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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of ICG)
TELECOM GROUP, INC.,)
)
Complainant,)
)
v.)
)
AMERITECH OHIO,)
)
)
Respondent.)

Case No. 97-1557-TP-CSS

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**TIME WARNER TELECOM'S MEMORANDUM IN OPPOSITION
TO AMERITECH OHIO'S APPLICATION FOR REHEARING
AND TEMPORARY STAY OF PAYMENT ORDER**

A. Argument

Ameritech Ohio's Application for Rehearing and Temporary Stay of Payment Order ("the Application") does little more than recast Ameritech's arguments first advanced in this docket nearly one (1) year ago in an effort to support its claim that the Commission's Opinion and Order granting ICG's Complaint against Ameritech and ordering Ameritech to pay to ICG reciprocal compensation payments, is unreasonable and unlawful. Now time-worn and already twice rejected by the Commission, these same arguments offer nothing new to support Ameritech's attack upon the Commission's Opinion and Order. Typical of its efforts to avoid the "day of reckoning" is Ameritech's request for the Commission to yet again defer to the FCC, a body which Ameritech claims will speak dispositively on this issue no later than October 30, 1998.

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This of course is the same FCC that Ameritech promised would rule any time when urging this Commission to defer from deciding the merits of this complaint in October 1997.

No matter when the FCC might rule, the Commission has already, and lawfully, recognized that ICG's Complaint is properly within the Commission's jurisdiction to interpret and enforce as to the terms of the involved interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996. *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997). Despite Ameritech's assertions, the FCC has not "promised ruling late [this] month on the question of whether calls from end-users to the Internet through ISPs are subject to FCC jurisdiction." (Ameritech Application, p.28). Instead, the response of the FCC as *amicus curiae* in the North Carolina proceeding referenced by Ameritech (Attachment C to the Application), evidences the FCC's position that it is "unclear whether, or the extent to which, [its] resolution of the jurisdictional issue in the GTE tariff proceeding will be relevant to the proper treatment of ISP traffic under the terms of the interconnection agreement between BellSouth and US LEC." (*Id.*, p. 6). The FCC noted that the GTE tariff proceeding before it did not "involve application of the reciprocal compensation provisions of section 251(b)(5) or interpretation of the terms of an interconnection agreement." *Id.*

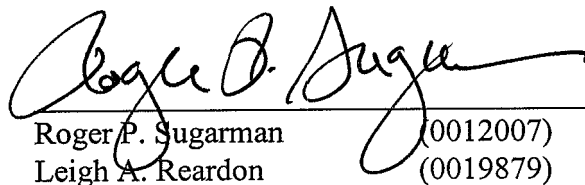
Still, even were Ameritech's characterization of the FCC's decisional intention accurate, the FCC *amicus* filing concludes unambiguously that this later decision would not alter or modify the terms of an earlier agreement. The FCC acknowledged that "the proper construction of the specific compensation agreement previously entered into between the parties would not necessarily turn on a subsequent determination by the FCC with respect to its jurisdiction over ISP traffic." (*Id.*) Therefore, by the FCC's own admission, this Commission's interpretation, construction and application of the ICG/Ameritech interconnection agreement, as reflected in its

Opinion and Order of August 27, 1998, would not turn (or retroactively change) on any subsequent determination by the FCC.

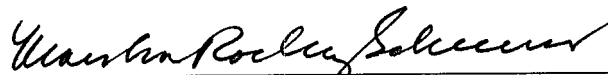
Twenty-one (21) of twenty-one (21) state public utilities commissions have agreed that ILECs, like Ameritech, must honor their contractual obligations embodied in their interconnection agreements, including that requiring the payment of reciprocal compensation. Some day it might occur to the ILECs to pay up that which is owed and then, renegotiate their current agreements with CLECs. Until that day, however, the analysis, construction and interpretation of the reciprocal compensation provisions of the Ameritech/ICG interconnection agreement embodied by the Commission's Opinion and Order in this docket, like that rendered by all other regulatory and judicial bodies, is reasonable and lawful. Ameritech's Application should therefore be denied in all respects.

Respectfully submitted,

TIME WARNER TELECOM



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CERTIFICATE OF SERVICE

I hereby certify that a copy of TIME WARNER TELECOM'S OPPOSITION TO AMERITECH OHIO'S APPLICATION FOR REHEARING AND TEMPORARY STAY OF PAYMENT ORDER was served upon the following parties, or their counsel of record to these actions, via ordinary U.S. mail, postage prepaid, this 28th day of October, 1998:

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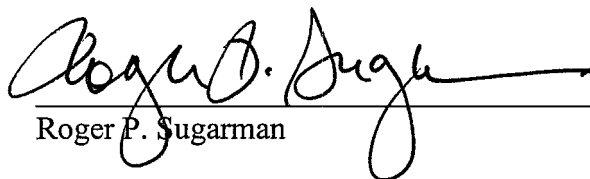
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