

**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,**

**y.**

**Case No. 93-576-TP-CSS**

The Ohio Bell Telephone Company, )

**Respondent.**

## ENTRY

**The Commission finds:**

- 1) On November 23, 1994, the Commission issued its Opinion and Order in these proceedings approving the joint stipulation filed on September 20, 1994, to the extent set forth in the order. On January 19, 1995, we denied various applications for rehearing in these cases and reaffirmed our November 23, 1994 order.
- 2) On January 12, 1995, Time Warner AxS (Time Warner) filed a motion in these cases requesting that, since the Commission has approved the stipulated plan and the associated tariffs in these cases, the Commission should direct Ameritech Ohio (also known as The Ohio Bell Telephone Company) to dismiss the appeals challenging the two Time Warner certificate cases which are still pending at the Supreme Court of Ohio in Ameritech Ohio v. The Public Utilities Commission of Ohio, Case Nos. 94-1246 and 94-988. According to Time Warner, the stipulation in these cases clearly states that these appeals are to be dismissed

upon approval of the stipulation by the Commission.

- 3) On January 30, 1995, Ameritech filed a memorandum contra Time Warner's motion to enforce the provision stipulation. While Ameritech admits that the stipulation does call for the withdraw of several appeals pending at the supreme court, as well as a motion for hearing which is pending in a certification case at the Commission, neither the stipulation nor the Commission's orders set forth a specific deadline for such withdrawal. Therefore, in Ameritech's view, it can not be found to be in non-compliance with a Commission order. Furthermore, Ameritech states that it is unwilling to dismiss the pending court appeals while Time Warner and other parties in these cases still have the opportunity to seek an appeal or further rehearing of the Commission's orders in these cases. Ameritech believes that to do otherwise would subject it to the potential of dismissing the appeals as part of the agreement in these cases, only to have the court overturn the agreement. According to Ameritech, "[i]n 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." As a final argument, Ameritech states that Time Warner's motion is procedurally defective in that the appropriate forum for Time Warner to raise the allegations that Ameritech has not complied with the terms of a Commission order is in a complaint case filed pursuant to Section 4905.26, Revised Code. Thus, Ameritech suggests that, since the appeals are currently being held in abeyance at the court at the request of the parties, a further request should be made to take the cases off the court's active docket until the appeal period has expired. Time Warner filed a reply to Ameritech's memorandum contra on February 6, 1995.
- 4) The stipulation states that "To effectuate this agreement the Company agrees to waive its claimed exclusive franchise right for any person or company. The Company further agrees

to withdraw its pending Supreme Court of Ohio appeals in Ameritech Ohio v. The Public Utilities Commission of Ohio, Case Nos. 94-988, 94-1246, and 94-1247 and to withdraw its Motion to Intervene and Suspend Application and Request for Hearing in the application of FoneNet Ohio, Inc., Case No. 94-961-CT-ACE." Section 4903.15, Revised Code, states that "(u)nless a different time is specified therein or by law, every order made by the public utilities commission shall become effective immediately upon entry thereof upon the journal of the public utilities commission." Pursuant to its terms, the stipulated plan became effective January 23, 1995. Ameritech Ohio clearly agreed to withdraw the pending Supreme Court cases as part of effectuating the plan. Therefore, the cases should have been dismissed by January 23, 1995. In light of the above provisions of the stipulation, which were agreed to by Ameritech, the Commission concludes that Ameritech has failed to withdraw the appeals, as well as its motion to intervene in 94-861 upon the effective date of the plan. Contrary to Ameritech's assertions, we can find no provision in the plan which ties the withdrawal of the appeals and motion to the appeals process in these cases. Therefore, we conclude that Time Warner's motion to enforce this provision of the stipulation should be granted. Accordingly, Ameritech shall withdraw the three appeals pending at the court, as well as its motion to intervene in 94-961, on or before February 16, 1995.


It is, therefore,

ORDERED, That Time Warner's January 12, 1995 motion is granted. It is, further,

ORDERED, That Ameritech shall withdraw the three appeals pending at the court by filing a motion to dismiss, as well as its motion to intervene in 94-961 on or before February 16, 1995. It is, further,

ORDERED, That copies of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Craig A. Glazer Chairman

J. Michael Biddison

  
Richard M. Fanelly

  
Jolynn Barry Butler


David W. Johnson

CMTF/vrh 

Entered in the Journal

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A True Copy

  
Gary E. Vigorito  
Secretary