

9  
RECEIVED-DOCKETING DIV  
00 FEB 11 PM 4:06

PUCO

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

*file*

In the Matter of the Commission	)	
Investigation Into the Treatment of Reciprocal	)	
Compensation for Internet Service Provider	)	Case No. 99-941-TP-ARB
Traffic	)	

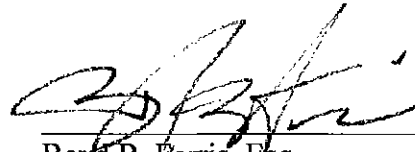
**MOTION TO INTERVENE OF FOCAL  
COMMUNICATIONS CORPORATION OF OHIO**

Focal Communications Corporation of Ohio ("Focal"), by its undersigned counsel, respectfully requests, pursuant to Ohio Administrative Code, Rule 4901-1-11, that it be allowed to intervene and participate in the captioned proceeding. In support of the motion, as more fully detailed in the attached Memorandum in Support of Motion to Intervene of Focal, Focal states that it has a real and substantial interest in the proceedings, that disposition of the proceedings could impair or impede its ability to protect that interest, and Focal's interest are not adequately represented by the existing parties. Further, Focal's intervention will contribute to a just and expeditious resolution of the issues and will not result in any undue delay or prejudice to other parties in the proceedings.

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.  
Technician Andrea Smith Date Processed 2/11/00

Accordingly, Focal requests that it be allowed to intervene and participate fully in these proceedings.

Respectfully submitted,



Boyd B. Ferris, Esq.  
FERRIS & FERRIS  
2733 West Dublin-Granville Road  
Columbus, OH 43235-2798  
Tel: (614) 889-4777  
Fax: (614) 889-6515

Matthew Berns, Esq.  
Focal Communications Corporation  
200 N. LaSalle Street, Suite 820  
Chicago, IL 60601  
Phone: (312) 895-8400  
Fax: (312) 895-8403

Richard M. Rindler, Esq.  
Robin L. Redfield, Esq.  
SWIDLER BERLIN SHEREFF  
FRIEDMAN, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
Tel: (202) 424-7775  
Fax: (202) 424-7645

Richard Metzger, Esq.  
Vice President, Regulatory Affairs  
and Public Policy  
Focal Communications Corporation  
1120 Vermont Avenue, N.W.,  
Terrace Level  
Washington, D.C. 20005  
Tel.: (202) 293-0142  
Fax: (202) 521-8899

**Counsel for Focal Communications  
Corporation of Ohio**

February 11, 2000

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission	)	
Investigation Into the Treatment of Reciprocal	)	
Compensation for Internet Service Provider	)	Case No. 99-941-TP-ARB
Traffic	)	

**MEMORANDUM IN SUPPORT OF  
MOTION TO INTERVENE OF FOCAL  
COMMUNICATIONS CORPORATION OF OHIO**

**PRELIMINARY STATEMENT**

Focal Communications Corporation of Ohio ("Focal") respectfully requests that it be allowed to intervene in this investigation into the treatment of inter-carrier compensation for Internet service provider ("ISP") traffic. Focal's certification to operate in Ohio is currently pending with the Commission and Focal is seeking to negotiate an interconnection agreement with an incumbent local exchange carrier ("ILEC") in Ohio that will involve the treatment of inter-carrier compensation for ISP-bound traffic.

Petitioners filed this action seeking resolution of numerous ongoing disputes between ILECs and competitive local exchange carriers ("CLECs") concerning whether inter-carrier compensation is to be paid for terminating ISP-bound traffic.<sup>1</sup> The petitioners seek a uniform policy governing the issue for all telecommunications providers in Ohio. The petitioners state that they "seek resolution of this issue in a generic proceeding in which all interested parties would have an opportunity to comment and be heard."<sup>2</sup> As discussed more fully below, Focal is entitled to

---

<sup>1</sup> Petitioners are Time Warner Telecom of Ohio, L.P., ICG Telecom Group, Inc, CoreComm, Newco Inc., and Telecommunications Resellers Association.

<sup>2</sup> See Petition to Investigate and Decide the Treatment of Reciprocal Compensation for Internet Service Provider Traffic at 1.

opportunity to comment and be heard.”<sup>2</sup> As discussed more fully below, Focal is entitled to participate in this action because it has a real and substantial interest in the proceedings, disposition of the proceedings could impair or impede its ability to protect that interest, and Focal’s interests are not adequately represented by the existing parties. Moreover, Focal’s participation will contribute to a just and expeditious resolution of the issues and intervention at this stage will not cause undue delay or prejudice to the parties in this proceeding. Focal recently learned that the petitioners initiated this proceeding on August 12, 1999, seeking an investigation into the treatment of inter-carrier compensation for ISP-bound traffic. Petitioners are requesting that the Commission conduct an investigation into this issue for the sake of efficiency, economy of resources, and to satisfy the need for predictability. In the Commission’s Entry in this docket on January 13, 2000, it invited other interested parties to intervene in the proceedings. Focal has a substantial interest in the outcome of these proceeding and it requests, for the following reasons, that it be permitted to intervene and participate fully as a party.

## **ARGUMENT**

### **A. Focal Is Entitled to Intervene in This Proceeding as a Matter of Right**

Intervention is permitted as a matter of right under Rule 4901-1-11 (A) of the Ohio Administrative Code, if the intervenor has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented

---

<sup>2</sup> See Petition to Investigate and Decide the Treatment of Reciprocal Compensation for Internet Service Provider Traffic at 1.

by existing parties.<sup>3</sup> Focal is entitled to intervention as a matter of right because it is able to satisfy each of these elements.

The purpose of this proceeding is to address the treatment of inter-carrier compensation for ISP-bound traffic to avoid repeatedly facing this issue in two-party arbitrations on generation two interconnection agreements. Focal, as a soon to be provider of local telecommunications in Ohio, like the petitioners, is faced with the prospect of having to repeatedly address the issue of inter-carrier compensation for ISP traffic in separate interconnection agreements and arbitrations of disputes. Focal has the same interest that the petitioners have in obtaining a ruling that addresses this situation, so that any unnecessary expense and protracted disputes with various ILECs can be avoided.

Further, disposition of this matter would undoubtedly have the potential of impairing or impeding Focal's ability to protect its interests. If this Commission were to conclude that ISP-bound traffic is not subject to inter-carrier compensation, such a ruling would have a detrimental effect on Focal. As a result of such a ruling, Focal would incur significant costs to terminate ISP-bound traffic, but not be able to receive compensation to cover those costs. Only Focal, and not the other petitioners, can address the impact of this result on Focal. The Commission has granted the right to

---

<sup>3</sup> See *In re So-Glen Gas Company, LLC*, Case No. 98-1687-GA-ARJ, 1999 WL 359803 (Ohio P.U.C. February 25, 1999)(Commission found that East Ohio Gas Company had a real and substantial interest in proceeding filed by So-Glen Gas Company to obtain the right to begin a landfill gas project in Solon, Cuyahoga County; East Ohio alleged that if So-Glen were successful it would obtain an unfair competitive advantage in the County.)

intervene in other cases where the intervenor has demonstrated that a Commission ruling would impair or impede the value of the intervenor's assets.<sup>4</sup>

B. Alternatively, The Commission Should Exercise Its Discretion and Allow Focal To Intervene In this Proceeding

Under Ohio Administrative Code, Rule 4901-11(B), intervention may be permitted as a matter of the Commission's discretion. In determining whether intervention should be granted under this standard, the Rule requires consideration of: (1) the nature of the person's interest, (2) the extent to which the person's interest is represented by existing parties, (3) the person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding, and (4) whether granting intervention would cause undue delay or unjust prejudice to existing parties. Although Focal believes it is entitled to intervention as a matter of right, alternatively it seeks permission to intervene as a matter of the Commission's exercise of its discretion.

Focal has previously addressed the nature of its interest and the extent to which its interest are not represented by existing parties. In addition, Focal's presence in the proceedings will contribute to a just and expeditious resolution of the issues. Finally, since this proceeding is in the very early stages, intervention will not cause any delay. The petition was filed on August 12, 1999, mediation is scheduled for the week of February 14, 2000, but no hearing date has been set.

---

<sup>4</sup> See *In re Ohio Suburban Water Company*, Case No. 95-318-WS-UNC, 1995 WL 493566 \*4 (Ohio P.U.C. August 3, 1995)( Huber Heights was granted right to intervene in proceedings by Ohio Suburban Water for the sale of its water and wastewater systems where there was a possibility that the Commission might impose obligations on Huber's acquisition of Ohio Suburban's utility facilities.).

## CONCLUSION

Thus, based on the foregoing, Focal requests that it be allowed to intervene in the proceedings as a matter of right and, alternatively, that the Commission exercise its discretion and grant intervention.

Respectfully submitted,



Boyd B. Ferris, Esq.  
FERRIS & FERRIS  
2733 West Dublin-Granville Road  
Columbus, OH 43235-2798  
Tel: (614) 889-4777  
Fax: (614) 889-6515

February 11, 2000

Matthew Berns, Esq.  
Focal Communications Corporation  
200 N. LaSalle Street, Suite 820  
Chicago, IL 60601  
Tel: (312) 895-8400  
Fax: (312) 895-8403

Richard M. Rindler, Esq.  
Robin L. Redfield, Esq.  
SWIDLER BERLIN SHEREFF  
FRIEDMAN, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
Tel: (202) 424-7775  
Fax: (202) 424-7645

Richard Metzger, Esq.  
Vice President Regulatory Affairs  
and Public Policy  
Focal Communications Corporation  
1120 Vermont Avenue, N.W.,  
Terrace Level  
Washington, D.C. 20005  
Tel.: (202) 293-0142  
Fax: (202) 521-8899

**Counsel for Focal Communications  
Corporation of Ohio**

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion to Intervene and Memorandum in Support of Focal Communications Corporation of Ohio has been served upon all parties listed below, by ordinary U.S. Mail, postage prepaid, this 11<sup>th</sup> day of February, 2000.

  
Boyd B. Ferris

Benita Kahn  
Vorys Sater Seymour & Pease LLP  
52 E. Gay Street  
P. O. Box 1008  
Columbus OH 43216-1008

Joseph R. Stewart  
50 W. Broad Street, Suite 3600  
Columbus OH 43215

Lee T. Lauridsen  
Sprint Communications Company LP  
8140 Ward Parkway  
Kansas City MO 64114

Thomas E. Lodge  
Thompson Hine & Flory LLP  
One Columbus  
10 W. Broad Street, Suite 700  
Columbus OH 43215-3435

Douglas E. Hart  
Jack B. Harrison  
Frost & Jacobs LLP  
201 E. Fifth Street  
Cincinnati OH 45202

Christopher J. Wilson  
Staff Counsel  
Cincinnati Bell Telephone Company  
201 E. Fourth Street, 6<sup>th</sup> Floor  
Cincinnati OH 45201

Michael T. Mulcahy  
Ameritech - Legal Department  
45 Erieview Plaza, Suite 1400  
Cleveland OH 44114

William S. Newcomb, Jr.  
Stephen M. Howard  
Vorys Sater Seymour & Pease LLP  
P. O. Box 1008  
Columbus OH 43216-1008

David C. Bergmann  
Dirken D. Winkler  
Ohio Consumers' Counsel  
77 S. High Street, 15<sup>th</sup> Floor  
Columbus OH 43266-0550

Sally W. Bloomfield  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus OH 43215-4291

David J. Chorzempa  
AT&T Corporation  
222 W. Adams, Suite 1500  
Chicago IL 60606

Judith B. Sanders  
Barth E. Royer  
Bell Royer & Sanders Co. LPA  
33 S. Grant Avenue  
Columbus OH 43215-3927



David W. McGann  
MCI Worldcom  
205 N. Michigan Avenue, Suite 3700  
Chicago IL 60601

Thomas J. O'Brien  
Corecomm Newco Inc.  
450 W. Wilson Bridge Road, Suite 100  
Worthington OH 43085

Marsha Rockey Schermer  
Time Warner Telecom of Ohio  
65 E. State Street, Suite 1800  
Columbus OH 43215

Roger P. Sugarman  
Kegler Brown Hill & Ritter  
65 E. State Street, Suite 1800  
Columbus OH 43215

Daniel R. Conway  
Porter Wright Morris & Arthur  
41 South High Street  
Columbus OH 43215

Richard M. Rindler  
Robin L. Redfield  
Swidler Berlin Shereff Friedman LLP  
3000 K Street, NW, Suite 300  
Washington DC 20007

David A. Turano  
Harris Turano & Mazza  
941 Chatham Lane, Suite 201  
Columbus OH 43221