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ORIGINAL

BEFORE
THE PUBLIC UTILITIES COMMISSION
OF OHIO

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DOCKETING DIVISION
Public Utilities Commission of Ohio

STATE ALARM INC.

COMPLAINANT

vs.

AMERITECH OHIO

RESPONDENT

)
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) P.U.C.O. CASE NO.
) 95-1182-TP-CSS
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REPLY MEMORANDUM ON BEHALF
OF AMERITECH OHIO

This is an adequacy of service case brought by State Alarm, Inc. ("State Alarm" or "Complainant") against Ameritech Ohio ("Ameritech") alleging that Ameritech has failed to provide adequate service and facilities to State Alarm over the period 1975 to the present. Ameritech answered the Complaint on January 17, 1996, and also filed its motion seeking dismissal because State Alarm has failed to prosecute its claims over the twenty year period addressed in the Complaint. State Alarm filed its Memorandum Contra on February 5, 1996. This is Ameritech's Reply to that Memorandum Contra.

Complainant incorrectly perceives the relative burden on the parties resulting from a complaint that extends back decades in time, and consequently arrives at the wrong conclusion regarding

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that burden. Twice State Alarm says in its Memorandum Contra that it "...has ... had little opportunity to discover the nature of its service problems..." (Memorandum Contra at 3, 4) and it concludes that Ameritech, "... with its advantages in this case as to information concerning its own system, is in no worse condition to defend itself here than it was in Rite Rug."¹ (Memorandum Contra at 2). To the contrary, however, State Alarm is the repository of information concerning "the nature of its service problems." It's Complaint consumes 34 paragraphs and 8 pages of text, repeatedly referring to the claimed nature of its problems while blaming Ameritech for their existence. Complainant has, at all times relevant to this Complaint, been in exclusive control of its own business. It is clearly State Alarm, therefore, and not Ameritech, that has the information advantage. By contrast, Ameritech has an enormous discovery burden simply to try and "catch up" to a point where it knows exactly what it must defend against.

The Commission also knows well the truly massive changes that have taken place in the telecommunications industry before and after the 1984 Bell System divestiture, and the Commission is likewise aware of the restructuring of companies such as Ameritech as a part of those developments. In the face of those

¹Complainant is referring to Rite Rug v Ohio Bell Tel. Co., P.U.C.O. Case No. 93-692-TP-CSS (Entry, October 20, 1993).

unprecedented changes, it is disingenuous in the extreme for Complainant to blithely assume that Ameritech should be able to reconstruct records and events over the extensive time frame covered by this Complaint. Complainant, however, has no such obstacles to overcome.

Finally, the cases cited by Ameritech in its motion articulate a rule of fundamental fairness that is appropriate for Commission proceedings. While the Commission has no statute of limitations, R.C. § 4905.26 requires reasonable grounds to exist before a complaint may be processed and the concept of reasonable grounds embodies, by definition, the notion of fairness. How is it fair for a Complainant to wait many years before bringing its Complaint? What possible excuse could there be for such delay? How can such delay be excused, if fairness is the policy of the Commission? Ameritech is aware of the Rite Rug decision relied upon by State Alarm. It was Ameritech that brought the Rite Rug case to the Commission's attention through its motion. That case represents the opinion of the Attorney Examiner who decided it, and it is clearly entitled to respect. It does not, though, foreclose the Commission from objectively reviewing this case and the dismissal authority it recently confirmed that it had in the Robinson

precedent cited in Ameritech's original motion.² The Commission should exercise that authority here and dismiss this Complaint.

Respectfully submitted,

AMERITECH OHIO

BY:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon counsel for Complainant, John W. Bentine, Esq. and Jeffrey L. Small, Esq., Chester, Willcox and Saxbe, 17 South High Street, Suite 900, Columbus, Ohio 43215-3413 by depositing that copy in the United States mail, postage prepaid, this 15 day of February, 1996.

Charles S. Rawlings
CHARLES S. RAWLINGS

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²Tom Robinson v Ameritech Ohio, P.U.C.O. Case No. 95-553-TP-CSS (Entry, January 4, 1996).