

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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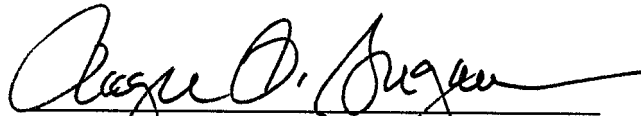
In the Matter of the Complaint of ICG Telecom )  
Group, Inc. Against Ameritech Ohio Regarding )  
The Payment of Reciprocal Compensation )

Case No. 97-1557-TP-CSS

**MOTION OF TIME WARNER COMMUNICATIONS OF OHIO, L.P.  
FOR CLARIFICATION OF THE COMMISSION'S JANUARY 22, 1998 ENTRY**

The Commission's Entry of January 22, 1998, *inter alia*, denied Time Warner Communications of Ohio, L.P.'s ("Time Warner") Motion to Intervene and granted Time Warner's alternative request for *amicus curiae* status. Time Warner submits this motion requesting clarification of its role with respect to these proceedings. The issues as to which Time Warner requests clarification are set forth in the attached Memorandum in Support.

Respectfully submitted,



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Prepared by Anna M. Hix Date Processed Jan 30, 1998

## MEMORANDUM IN SUPPORT

Time Warner's preference was to intervene and become a part of the current proceedings in order to present Time Warner's factual and legal position, including evidence and arguments regarding its own Interconnection Agreement with Ameritech and regarding the other legal considerations relevant to the determination of whether telecommunications traffic to information service providers is "local traffic." Time Warner understands that, pursuant to the Commission's ruling, Time Warner will not be permitted as expansive a role as it had requested with respect to these proceedings. In light of this ruling, Time Warner seeks to aid the Commission in addressing the local traffic issue, while at the same time protecting and preserving the opportunity to present Time Warner's complete position to the Commission at the appropriate time if that becomes necessary.

In furtherance of that objective, Time Warner respectfully requests clarification from the Commission regarding the following issues: (1) the permissible level of participation for Time Warner as an *amicus* in this matter, *i.e.*, is Time Warner permitted as an *amicus* to participate in discovery, present witnesses at a hearing, file briefs?; (2) the lack of collateral estoppel effect of these proceedings with respect to non-parties whose request for intervention has been denied; and (3) the admissibility or inadmissibility at a hearing of evidence relating to Time Warner's Interconnection Agreement, negotiations with Ameritech and various proceedings in which Time Warner and Ameritech participated which can shed light on this subject. Each of the foregoing issues will be addressed briefly below.

### *1. Level of Participation as an Amicus*

The first issue upon which Time Warner seeks clarification is the scope of its participation in these proceedings as an *amicus*. Paragraph 10 of the Commission's January 22, 1998 Entry states that the Commission prefers Time Warner, Brooks, TCG, and MCI to have *amicus curiae* status, rather than "full intervention," in order to prevent expansion of the proceedings and the addition of claims. The Commission further states that "*amicus curiae* status is appropriate so that TCG, Brooks, Time Warner and MCI can address the legal issue

to which they have an interest.” *Id.* The Commission’s direction that the *amici* be limited to addressing the “legal issue” suggests a very limited role, perhaps confined to the submission of briefs, addressing the legal issue surrounding the characterization of telecommunication traffic to information service providers as “local traffic.” Time Warner understands its role to be that of an observer entitled to review all submissions and discovery by the parties and to submit a brief to the Commission addressing the legal issues relevant to the proceedings. If the Commission intended to allow a more expansive role,<sup>1</sup> or require a more limited role, Time Warner requests that the Commission articulate that role before the matter proceeds further.

2. *Lack of Collateral Estoppel Effect of Proceedings Against the Non-Party Amici*

Having been denied the opportunity to intervene and fully litigate this matter before the Commission, any outcome of the proceedings between ICG and Ameritech which is favorable to Ameritech will not have collateral estoppel effect on Time Warner or the other *amici*. If it is the Commission’s or Ameritech’s intention that Time Warner will be bound by an adverse result, then Time Warner is entitled to intervene pursuant to Civ. R. 24. Having been granted *amicus curiae* status, Time Warner asks the Commission to clarify this collateral estoppel issue with respect to Time Warner and the other *amici*.<sup>2</sup> Time Warner cannot be prevented from full participation in this matter and at the same time be bound by an adverse result.

3. *Admissibility of “Time Warner Evidence” at a Hearing*

The Commission’s January 22, 1998 Entry acknowledges variations between the ICG/Ameritech interconnection agreement, and the agreements between the *amici* and Ameritech. (See *id.* at ¶ 10.) Ameritech argued that the agreements with new entrant carriers other than ICG are not appropriate or relevant for consideration in these proceedings:

Ameritech does, however, believe that the language of the interconnection agreements of TCG, Brooks, Time Warner, and MCI is not an appropriate or relevant subject for consideration in

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<sup>1/</sup> *E.g.*, attendance and participation in conferences regarding fact stipulations, engaging in discovery, submission of testimony, and calling witnesses and cross-examining witnesses during a hearing.

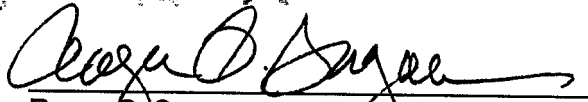
<sup>2/</sup> In light of the Commission’s decision in a somewhat similar situation involving NEXTLINK Ohio’s complaint against Ameritech (Case NO. 97-1291-TP-CSS), while Time Warner raised the possibility of participation as an *amicus*, it obviously preferred and primarily sought to intervene as a party in these proceedings.

ICG's complaint case. Ameritech believes that the facts surrounding the various interconnection agreements are not identical and, thus, consolidation of those agreements with ICG's agreement would not be consistent with the Commission's goal of rapid resolution of carrier-to-carrier complaints.

(See January 22, 1998 Entry at ¶ 8.) Recognizing that both Ameritech and the Commission have concluded that facts surrounding interconnection agreements between Ameritech and the *amici* are not relevant to the ICG/Ameritech dispute, Time Warner respectfully requests that the Commission prevent the presentation by Ameritech of such evidence in connection with this matter. Such a ruling would allow the *amici* to fully present the evidence relevant to their individual positions if, and when, it becomes necessary to litigate their own cases before the Commission. Time Warner feels strongly that if the Commission is to hear evidence regarding negotiations and/or the Interconnection Agreement between Time Warner and Ameritech, then Time Warner should be permitted a full and fair opportunity for participation in discovery, evidentiary presentation, and cross-examination regarding such facts. In the absence of such an opportunity, Time Warner may be prejudiced by the presentation of such untested evidence to the Commission.

For all of the foregoing reasons, Time Warner respectfully requests clarification of the Commission's January 22, 1998 Entry with respect to the issues raised herein.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing MOTION OF TIME WARNER COMMUNICATIONS OF OHIO, L.P. FOR CLARIFICATION OF THE COMMISSION'S JANUARY 22, 1998 ENTRY AND MEMORANDUM IN SUPPORT was served upon the following parties of record or *amici* to this action, or their counsel of record, by either facsimile transmission or hand delivery, this 29th day of January, 1998.

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