

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ameri-)
tech Ohio (Formerly known as The Ohio)
Bell Telephone Company) for Approval of) Case No. 93-487-TP-ALT
an Alternative Form of Regulation.)

ENTRY ON REHEARING

The Commission finds:

- (1) By Opinion and Order issued April 27, 2000, the Commission adopted a Stipulation and Recommendation (Stipulation) entered into between Ameritech Ohio (Ameritech), the Commission's Staff (Staff), Ohio Consumers' Counsel (OCC), AT&T Communications of Ohio, Inc. (AT&T), MCI WorldCom, Inc. (WorldCom), Appalachian Peoples' Action Coalition, Edgemont Neighborhood Coalition, and Empowerment Center of Greater Cleveland. Specifically, the Commission found that the Stipulation represented an extension of the then existing plan of alternative regulation for Ameritech, constituted the authorization for a new plan of alternative regulation, and resolved certain other pending issues.

Included within the Stipulation were provisions capping the Cell 1 core service rates for residential and non-residential customers, reclassifying message toll services to Cell 4, funding of certain computer-related initiatives for senior citizens and community computer centers, extending automatic enrollment in Ameritech's Universal Service Assistance program throughout Ohio, reducing rates or engaging in promotions for certain privacy-related services, and committing to a time line for filing cost studies and tariffs or interconnection agreement language for certain offerings important to Ameritech's competitors. On balance, and after considering the objections raised to the Stipulation, the Commission found that the Stipulation filed in this matter was in the public interest and represented a reasonable disposition of the alternative regulation issues and other issues raised during the negotiation sessions. Therefore, the Commission adopted the Stipulation without modification.

- (2) Section 4903.10, Revised Code, states that, within 30 days after the entry of the order upon the Commission's journal,

any party who has entered an appearance in a proceeding may apply for rehearing with respect to any matters determined in said proceeding.

- (3) On May 26 and May 30, 2000, The Payphone Association of Ohio (PAO) and Time Warner Telecom of Ohio, L.P. (Time Warner) filed applications for rehearing of the Commission's April 27, 2000 Opinion and Order. Ameritech filed a memorandum contra the applications for rehearing on June 5, 2000.
- (4) Time Warner's first assignment of error asserts that the Commission erred by approving the Stipulation prior to the submission by Ameritech of final action plans. According to Time Warner, the premise behind this provision of the Stipulation was to afford the non-signatory competitive local exchange carriers (CLECs) time to review the final action plans submitted by Ameritech and to make a determination whether to sign the Stipulation or not. In its second assignment of error, Time Warner maintains that the Commission erred by failing to consider the effect the approved Stipulation would have on CLECs in contravention of the public interest and of Section 4927.02, Revised Code.

In its memorandum contra, Ameritech claims that Time Warner has failed to present any new arguments or facts to support its application for rehearing. Ameritech also maintains that it was not unreasonable or unlawful for the Commission to approve the Stipulation prior to Ameritech filing its final action plans, as there was no requirement in the Stipulation to support Time Warner's position. Ameritech also submits that the Commission properly found that the Stipulation was in the public interest and furthers the goals of Section 4927.02, Revised Code.

- (5) The Commission determines that Time Warner's assignments of error are without merit and are, therefore, denied. Time Warner's first assignment of error asserts that the Commission should not have considered the merits of the Stipulation prior to Ameritech submitting its final action plans on certain operational issues raised by several facilities-based CLECs. The Commission first notes that this argument was addressed specifically and rejected in the April 27, 2000 Opinion and Order at pages 17-18. Therefore, Time

Warner has failed to raise on rehearing any new arguments not previously addressed by the Commission.

Notwithstanding the preceding determination, the Commission finds that Time Warner's assignment of error does not warrant rehearing. Initially, there is absolutely no support in the language of the Stipulation for Time Warner's position that the Commission was estopped from ruling on the Stipulation prior to the submission by Ameritech of any final action plans. In fact, other provisions of the Stipulation lead to just the opposite conclusion. For example, the Stipulation at section C.15 reflects that Ameritech's "final action plans shall be filed with the Commission in this docket." Continuing the Stipulation reveals that "the Company's agreement to implement its final action plans in good faith shall be considered a commitment of the Stipulation." The above-quoted language makes clear that docketing the final action plans was not a prerequisite to the Commission ruling on the Stipulation. Further, the commitment to implement the filed action plans in good faith contemplates future action on the part of Ameritech exactly as the other commitments within the Stipulation contemplate future action on behalf of Ameritech.

- (6) Time Warner's second assignment, that the Commission failed to evaluate the Stipulation under the public interest and policy provisions of Section 4927.02, Revised Code, is also denied. Contrary to Time Warner's claim, the Commission clearly outlined each provision of the Stipulation as well as the arguments filed in opposition, including the CLEC-related operational issues, and, based on that evaluation, concluded that the Stipulation furthered the public interest and comported with the policy of this state as outlined in Section 4927.02, Revised Code. As discussed in the April 27, 2000 Opinion and Order, there are a number of positive provisions within the Stipulation to enhance the CLECs ability to compete in the competitive market. Moreover, Time Warner's argument that the Stipulation does not address facilities-based CLEC issues is undermined due to the fact that two facilities-based CLECs, AT&T and WorldCom, endorsed the Stipulation as signatory parties. The mere fact that Time Warner's operational issues were not resolved in a docket involving Ameritech's alternative regulation plan does not warrant rejection of a Stipulation that does, on the whole, further the public interest and policy of Ohio as set

forth in Section 4927.02, Revised Code. As a final matter, the Commission noted in the April 27, 2000 Opinion and Order that there are other, more appropriate, venues through which Time Warner's operational issues could be more properly addressed.

- (7) The PAO raises eight assignments of error in its application for rehearing. A number of the arguments made on rehearing are a recapitulation of arguments made in opposition to the Stipulation that were addressed by the Commission in the April 27, 2000 Opinion and Order. Nonetheless, the Commission will briefly address the PAO's assignments of error below. However, where possible the assignments of error will be grouped together for purposes of discussion. First, the PAO urges the Commission to reconsider the classification of the Stipulation as a new grant of alternative regulation, as opposed to an abrogation or modification of the existing alternative regulation plan under Section 4927.03, Revised Code. Related to this argument, the PAO argues that the Commission's action was unlawful as the Commission did not comply with the notice and hearing provisions of Section 4927.03(D), Revised Code.

It appears as though the PAO does not understand that the Ameritech plan of alternative regulation as well as the Stipulation the Commission is now considering, involves services that are subject to both Section 4927.03 and Section 4927.04, Revised Code. Regarding the services under Section 4927.04, Revised Code, the Stipulation simply reflects an extension of the current plan of alternative regulation. However, for those services under the Stipulation that are reclassified and removed from the price cap structure, such as message toll service and other non-basic services deemed competitive as a result of Case Nos. 89-563-TP-COI (89-563) and 99-563-TP-COI (99-563), the Stipulation did constitute a new grant of alternative regulation. Regarding the notice and hearing requirement argument, the Commission thoroughly addressed that argument at page 20 of the April 27, 2000 Opinion and Order. The Commission need not reiterate those arguments here. These two assignments of error are denied.

- (8) The PAO's next assignment of error claims that the Commission did not address Ameritech's failure to file an application for alternative regulation, in violation of Section

4909.18, Revised Code, and that the failure to file such an application is contrary to an Ohio Supreme Court decision in *Time Warner AxS v. Pub. Util. Comm.*, (1996), 75 Ohio St. 3d 229. Section 4909.18, Revised Code, and *Time Warner, supra*, are not impacted by an extension of Ameritech's alternative regulation plan. As correctly noted by the PAO, following the Ohio Supreme Court's *Time Warner* decision, the Ohio General Assembly legislatively reinstated Ameritech's alternative regulation plan in Sub. S.B. 306 on June 18, 1996. By the terms of the reinstated alternative regulation plan, the stipulating parties agreed to a process whereby the alternative regulation plan could be extended. Additionally, Sub. S.B. 306 at Section 3 makes clear that modifications to the alternative regulation plan were permissible. Rehearing on this assignment of error is denied.

- (9) Next, the PAO alleges that the Commission failed to consider the terms and conditions set forth in Section 4927.03(A)(1) and (2), Revised Code, when the Commission approved the Stipulation. The only services that were reclassified to Cell 4 and removed from the price cap as a result of this Stipulation are those services deemed by the Commission to be competitive as a result of Case Nos. 89-563-TP-COI and 99-563-TP-COI. That such services are competitive is an explicit conclusion by the Commission in those other proceedings and did not, in our view, need to be repeated here. One such service is message toll service for example. The Commission has certified several hundred telephone companies to provide message toll service as a component of their regulated offerings. Moreover, most certified companies offer a variety of rates and package message toll service offerings to appeal to a vast majority of customers. Further, there are virtually no entry barriers to companies who seek to provide message toll services. Under these circumstances, it is obvious to us that Ameritech faces competition for message toll services and that customers have reasonably available alternatives to taking these services from Ameritech. This assignment of error lacks merit.
- (10) The PAO's fifth assignment of error asserts that the Stipulation confers advantages upon Ameritech in violation of Section 4927.03(C), Revised Code. In support of its argument, the PAO maintains that by allowing Ameritech to

avoid rate regulation and overearnings review for an additional two years, the Commission has permitted Ameritech to continue the abuses that the company has practiced upon consumers and competitors such as the PAO. Contrary to the PAO's assignment of error, the Commission found that the Stipulation, as a whole, benefited the public interest. The Commission made this determination, however, only after reviewing all of the terms and conditions of the Stipulation, including the significant commitments Ameritech agreed to in order to obtain increased regulatory flexibility. Moreover, as noted in the April 27, 2000 Opinion and Order at page 21, the Commission still has full jurisdiction to regulate the company's services, address complaints by carriers or customers, and remain informed as to the financial situation of the company. Rehearing on this issue is, therefore, denied.

- (11) The PAO's next assignment of error claims that the Commission erred by approving a Stipulation that failed to represent the interests of facilities-based CLECs. Initially, we note that, as addressed above, two facilities-based carriers, AT&T and WorldCom, did execute this Stipulation as signatory parties. The Commission also notes in rejecting this assignment of error that the PAO cited no statute or rule to support its argument that a stipulation must be unanimous before the Commission might consider the merits of such a stipulation. While not binding on the Commission, stipulations are accorded substantial weight. The Commission, at page 16 of the April 27, 2000 Opinion and Order, evaluated the Stipulation in accordance with applicable Commission and Ohio Supreme Court precedent. The Commission finds no error was committed in our adoption of the Stipulation in this matter. Rehearing is denied on this issue.
- (12) The seventh assignment of error raised by the PAO is that the Commission erred in approving the Stipulation absent Ameritech's compliance with the obligation to file supporting workpapers consistent with the local service guidelines adopted in Case No. 95-845-TP-COI (95-845), *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*. In support of this argument, the PAO asserts that the 95-845 guidelines require Ameritech to demonstrate that the company is not engaging in price squeezes with respect to its competitive services. While citing to the 845

guidelines, the PAO has not cited a specific provision requiring Ameritech to file workpapers that demonstrate that no price squeeze for competitive services exists. The provision of the 845 guidelines where workpapers are necessary is in relation to cost studies that are to be submitted to the staff. More importantly, we determined that no cost studies, and by extension workpapers, are needed to support the provisions of the Stipulation. This assignment of error is without merit.

- (13) The PAO's final assignment of error asserts that the failure to properly consider the impact of Cell 4 reclassification and the continued exclusion of Cell 1 residential services from the Price Cap Index renders the April 27, 2000 Opinion and Order unlawful and against public policy. The PAO's arguments concerning Cell 1 services fails to recognize that Cell 1 core services need not be subject to and included in the price cap mechanism, as those services are already capped and can not move upward above the cap. Moreover, the actual rates for residential service have decreased under Ameritech's alternative regulation plan. Thus, contrary to the PAO's arguments, residential service customers have benefitted as a result of Ameritech's alternative regulation plan.


As for the arguments concerning Cell 4 reclassification, the Commission notes that since February 8, 1999, the date Ameritech instituted intraLATA presubscription, Ameritech's message toll service has had to compete for customers with all other intraLATA toll providers. Further, while Ameritech must compete with other toll providers in its intraLATA toll markets, Ameritech is still prohibited from competing for customers in the interLATA market. As noted above, due to the state of competition for those services the Commission has deemed competitive as a result of 89-563 and 99-563, the Commission now determines that it is appropriate to afford Ameritech Cell 4 treatment of those services. The PAO's final assignment of error is denied.

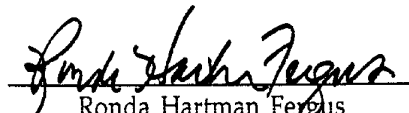
It is, therefore,

ORDERED, That the applications for rehearing filed by Time Warner Telecom of Ohio, Inc. and the Payphone Association of Ohio are denied as set forth herein. It is, further,

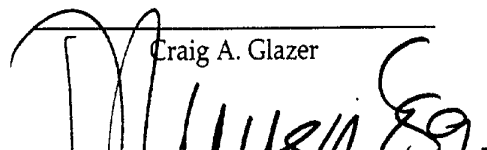
ORDERED, That a copy of this Entry on Rehearing be served upon each party and interested person of record.

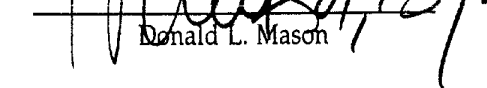
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus

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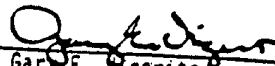

Donald L. Mason

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Gary E. Hgorito
Secretary