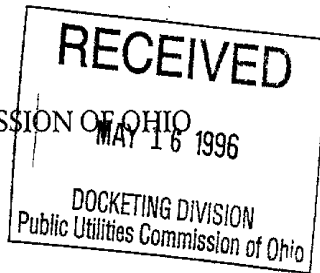


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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO



Sprint Communications Company, L.P. )  
Complainant, )  
v. )  
Ameritech Ohio, )  
Respondent )

Case No. 96-142-TP-CSS

MEMORANDUM OF MCI TELECOMMUNICATIONS  
CORPORATION CONTRA MOTION TO DISMISS

This proceeding was initiated on February 13, 1996 when Sprint filed a complaint against Ameritech Ohio (Ameritech) alleging that its PIC protection program is unreasonable, unlawful and anti-competitive. Sprint filed an amended complaint on April 8, 1996 and on April 29, 1996 Ameritech filed an answer and motion to dismiss. MCI Telecommunications Corporation (MCI) filed a motion for leave to intervene on April 24, 1996.<sup>1</sup> MCI opposes the motion to dismiss filed by Ameritech for the reasons set forth below.

Ameritech has captioned its pleading as a motion to dismiss the complaint for failure to set forth reasonable grounds, but in actuality it is more of a statement of Ameritech's defenses to the merits of the complaint. Such strenuous arguments in response to the allegations of the complaint would seem to prove that Sprint has stated reasonable grounds upon which a hearing should be held. Very little of the "motion" is devoted to an explanation of how Ameritech believes that Sprint has not

<sup>1</sup> The Commission has not yet ruled on MCI's motion. However, no party, including Ameritech, has opposed MCI's participation in the case.

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met the requirements of R.C. §4905.26.

At page 9 of the "motion", Ameritech makes the unsupported statement that its PIC freeze program does not violate any statute or Commission rule or order and that the Commission has never limited a carrier's ability to offer slamming "protection" to its customers. Of course, the fact that Ameritech believes its practices to be within the bounds of the law does not make it so. Sprint has alleged that the brochure offering the PIC freeze program to customers violates R.C. §§4905.26 and 4905.35 and has explained the basis for such allegations in its complaint. Ameritech has offered no explanation as to how those allegations do not rise to the level of stating reasonable grounds for complaint. The Commission will adjudicate the merits of the issues raised by the complaint following the presentation of evidence at hearing.

It appears that Ameritech has made the same legal argument in support of its motion which was rejected by the Ohio Supreme Court in Allnet Comm. Serv. v. Pub. Util. Comm. (1988) 38 Ohio St. 3d 195. In that case, Allnet filed a complaint alleging that Ameritech's failure to provide intraLATA 1+ presubscription, while at the same time charging premium access rates, was unjust, unreasonable, discriminatory and in violation of various statutory provisions, including R.C. §§4905.26 and 4905.35. Ameritech filed a motion to dismiss, arguing that its access charges were in compliance with Commission rules and regulations. The Commission granted the motion and Allnet appealed. The Court reversed the Commission's decision and remanded the case to the Commission, noting:

In essence, the gravamen of Allnet's complaint is that it is required to pay premium access rates while receiving inferior access services. It appears that these allegations do set forth reasonable grounds for complaints that the services received, the rates for those services, and Ohio Bell's practices affecting or relating to those services are

unreasonable, unjust, discriminatory and unjustly preferential in violation of R.C. 4905.32, 4905.33 and 4905.35.

(38 Ohio St. 3d at 196)

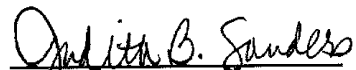
Thus, an R.C. §4905.26 complaint which challenges the reasonableness of a utility rate or practice should not be dismissed as failing to state reasonable grounds simply because the utility alleges that it is in compliance with Commission rules and orders.

Ameritech's other comment, which apparently was made in support of its "motion", is found on page 11, wherein Ameritech draws the unsupported conclusion that the PIC freeze brochure is not an 'anti-competitive tool'. In a footnote, Ameritech then trots out the timeworn argument that the Commission has no jurisdiction to balance the interests of competitors in a complaint proceeding. This argument, which has long been a favorite of Ameritech's, was also laid to rest in the Allnet case when the court held that a competitor can use the R.C. §4905.26 complaint process to challenge a utility practice as being anti-competitive. The Commission has jurisdiction to adjudicate the merits of claims involving anti-competitive behavior, and such claims cannot be dismissed out of hand simply because the complainant competes in the same market. Indeed, the Commission's Staff has recognized that the R.C. §4905.26 complaint procedures are available to carriers in its proposed rules regarding local service competition (See Case No. 95-845-TP-COI, Entry, September 27, 1995, App. B. Rule XVI. C. 2.).

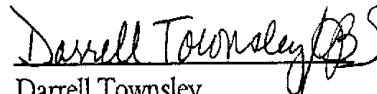
Although the arguments offered by Ameritech which respond to the merits of the complaint are without merit, MCI will refrain from engaging in a debate which

should be saved for a later point in the case. Suffice it to say that Ameritech has offered no valid reason for the dismissal of Sprint's complaint. The matter should be set for an evidentiary hearing in accordance with R. C. §4905.26.

Respectfully submitted,



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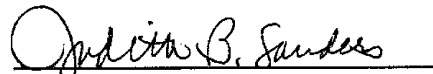


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CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing Memorandum  
Contra to the following parties via U.S. mail, postage prepaid, this 16<sup>th</sup> day  
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