

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint)
of ICG Telecom Group, Inc.,)
Complainant,)
v.)
Ameritech Ohio,)
Respondent.)

Case No. 97-1557-TP-CSS

In the matter of the Complaint of)
MCImetro Access Transmission)
Services, Inc., to Compel Payment of)
Reciprocal Compensation,)
Complainant,)
v.)
Ameritech Ohio,)
Respondent.)

Case No. 97-1723-TP-CSS

In the Matter of the Complaint of)
Time Warner Communications of)
Ohio, L.P.,)
Complainant,)
v.)
Ameritech Ohio,)
Respondent.)

Case No. 98-308-TP-CSS


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technician *[Signature]* Date Processed

AMERITECH OHIO'S
NOTICE OF SUPPLEMENTAL AUTHORITY

On June 26, 1998, Time Warner Communications of Ohio, L.P. (Time Warner) submitted as supplemental authority in this proceeding a copy of the June 16, 1998 decision by the U.S. District Court for the Western District of Texas denying Southwestern Bell Telephone Company's request for declaratory and injunctive relief. Southwestern Bell Tel. Co. v. Public Util. Comm'n., No. 98 CA 043 (W.D. Tex. June 16, 1998).

On June 29, 1998, the Federal Communications Commission filed its motion for leave to file a memorandum as *amicus curiae* and its proposed memorandum. The purpose of the FCC's memorandum, on its face, is to correct the Texas Federal District Court's mistaken belief that the FCC currently is considering whether internet service providers are entitled to reciprocal compensation for transporting internet traffic to ISP points of presence. The FCC's proposed memorandum submitted in the Texas proceeding makes clear that the issue currently under consideration at the FCC concerns the rights of new entrant carriers to receive reciprocal compensation for internet traffic -- the precise issue that is before this Commission. Accordingly, Ameritech Ohio submits herewith a copy of the FCC's pleading in the Texas Federal District Court proceeding.

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THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

SOUTHWESTERN BELL TELEPHONE
COMPANY,

Plaintiff,

v.

PUBLIC UTILITY COMMISSION OF
TEXAS, et al.

Defendants

NO-88-CA-49

MOTION OF THE FEDERAL COMMUNICATIONS COMMISSION
FOR LEAVE TO FILE A MEMORANDUM AS AMICUS CURIAE

The Federal Communications Commission ("FCC"), by its undersigned attorneys, hereby seeks leave to file a memorandum as amicus curiae in this action. The proposed amicus memorandum is being tendered for filing and served on the parties contemporaneously with this motion.

The ground for this motion is that the filing of an amicus memorandum will clarify for the Court one aspect of the FCC's position. The Court's opinion of June 16, 1988, relies extensively on rulings and opinions of the Federal Communications Commission. E.g., June 16 Opinion at 17-24. As the Court explained in its opinion, "[g]enerally, . . . a federal court will give such deference to the FCC's interpretation of the Telecommunications Act of 1935." *Id.* at 18. Given the Court's reliance on the FCC's rulings and opinions, it is therefore

appropriate for the proposed amicus memorandum to clarify the position of the Federal Communications Commission in one respect.

The FCC recognizes that the Court has previously entered a final judgment in this matter. However, if the motion for leave to file an amicus memorandum is granted, the memorandum would be available to the Court to consider in connection with any post-judgment motion that may be filed by a party.

Accordingly, the motion of the FCC for leave to file a memorandum as amicus curiae should be granted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

SOUTHWESTERN BELL TELEPHONE)
COMPANY,)

Plaintiff,)

v.)

PUBLIC UTILITY COMMISSION OF)
TEXAS, et al.,)

Defendants.)

Case No. MO-98-CA-43

**MEMORANDUM OF THE FEDERAL COMMUNICATIONS COMMISSION
AS AMICUS CURIAE**

The Federal Communications Commission ("FCC") respectfully submits this Memorandum *as amicus curiae* to address a point made by this Court in its Order of June 16, 1998, concerning plaintiff Southwestern Bell Telephone Company's ("SBC") interconnection agreement with defendants Time Warner Communications of Austin, L.P., Time Warner Communications of Houston, L.P. and Fibrecom, Inc. (collectively "Time Warner"). See *Southwestern Bell Telephone Co. v. Public Utility Comm'n of Texas*, No. MO-98-CA-43 (W.D. Tex. June 16, 1998) ("June 16, 1998 Order"). Specifically, in its June 16, 1998 Order, this Court concluded that Internet traffic is "local traffic" as defined in the parties' interconnection agreement and, therefore, is subject to the reciprocal compensation provisions of that agreement. *Id.* Because the Court relied extensively on various FCC rulings and proceedings in its analysis, see, e.g., *id.* at 17-24, this memorandum is included to clarify the FCC's position on this issue for the Court.

The FCC has not yet determined whether competitive local exchange carriers ("CLECs") — such as Time Warner here — are entitled to reciprocal compensation for terminating Internet traffic. That issue is currently before the FCC in an administrative proceeding and remains unresolved. See *Pending Cycle Established for Comments on Request by ALTA for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, Public Notice, FCC Common Carrier Bureau/CPD 97-30 (released July 2, 1997), 12 FCC Red 9715 ("Pending Cycle Notice") (copy appended hereto).

This Court noted a similar statement from the FCC in the *Report to Congress, In re Federal-State Joint Board on Universal Service*, FCC 98-67 (April 10, 1998) ("Report to Congress"), but concluded that the FCC's statement in the context of the *Report to Congress* did not refer to the precise issue in dispute here. See July 16, 1998 Order at 21 n.14 (quoting *Report to Congress* at ¶ 206 n.220). The Court determined that the FCC's statement in the *Report to Congress* indicated that the agency was considering only the question of whether information service providers — rather than telecommunications carriers like Time Warner — are entitled to reciprocal compensation for terminating Internet traffic. *Id.*

Although the *Report to Congress* may have given the Court an impression in the contrary, the *Pending Cycle Notice*, in which the *Report to Congress* refers, makes clear that the issue under consideration by the FCC concerns "the rights of a competitive local exchange carrier (CLEC) to receive reciprocal compensation . . . for the transport and termination of traffic to CLEC subscribers that are information service providers." *Pending Cycle Notice*, 12 FCC Red at 9715 (emphasis added). Thus, the precise issue that the Court addressed is pending before the FCC in an administrative proceeding and remains unresolved.

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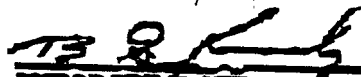
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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Ameritech Ohio's Notice of Supplemental Authority was served upon the counsel listed below this 27th day of July, 1998, via First-Class U.S. Mail.

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