if the Commission's Order approving the Stipulation were reversed by the Supreme Court of Ohio. Ameritech states that it is unwilling to dismiss the pending appeals while Time Warner and others have the opportunity to seek an appeal or further rehearing of the Commission's Orders in case the Orders are overturned. *Id.* at 3. "In the unlikely event this occurred Ameritech Ohio would be left without a remedy to be placed in the same position as before the appeals were withdrawn. For the other terms of the "bargain" the Commission has the jurisdiction to reverse the effect of the Orders." *Id.* (Emphasis added). The example provided by Ameritech is the initial rate reductions which could, according to Ameritech, be removed by a future Commission Order.¹

¹ If Ameritech is implying by this statement that it somehow has the ability to seek recovery for the difference between the rates it charged end users pursuant to the initial rate reductions and the rates the Commission may subsequently order pursuant to Supreme Court of Ohio reversal of the Commission's Order, it is mistaken. Ameritech is not authorized to be "made whole" because the rates it charged in accordance with the initial rate reductions were the lawful and authorized rates at the time such rates were collected. *Cleveland Electric Illum. Co. v. Public Util. Comm.*, 46 OS2d 105, 75 002d 172, 346 NE2d 778 (1976).

Ameritech also claims that dismissing the appeals while Time Warner and others have an opportunity to seek an appeal or further rehearing would subject Ameritech to the potential of dismissing the appeals as part of the "bargain" in the alternative regulation cases, only to have the Court overturn the "bargain". *Id.* Dismissal of the appeals is only one small element of the "bargain" the stipulating parties agreed to. Were the court to overturn the Commission's Order, presumably all aspects of the Order would be subject to change or nullification, including Ameritech's agreement to dismiss the appeals. Parties could reasonably go back to the negotiating table. Ameritech would be in no less of a "bargaining" position than any other party. Thus, Ameritech's claim that it loses the benefit of its "bargain" is erroneous and unpersuasive.

For the foregoing reasons, and the reasons stated in its Motion, Time Warner urges the Commission to direct Ameritech Ohio to comply with the Stipulation and dismiss the pending appeals in Case Nos 94-1246, 94-988 at the Supreme Court of Ohio immediately.

Respectfully submitted,



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