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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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ICG Telecom Group, Inc.,)
)
 Complainant)
)
 v.)
)
 Ameritech Ohio,)
)
 Respondent.)

Case No. 97-1557-TP-CSS

**REPLY BRIEF OF AMICUS CURIAE
MCImetro ACCESS TRANSMISSION SERVICES, INC.**

MCI Metro Access Transmission Services, Inc. ("MCI") hereby submits this reply brief in response to the Initial Post-Hearing Brief of Ameritech Ohio ("Ameritech") filed in the above-captioned consolidated cases.

DISCUSSION

1. The ISP traffic at issue in this proceeding is local in nature.

Ameritech first argues that Internet communications are non-local in nature and jurisdictionally interstate. Despite the undisputed facts that a seven digit telephone number is used to place a call to an Internet service provider ("ISP"), that Ameritech charges its own end users for a call to an ISP as a local call, and that Ameritech paid the CLECs reciprocal compensation charges for ISP traffic in the past, Ameritech asserts that these matters should have

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Technician Anna M. Nijm Date Processed March 11, 1998

no bearing on the issue of whether ISP traffic is local traffic under the interconnection agreements. Rather, Ameritech attempts to cloud the issue by arguing that customers placing calls to an ISP may ultimately have access to information stored in various databases on the Internet and urges that this is the terminating point of the communication and the determining factor. Initial Brief of Ameritech, p. 10. Ameritech's apparent strategy is to blur what really happens in the typical ISP transaction and pretend that this case is about the portion of the ISP transaction that is handled by the ISP, but it is not. This case is about the local resident's local call to the ISP. The calls which are at issue are intrastate in nature, not interstate, originated by Ameritech customers and terminated by ICG Telecom Group, Inc. ("ICG") to its ISP customers within the same local calling area, as defined by this Commission. A call placed over the public switched telephone network is considered terminated when it is delivered to the Telephone Exchange Service bearing the called telephone number. (Testimony of Cindy Z. Schonhaut, pp. 6-7).

2. The plain language of the interconnection agreement between ICG and Ameritech reflects the understanding of the parties and clearly establishes that the ISP calls at issue in this proceeding constitute local traffic.

Ameritech erroneously claims that the ISP traffic at issue in these proceedings is not subject to reciprocal compensation because it is not local traffic under the interconnection agreements between ICG and Ameritech. In fact, the contract language is clear in its definition of "Local Traffic," and Ameritech's own conduct in paying reciprocal compensation through July of 1997 confirms the clarity of the contract as well as the intent of the parties. (ICG Complaint, Appendix A) The interconnection agreement contains definitions of Local Traffic, Switched

Access Traffic and Reciprocal Compensation and clearly states that reciprocal compensation applies for transport and termination of Local Traffic billable by Ameritech. Ameritech admits that when its end user places a call to an ISP, Ameritech bills the calling party for a local call. (Tr. 130) Moreover, a call originated by an Ameritech customer to an ISP located within the same local service area, as defined by the Commission, squarely falls within the literal definition of "Local Traffic" set forth in the Agreement.

3. Under the FCC's orders, the ISP traffic at issue in this proceeding does not constitute switched access service.

Ameritech's focus on the words "similar Switched Exchange Services," as well as its attempt to twist FCC precedent to support its contentions, is unavailing. Indeed, the FCC's treatment of ISP traffic completely supports ICG's understanding that ISP traffic is subject to reciprocal compensation. The FCC consistently has found that ISPs are end users, not carriers.¹ Moreover, as explained in MCI's initial Brief filed in this proceeding, the ISP traffic at issue in this proceeding is not Switched Exchange Access Service because Ameritech customers are not placing calls to ISPs for the purpose of originating or terminating Telephone Toll Service. Instead, the customers establish data links to the ISP and obtain information available on the Internet. There are no Telephone Toll Services involved at all.

¹*In re Access Charge Reform*, First Report and Order, CC Docket 96-262, FCC 97-158, ¶¶342, 348 (rel. May 16, 1996); *Amendment of Section 64.702 of the Commission's Rules and Regulations* (Second Computer Inquiry), Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980), recon., 844 FCC 2d 50 (1980).

The Agreement is clear. When read in conjunction with the aforementioned FCC conclusions, the Agreement is ever more compelling. Try as it may, Ameritech cannot mangle the straight forward law and facts before this Commission.

4. The Commission should reject Ameritech's proposed compromise.


Finally, in what it paints as an attempt to compromise, Ameritech offers to establish what it describes as a type of meet point billing arrangement to divide the local revenue that Ameritech receives from ISP calls until such time as the FCC may subject such calls to access charges. Ameritech Initial Brief, p. 33. This "compromise" is proposed despite the facts that state after state has ruled against the position Ameritech advances here, that the FCC has rejected Ameritech's position, and that Ameritech's refusal to pay reciprocal compensation for the termination of ISP traffic was unilateral. Ameritech agreed to contract language reflecting its obligations. For Ameritech to now assert that it wants different treatment for a particular subset of calls that is out of balance in its competitor's favor is nothing more than a piecemeal attempt to revise those portions of the contract that it finds not to its liking. The Commission should enforce the terms of the agreement to which Ameritech has already agreed by ordering Ameritech to pay the reciprocal compensation to ICG that Ameritech has unilaterally and unfairly withheld. There is nothing in this record or the law which would justify the adoption of Ameritech's recommendation, and it should be rejected.

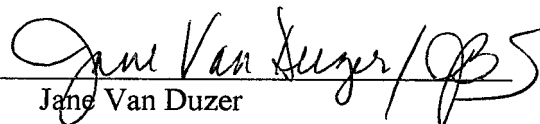
CONCLUSION

Simply stated, this is a breach of contract action well within the jurisdiction of this Commission to remedy. The interconnection agreements between the CLECs and Ameritech provide that Local Traffic is subject to reciprocal compensation. ISP traffic falls within the definition of Local Traffic and does not fall within the exception to reciprocal compensation that is established for switched exchange access service. This interpretation of the contract is consistent with the FCC's orders, the holdings of other state regulatory commissions, and the intent of the parties.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION and
MCI metro ACCESS TRANSMISSION SERVICES, INC.

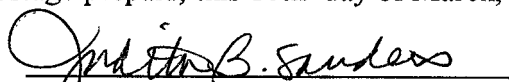
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Dated: March 10, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the foregoing Reply Brief to the parties listed below via telecopy or first-class U.S. mail, postage prepaid, this 10th day of March, 1998.


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