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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

**TIME WARNER COMMUNICATIONS OF OHIO, L.P.'S RESPONSE  
TO AMERITECH OHIO'S NOTICE OF SUPPLEMENTAL AUTHORITY**

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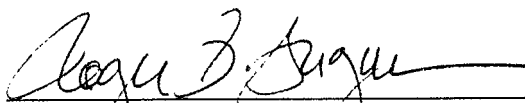
In response to Time Warner Communications of Ohio, L.P.'s submission of the decision by the United States District Court for the Western District of Texas denying Southwestern Bell Telephone Company's request for declaratory and injunctive relief, *Southwestern Bell Tel. Co. v. Public Util. Comm'n.*, No. 98 CA 043 (W.D. Tex. June 16, 1998), Ameritech Ohio submits as supplemental authority a motion of the Federal Communications Commission ("FCC") for Leave to File a Memorandum as *Amicus Curiae*, together with the FCC's Memorandum, filed in the same case. While Ameritech Ohio ascribes a self-serving purpose to the FCC's Memorandum, as well as in its meaning, the Western District of Texas court has already rejected the Ameritech Ohio "spin on things." That court has denied Southwestern Bell's Motion to Alter or Amend Judgment, a motion filed in reliance upon the authority purportedly represented by the FCC's *amicus* memorandum.

By Order dated July 20, 1998 (a copy of which is attached hereto), Judge Bunton denied Southwestern Bell's Motion to Amend or Alter Judgment, finding that the only amendment to be made to the Court's prior opinion was the deletion of footnote 15 on page 21. Unswayed by the rhetoric of the FCC's Memorandum, the Court stated that it had "recogniz[ed] all along that the Federal Communications Commission has not decided the specific issue of whether local phone companies are entitled to reciprocal compensation for terminating internet traffic." Judge Bunton reemphasized that the judgment denying Southwestern Bell's request for declaratory and injunctive relief would stand. *Id.* In other words, the Court rejected the FCC Memorandum as any grounds for altering the Court's decision. Instead, Judge Bunton affirmed his earlier holding that the Texas Commission was correct in finding that Southwestern Bell must pay reciprocal compensation for local calls terminated to internet service providers.

Thus, the Texas federal court decision stands as it was issued notwithstanding SBC's very late (post-judgment) effort to reverse the outcome. Thus, this filing by Ameritech does not tell the whole Texas story. It likewise here should have no influence on the outcome. The Commission should reject this proffered "authority" as it has no precedential value for the position advocated by Ameritech Ohio in these proceedings.

Respectfully submitted,

TIME WARNER COMMUNICATIONS OF  
OHIO, L.P.



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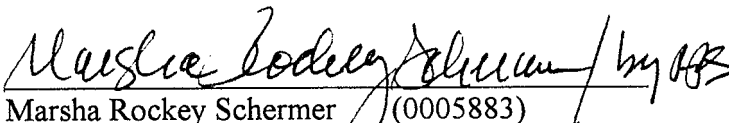
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IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF TEXAS  
 MIDLAND-ODESSA DIVISION

FILED

JUL 20 1998

CLERK, U.S. DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS  
 BY *[Signature]*  
 DEPUTY CLERK

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 SOUTHWESTERN BELL )  
 TELEPHONE COMPANY, )  
 PLAINTIFF, )  
 )  
 v. )  
 )  
 PUBLIC UTILITY COMMISSION OF )  
 TEXAS, ET. AL, )  
 DEFENDANTS. )  
 \_\_\_\_\_

MO-98-CA-43

ORDER

BEFORE THIS COURT, in the above-captioned cause of action, are the Plaintiff's Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil Procedure 59(e), filed June 22, 1998; Defendant Public Utility Commission of Texas and Its Commissioners' Response to Southwestern Bell's Motion to Alter or Amend Judgment, filed July 9, 1998; Defendant Time Warner's Response to Motion to Alter or Amend Judgment, filed July 13, 1998; and Southwestern Bell's Reply to Public Utility Commission's Response to Southwestern Bell's Rule 59(e) Motion, filed July 14, 1998. Also before the Court are Amicus Curiae Teleport Communications Group, Inc.'s Response to Motion to Alter or Amend Judgment, filed July 10, 1998, and the Joint Opposition of *Amici* to Southwestern Bell's Motion to Alter or Amend Judgment, filed July 13, 1998.

After due consideration, the Court is of the opinion that the Order (*Nunc Pro Tunc*) of June 22, 1998, should be amended by deleting footnote 15 on page 21. However, recognizing all along that the Federal Communications Commission has not decided the specific issue of whether local phone companies are entitled to reciprocal compensation for terminating Internet traffic, the

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Court's judgment to deny the Plaintiff's request for declaratory and injunctive relief shall stand.

Accordingly,

**IT IS ORDERED** that Plaintiff's Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil Procedure 59(e) is hereby **DENIED**.

**IT IS FURTHER ORDERED** that footnote 15 on page 21 of the Order (*Nunc Pro Tunc*) of June 22, 1998, shall be **DELETED**.

SIGNED this 16 day of July, 1998.

  
**HONORABLE LUCIUS D. BUNTON III**  
**SENIOR U.S. DISTRICT JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of TIME WARNER COMMUNICATIONS OF OHIO, L.P.'S RESPONSE TO AMERITECH OHIO'S NOTICE OF SUPPLEMENTAL AUTHORITY was served upon the following parties, or their counsel of record to these actions, via ordinary U.S. mail, postage prepaid, this 29<sup>th</sup> day of July, 1998:

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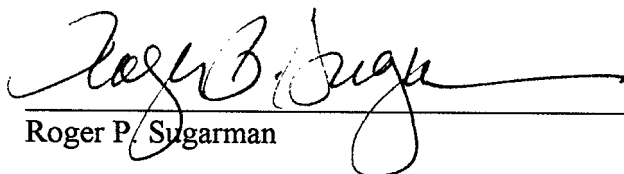
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