

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Numerous Applications of)
Ameritech Ohio for Approval of a Contract)
or Other Arrangement Between Ameritech)
Ohio and Various of its Customers:)
)
Ameritech\Southdown Inc.) Case No. 96-389-TP-AEC
Ameritech\NewPar dba Cellular One) Case No. 96-390-TP-AEC
Ameritech\Kelly Services) Case No. 96-403-TP-AEC
Ameritech\Corrigan Moving) Case No. 96-442-TP-AEC
Ameritech\Corrigan Moving) Case No. 96-443-TP-AEC
Ameritech\D.O.C. Optical) Case No. 96-444-TP-AEC
Ameritech\Reynolds & Reynolds) Case No. 96-445-TP-AEC
Ameritech\LCI International) Case No. 96-446-TP-AEC
Ameritech\Libby-Owens-Ford Co.) Case No. 96-465-TP-AEC
Ameritech\Key Services Corp.) Case No. 96-555-TP-AEC
Ameritech\Mortgage Placement) Case No. 96-580-TP-AEC
Ameritech\Sears, Roebuck & Co.) Case No. 96-629-TP-AEC
Ameritech\Croghan Colonial Bank) Case No. 96-640-TP-AEC
Ameritech\Citizens Banking Co.) Case No. 96-653-TP-AEC
Ameritech\OCLC Online Computer Library) Case No. 96-661-TP-AEC
Ameritech\Chase Manhattan Mortgage) Case No. 96-704-TP-AEC
Ameritech\OfficeMax, Inc.) Case No. 96-705-TP-AEC
Ameritech\Sun TV) Case No. 96-738-TP-AEC
Ameritech\Dean Witter) Case No. 96-754-TP-AEC
Ameritech\Akron General Medical Center) Case No. 96-755-TP-AEC
Ameritech\Huntington National Bank) Case No. 96-778-TP-AEC
Ameritech\Mt. Carmel Health Systems) Case No. 96-826-TP-AEC
Ameritech\CompuServe, Inc.) Case No. 96-827-TP-AEC
Ameritech\Heritage Mutual Insurance Co.) Case No. 96-833-TP-AEC
Ameritech\Meridia Health Systems) Case No. 96-839-TP-AEC
Ameritech\North Canton Medical Clinic) Case No. 96-874-TP-AEC
Ameritech\TheOnRamp) Case No. 96-911-TP-AEC
Ameritech\Ohio Savings Bank) Case No. 96-915-TP-AEC
Ameritech\Stow-Glenn, Inc.) Case No. 96-939-TP-AEC
Ameritech\American Airlines) Case No. 96-954-TP-AEC
Ameritech\Revco D. S., Inc.) Case No. 96-955-TP-AEC
Ameritech\Salem Community Hospital) Case No. 96-956-TP-AEC
Ameritech\Altman Hospital) Case No. 96-994-TP-AEC
Ameritech\Sun TV) Case No. 96-995-TP-AEC
Ameritech\Cowen & Company) Case No. 96-1017-TP-AEC
Ameritech\Netwalk) Case No. 96-1039-TP-AEC
Ameritech\Gordon Food Service) Case No. 96-1042-TP-AEC

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Ameritech\Bethesda Good Samaritan)	Case No. 96-1043-TP-AEC
Ameritech\Motor Parts Federal Credit Union)	Case No. 96-1044-TP-AEC
Ameritech\Village Green Co.	)	Case No. 96-1045-TP-AEC
Ameritech\Third Federal Savings and Loan	)	Case No. 96-1078-TP-AEC
Ameritech\Dayton Walther Corporation)	Case No. 96-1092-TP-AEC
Ameritech\Laurelwood)	Case No. 96-1101-TP-AEC
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Ameritech\First American Title Insurance)	Case No. 96-1110-TP-AEC
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Ameritech\Charter One Bank)	Case No. 96-1112-TP-AEC
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Ameritech\Cardinal Health, Inc.)	Case No. 96-1155-TP-AEC
Ameritech\First National Bank)	Case No. 96-1172-TP-AEC
Ameritech\Ursuline College	)	Case No. 96-1188-TP-AEC
Ameritech\The American Red Cross	)	Case No. 96-1210-TP-AEC
Ameritech\Limited Distribution Services, Inc.	)	Case No. 96-1251-TP-AEC
Ameritech\Office Depot Inc.	)	Case No. 96-1252-TP-AEC
Ameritech\Boston Market	)	Case No. 96-1274-TP-AEC
Ameritech\Alro Steel	)	Case No. 96-1293-TP-AEC
Ameritech\Citizens Banking Co.	)	Case No. 96-1296-TP-AEC
Ameritech\Cutler/Marting Realty	)	Case No. 96-1297-TP-AEC
Ameritech\Rapid Design Service	)	Case No. 96-1346-TP-AEC
Ameritech\Citizens Federal	)	Case No. 96-1347-TP-AEC
Ameritech\Federal Savings Bank	)	Case No. 96-1348-TP-AEC
Ameritech\Longaberger	)	Case No. 96-1368-TP-AEC
Ameritech\Airtouch Cellular	)	Case No. 96-1369-TP-AEC
Ameritech\Seaman Patrick Paper Company	)	Case No. 96-1388-TP-AEC
Ameritech\KinderCare Learning Center	)	Case No. 96-1389-TP-AEC
Ameritech\Venture Industries	)	Case No. 96-1390-TP-AEC
Ameritech\CompuServe Incorporated	)	Case No. 96-1408-TP-AEC
Ameritech\H.Q. Business	)	Case No. 96-1415-TP-AEC
Ameritech\BASF Corp.	)	Case No. 96-1416-TP-AEC
Ameritech\Electronic Data Systems Corp.	)	Case No. 97-21-TP-AEC
Ameritech\Big Bear Stores	)	Case No. 97-22-TP-AEC
Ameritech\Progressive Insurance Agency Inc.	)	Case No. 97-23-TP-AEC
Ameritech\City of Green	)	Case No. 97-24-TP-AEC
Ameritech\Southwest General Hospital	)	Case No. 97-29-TP-AEC
Ameritech\United Airlines	)	Case No. 97-55-TP-AEC
Ameritech\Grant/Riverside Methodist Hospitals	)	Case No. 97-90-TP-AEC
Ameritech\Timken Company	)	Case No. 97-91-TP-AEC
Ameritech\Lear Corporation)	Case No. 97-98-TP-AEC
Ameritech\Lexis-Nexis)	Case No. 97-133-TP-AEC
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Ameritech\Star Banc Services)	Case No. 97-150-TP-AEC
Ameritech\Charter One Bank)	Case No. 97-164-TP-AEC
Ameritech\Young's Environmental Cleanup Inc.	)	Case No. 97-191-TP-AEC

Ameritech\Aerotek	)	Case No. 97-192-TP-AEC
Ameritech\LTV Steel	)	Case No. 97-193-TP-AEC
Ameritech\CBC Companies (Columbus)	)	Case No. 97-271-TP-AEC
Ameritech\CBC Companies (N.W. Professional Plaza)	)	Case No. 97-272-TP-AEC
Ameritech\Key Services Corporation	)	Case No. 97-276-TP-AEC
Ameritech\Wickes Lumber	)	Case No. 97-277-TP-AEC
Ameritech\Wayne Industries	)	Case No. 97-309-TP-AEC
Ameritech\Applied Industrial	)	Case No. 97-319-TP-AEC
Ameritech\Timkin Company	)	Case No. 97-367-TP-AEC
Ameritech\Texlon Corp.	)	Case No. 97-372-TP-AEC
Ameritech\Grant Medical Center	)	Case No. 97-395-TP-AEC
Ameritech\Ohio Edison Company	)	Case No. 97-396-TP-AEC
Ameritech\Columbia Gas System Service Corp.	)	Case No. 97-400-TP-AEC
Ameritech\Avery International	)	Case No. 97-401-TP-AEC
Ameritech\Cassens Transport	)	Case No. 97-409-TP-AEC
Ameritech\Plain Dealer Publishing Co.	)	Case No. 97-444-TP-AEC
Ameritech\Grant/Riverside Methodist Hospitals	)	Case No. 97-464-TP-AEC
Ameritech\360 Communications	)	Case No. 97-465-TP-AEC
Ameritech\Summa Health Systems	)	Case No. 97-525-TP-AEC
Ameritech\Kinko's	)	Case No. 97-526-TP-AEC
Ameritech\National City Corp.	)	Case No. 97-530-TP-AEC
Ameritech\Sears, Roebuck & Co.	)	Case No. 97-557-TP-AEC
Ameritech\Banc One Services	)	Case No. 97-558-TP-AEC
Ameritech\General Electric Company	)	Case No. 97-559-TP-AEC
Ameritech\Toledo Hospital	)	Case No. 97-560-TP-AEC
Ameritech\Owens Corning	)	Case No. 97-561-TP-AEC
Ameritech\Exide Corporation	)	Case No. 97-565-TP-AEC
Ameritech\Exotic Rubber	)	Case No. 97-574-TP-AEC
Ameritech\Hills Department Store Company	)	Case No. 97-598-TP-AEC
Ameritech\Columbia Gas System	)	Case No. 97-599-TP-AEC
Ameritech\Siding World	)	Case No. 97-600-TP-AEC
Ameritech\CSM Industries	)	Case No. 97-610-TP-AEC
Ameritech\Cardinal Health	)	Case No. 97-620-TP-AEC
Ameritech\Forest City Auto Parts	)	Case No. 97-621-TP-AEC
Ameritech\Star Banc Services	)	Case No. 97-635-TP-AEC
Ameritech\Iwaynet Communication	)	Case No. 97-722-TP-AEC
Ameritech\Sterling Software	)	Case No. 97-758-TP-AEC
Ameritech\Parker Hannifin Corp.	)	Case No. 97-759-TP-AEC
Ameritech\Crawford Fitting	)	Case No. 97-768-TP-AEC
Ameritech\National City Corp.	)	Case No. 97-819-TP-AEC
Ameritech\Suarez Corp.	)	Case No. 97-874-TP-AEC
Ameritech\CBC Companies	)	Case No. 97-910-TP-AEC
Ameritech\OCLC	)	Case No. 97-911-TP-AEC
Ameritech\Hewlett Packard	)	Case No. 97-932-TP-AEC
Ameritech\Distribution Fulfill	)	Case No. 97-1060-TP-AEC

Ameritech\Chemical Abstracts	)	Case No. 97-1061-TP-AEC
Ameritech\Sherwin-Williams	)	Case No. 97-1062-TP-AEC
Ameritech\Sherwin-Williams	)	Case No. 97-1063-TP-AEC
Ameritech\Frank Z. Chevrolet	)	Case No. 97-1454-TP-AEC
Ameritech\Huntington Nat'l Bnk	)	Case No. 97-1492-TP-AEC
Ameritech\DLZ Corp.	)	Case No. 97-1662-TP-AEC
Ameritech\Bright.Net Brt.	)	Case No. 97-1663-TP-AEC
Ameritech\Erb Lumber	)	Case No. 97-1664-TP-AEC
Ameritech\American General Finance	)	Case No. 97-1665-TP-AEC
Ameritech\Lear Corporation	)	Case No. 97-1666-TP-AEC
Ameritech\MCA Mortgage Corp.	)	Case No. 97-1667-TP-AEC
Ameritech\Cowen and Company	)	Case No. 97-1685-TP-AEC
Ameritech\White Family Companies	)	Case No. 97-1686-TP-AEC
Ameritech\Economic Opportunity	)	Case No. 97-1687-TP-AEC
Ameritech\Caliber Technologies	)	Case No. 97-1688-TP-AEC
Ameritech\Aurora Foods	)	Case No. 97-1691-TP-AEC
Ameritech\Realty One	)	Case No. 97-1692-TP-AEC
Ameritech\Ohio Edison	)	Case No. 97-1699-TP-AEC
Ameritech\Reynolds & Reynolds	)	Case No. 97-1713-TP-AEC

ENTRY

The Commission finds:

- (1) On March 21, 1996, in Case No. 95-985-AU-ORD, the Commission issued an entry modifying various provisions of the Ohio Administrative Code (O.A.C.) including the provision dealing with the filing of alleged proprietary or confidential information with the Commission's Docketing Division. Modifications dealing with the filing of alleged proprietary information were set forth in revised Rule 4901-1-24(D), O.A.C.
- (2) By entry issued May 15, 1996, the Commission granted rehearing for the limited purpose of affording itself additional time to consider issues raised in applications for rehearing of the March 21, 1996 revisions including rehearing on Rule 4901-1-24, O.A.C.
- (3) In an Order on Rehearing issued June 19, 1997, the Commission further modified and revised Rule 4901-1-24, O.A.C., as that rule pertains to the filing of alleged confidential material with the Commission. Rule 4901-1-24(D), O.A.C., as revised, now sets forth a process for automatic approval of a motion for protective order involving a contract between a telecommunications carrier and a customer for an 18-month period

beginning on the date that the contract is automatically approved. However, the Commission clarified that nothing precludes the Commission from examining *de novo* the confidentiality issue if there is an application for rehearing filed on confidentiality or if a public records request for the redacted information is made.

- (4) On April 22, 1996, in Case No. 96-389-TP-AEC, Ameritech Ohio (Ameritech) began submitting redacted and unredacted copies of contracts between itself and its customers along with a motion seeking protective treatment of the allegedly confidential terms of the agreement in each case listed in the caption of this entry.
- (5) In its motions seeking protective treatment, Ameritech maintains that state law prohibits release of the information which is the subject of these motions¹; that non-disclosure will not impair the purposes of Title 49; that the Commission and its staff have full access to the information in order to fulfill its statutory obligations; and that no purpose of Title 49 would be served by public disclosure of the involved information.

In support of its positions, Ameritech asserts that the involved information represents "trade secrets" as that term is defined in the Uniform Trade Secrets Act (Section 1333.61(D), Ohio Revised Code). Citing to prior precedent from this Commission and to courts of other jurisdictions, Ameritech claims that the Commission has a duty to protect information deemed to be trade secrets. Ameritech also maintains that, for all of the information subject to these motions, Ameritech treats the information as trade secrets; in the ordinary course of business this information is stamped confidential, is treated as proprietary and confidential by Ameritech employees, and is not disclosed to anyone except in a Commission proceeding; and during the course of discovery, this information has generally been provided only pursuant to protective agreement.

- (6) At various times, certain entities have opposed Ameritech's motions seeking protective treatment of certain contract terms. For instance, on May 6, 1996, AT&T Communications of Ohio, Inc. (AT&T) filed a memorandum contra

¹ Ameritech specifically seeks to redact information regarding prices, quantities, length of contracts, customer locations, and billed telephone numbers from these contracts.

Ameritech's motions for protective orders in Case Nos. 96-389-TP-AEC, 96-390-TP-AEC, and 96-403-TP-AEC. In support of its memorandum contra, AT&T asserts that, in order to satisfy the requirements of Rule 4901-1-24(D), O.A.C., Ameritech must establish (i) that state or federal law prohibits the release of the information for which it now seeks protection; and (ii) that nondisclosure of the information is not inconsistent with Title 49 of the Ohio Revised Code. AT&T submits that Ameritech has failed to do either.

Similarly, on May 10, 1996, Time Warner AxS (Time Warner) filed a memorandum contra Ameritech's motions for protective orders. Time Warner submits that its pleading focuses mainly on the Telecommunications Act of 1996 (1996 Act). In support of its memorandum contra, Time Warner submits that nondisclosure of the information subject to the request for protective treatment will impair the purposes of Title 49 of the Ohio Revised Code. Time Warner further avers that there is a rebuttable presumption established in Rule 4901-1-24(D), O.A.C., that information should not be protected from disclosure and the burden is on the party requesting protected status to establish that protection is warranted. Time Warner submits that Ameritech has failed to overcome this presumption. Regarding the 1996 Act, Time Warner maintains that Section 251(c) [duty to negotiate in good faith]; Section 251(c)(3) [duty to provide unbundled network elements on an open and nondiscriminatory basis at rates and terms that are just, reasonable and nondiscriminatory]; Section 251(b) [duty not to prohibit nor impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services]; and Section 253(a) [state may not prohibit an entity from providing any telecommunications service] warrant denying Ameritech's request for protective treatment.

- (7) On May 16, 1996, Ameritech filed its reply to AT&T and Time Warner's memoranda contra. In its reply, Ameritech asserts that it followed the Commission rules and procedures when seeking protective status for the sensitive information contained in the involved contract filings. AT&T should have raised its arguments, according to Ameritech, in the recent Commission proceeding which modified the procedural rules. Ameritech submits that the information for which protection is sought represents pricing and customer specific information which, if publicly disclosed, would result in

competitive harm to Ameritech. Nothing in the 1996 Act nor the Ohio Revised Code supports Commission disclosure of the involved information Ameritech argues. As a final matter, Ameritech asserts that AT&T and other competitors do not disclose such information in the minimal information they file with the Commission for similar contracts and filings.

- (8) Ameritech's request for protective treatment of certain terms and conditions of the involved customer contracts must be scrutinized against both state and federal telecommunications policy. For instance, the federal Telecommunications Act of 1996 (1996 Act)² prohibits any unreasonable or discriminatory conditions or limitations on the resale of that LEC's telecommunications services to other local exchange carriers. 47 U.S.C. §251(b)(1) and 47 U.S.C. §251(c)(4)(B). In other words, it is the telecommunications policy of the United States that a local exchange carrier's services, including those services offered through end user contracts, should be made available for resale by competing telecommunications providers.³

In a similar fashion, this Commission has adopted guidelines as part of our local competition proceeding, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI (845), which prohibit unreasonable or discriminatory limitations on the resale of a contract entered into between a LEC and its end user subscriber. 845 guidelines IX.C.1, VI.I.2.d, and VII.

- (9) Having fully reviewed the documentation and the parties' arguments, as well as state and federal telecommunications policy and, further, recognizing that the burden of establishing that protection is warranted is on the party requesting confidential treatment, we find that Ameritech has not sufficiently justified granting protective treatment under Rule 4901-1-24(D), O.A.C., to any of the information the company redacted in the involved contracts.

The first analysis the Commission must undertake when reviewing a motion seeking to protect certain information in

² Codified as 47 U.S.C. 151 *et seq.*

³ States were afforded the discretion to limit the resale of certain services included within the definition of universal service.

a customer contract from public disclosure is to evaluate the level of competition the utility is subject to in the relevant market. In other words, is the requesting utility subject to direct, effective competition in the relevant market or is the level of competition the utility subject to merely emerging.⁴ A factor to be considered in the telecommunications industry in making this determination is whether the requesting utility is a primary provider of physical facilities which competitors must purchase in order to offer services to end users.⁵ In the circumstance where the utility requesting protective treatment for certain key elements in an end user contract also owns physical facilities which some or all of its competitors must purchase in order to compete, there is a strong presumption against affording protective treatment to the requesting utility.

A second basis on which Ameritech's motions must be denied is that state and federal telecommunications policy, as set above, provides that a local exchange carriers' customer contracts will be available for resale by competing telecommunication providers. Permitting Ameritech to redact information regarding prices, quantities, contract length, customer locations, and billed telephone numbers would frustrate that regulatory policy. In fact, Ameritech's request could be viewed as inhibiting customer choice in that competing carriers would have little or no indication of important terms and conditions of the contract including the contract's expiration date. Ameritech has failed to provide any justification that granting its motions for protective treatment will benefit end user customers.

As a final matter, Ameritech has also failed to convince us that the information the company seeks to protect from disclosure qualifies as trade secret information protectable under Ohio law. Practically every piece of information held by Ameritech, under its definition, could constitute a trade secret warranting protection from disclosure. Such a broad interpretation does not satisfy the standard set forth by the Ohio General Assembly in determining what constitutes trade secrets.

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- ⁴ We note, however, that even if a determination can be made that the requesting utility is subject to direct effective competition, as discussed in more detail below regarding resale obligations, other requirements must also be examined to determine whether protective treatment is warranted.
- ⁵ Each request must be reviewed on a case-by-case basis, and the unique status of each utility industry in the state must also be considered.

- (10) On September 8, 1997, Ameritech filed motions, pursuant to Rule 4901-1-24(F), O.A.C., seeking to extend protective treatment to the information redacted from the customer contracts submitted in Case Nos. 96-389-TP-AEC, 96-390-TP-AEC, and 96-403-TP-AEC.⁶ Ameritech maintains that the need for continued protection of this information from disclosure is the same as in Ameritech's memorandum in support of its original motion which the company incorporated by reference herein.
- (11) Ameritech's motions seeking to extend protective treatment to certain customer contracts beyond the 18-month time period authorized by Rule 4901-1-24, O.A.C., are denied. Ameritech has failed to provide any further justification in support of its motions than was considered and rejected in accordance with Finding (9). Consequently, Ameritech's motions to extend protective treatment beyond 18 months from the approval of the involved contracts⁷ are denied in accordance with the rationale set forth in Finding (9).
- (12) Ameritech's arguments on confidentiality fail to convince us that the involved information should be protected from disclosure; however, we are faced with the practical problem of what we do with the numerous contracts which have been filed to date. The parties have 30 days from the date of this entry to file an application for rehearing. If no application for rehearing is filed, the Commission's Docketing Division shall release into the public record all documents filed under seal in these cases. If an application for rehearing is filed, unless ordered otherwise, the Docketing Division shall release into the public record all documents filed in these cases upon the issuance of the Commission's entry on rehearing.
- (13) As a final matter, there are a handful of cases (Case Nos. 97-367-TP-AEC, 97-372-TP-AEC, 97-557-TP-AEC, 97-558-TP-AEC, 97-599-TP-AEC, 97-621-TP-AEC, and 97-635-TP-AEC) which are, pursuant to Ameritech's alternative regulation plan,⁸ considered to be in effect but have been suspended from the automatic approval process for various reasons.

⁶ Specifically, Ameritech seeks to keep confidential the prices, quantities, term, and the billed telephone numbers associated with the involved customer contracts.

⁷ Case Nos. 96-389-TP-AEC and 96-403-TP-AEC were approved by Finding and Order issued August 1, 1996. Case No. 96-390-TP-AEC was approved on August 15, 1996.

⁸ Case No. 93-487-TP-ALT.

Commission consideration of the appropriateness of these contracts will be addressed in subsequent Commission entries.

It is, therefore,

ORDERED, That, in accordance with Finding (9), Ameritech's request for protective treatment of the involved redacted information is denied. It is, further,

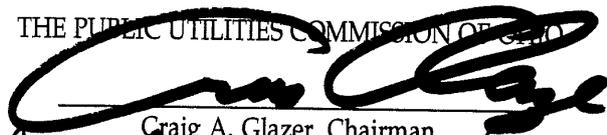
ORDERED, That the Docketing Division is directed to release into the public record all documents filed under seal in these cases pursuant to the directions given in Finding (12). It is, further,

ORDERED, That Ameritech's motions seeking to extend protective treatment to the contracts set forth in Finding (10) are denied. It is, further,

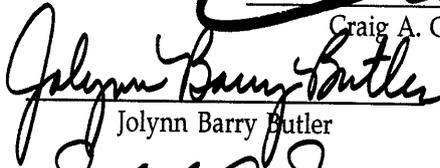
ORDERED, That the Commission's rulings in this entry do not affect the suspension of the contracts set forth in Finding (13). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF ILLINOIS



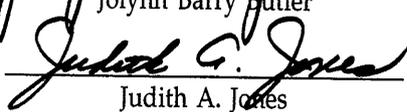
Craig A. Glazer, Chairman



Jolynn Barry Butler



Ronda Hartman Fergus



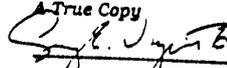
Judith A. Jones

JRJ;geb

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FEB 12 1998

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Gary E. Vigorito
Secretary

SERVICE NOTICE

PAGE 1

CASE NUMBER 96-390-TP-AEC
CASE DESCRIPTION AMERITECH OHIO/NEW PAR
DOCUMENT SIGNED ON February ¹²~~13~~, 1998
DATE OF SERVICE Feb 13, 1998

PERSONS SERVED

PARTIES OF RECORD

ATTORNEYS

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