

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of ICG)
Telecom Group, Inc.,)
)
Complainant,)
)
v.) Case No. 97-1557-TP-CSS
)
Ameritech Ohio,)
)
Respondent.)

ENTRY

The attorney examiner, pursuant to the authority granted in Rules 4901-1-12 and 4901-1-14, Ohio Administrative Code (O.A.C.), finds:

- (1) On November 26, 1997, ICG Telecom Group, Inc. (ICG) filed a complaint with the Commission against Ameritech Ohio (Ameritech). The complaint alleges that Ameritech has wrongly refused since July 1997 to pay certain bills that ICG has submitted pursuant to the parties' interconnection agreement.
- (2) On December 15, 1997, the attorney examiner scheduled this matter for a settlement conference on January 5, 1998. The attorney examiner further determined that the Commission will endeavor to process this matter within the 180-day time frame set forth in Local Service Guideline XVIII.C.1.
- (3) On January 5, 1998, the prehearing conference was held as scheduled. The parties did not reach a settlement. The parties and the examiner agreed upon a procedural schedule, which is dependent upon the outcome of the pending motion for a stay of the proceeding and the pending motions to intervene. The motion for a stay and the pending motions to intervene were denied by Commission Entry issued this same date.
- (4) On January 9, 1998, Time Warner Communications of Ohio, L.P. (Time Warner) served a notice of deposition upon Ameritech, seeking to depose an appropriate person to address: (a) the measurement and billing of ISP traffic, "including information service providers generally, internet ISP traffic and traffic for those providers who sell access to the

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Technician See Date Processed 1-23-98

internet", under the terms and conditions of the interconnection agreements between Time Warner and Ameritech; (b) the negotiations between Time Warner and Ameritech concerning the treatment, measurement, and billing of ISP traffic under their interconnection agreement; (c) Ameritech's contention that the information service traffic location serves as a routing point to forward the call to the internet, but such traffic does not terminate on the other party's network; and (d) the bases upon which Ameritech distinguishes between calls to ISP customers and other calls on new entrant carrier's networks.

- (5) On January 15, 1998, Ameritech filed a motion for a protective order so that it need not respond to the notice of deposition. Ameritech argues that the deposition is contrary to the expedited deadlines agreed upon during the January 5, 1998 conference. Ameritech believes that one round of written discovery was agreed upon so that the parties could then attempt to stipulate to the facts. Also, Ameritech believes that a deposition will divert the parties from their attempts to develop stipulations of fact. Finally, Ameritech states that Time Warner is also seeking to explore matters outside the scope of the complaint in the first two points of its notice of deposition.
- (6) On January 16, 1998, Time Warner filed a memorandum contra Ameritech's motion for a protective order. Time Warner states that the expedited discovery schedule that was established did not limit the type or scope of discovery that could be utilized by the parties. Time Warner acknowledges that the scope of the hearing or the proper scope of intervention has not been established by the Commission and acknowledges that those questions are tied to the Commission's determination of the pending motion for a stay and pending motions for intervention.

If the Commission grants Ameritech's motion for a protective order, Time Warner requests that the decision allow it to submit written discovery requests, in the form of admission and/or interrogatories, within two days. Time Warner states that it does not intend to delay this proceeding; that it is Ameritech's refusal to comply with the deposition request that is the source of possible interruption. Time Warner believes that the deposition would be the quickest means of obtaining the information necessary to prepare stipulations of

fact. In the alternative, Time Warner states that the Commission should require Ameritech to enter into the list of stipulations contained in Time Warner's pleading.

- (7) The attorney examiner concludes that Ameritech's motion for a protective order should be granted. On this same date, the Commission decided that Time Warner should be granted *amicus curiae* status, as opposed to intervenor status. Thus, Time Warner is not a "party" to this proceeding as set forth in Rule 4901-1-10, O.A.C. and precluded from conducting discovery as set forth in Rule 4901-1-16, O.A.C.

The examiner also concludes that Time Warner's request to submit written discovery requests, in the form of admission and/or interrogatories, within two days of this ruling and Time Warner's request for a Commission order to require Ameritech to enter into the list of stipulations contained in Time Warner's pleading should be denied since Time Warner has not been granted party status in this proceeding.

It is, therefore,

ORDERED, That Ameritech's motion for a protective order is granted. Ameritech need not produce personnel to respond to Time Warner's January 9, 1997 notice of deposition. It is, further,

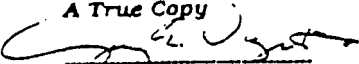
ORDERED, That Time Warner's request to submit additional written discovery requests, in the form of admission and/or interrogatories, within two days of this ruling is denied. Time Warner's request for a Commission order to require Ameritech to enter into the list of stipulations contained in Time Warner's January 16, 1998 memorandum contra is also denied. It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

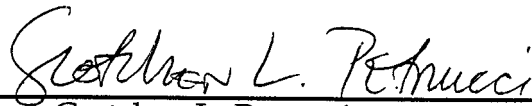
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JAN 22 1998

A True Copy


Gary E. Vigorito
Secretary

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Gretchen L. Petrucci
Attorney Examiner

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SERVICE NOTICE

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CASE NUMBER 97-1557-TP-CSS
CASE DESCRIPTION ICG TELECOM/AMERITECH OHIO
DOCUMENT SIGNED ON January 22, 1998
DATE OF SERVICE 1/23/98

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