

file

5

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
87 AUG -5 PM 4:57
PUCO

In the Matter of the Complaint of The Ohio)
Cable Telecommunications Association,)
Complainant,) Case No. 97-654-TP-CSS
v.)
Ameritech Ohio,)
Respondent.)

MEMORANDUM CONTRA AMERITECH OHIO'S MOTION
FOR AN ORDER TEMPORARILY STAYING THE COMMISSION'S
JULY 17, 1997 OPINION AND ORDER AND JULY 31, 1997
ENTRY ON REHEARING

Pursuant to the attorney examiner's direction, the Ohio Cable Telecommunications Association (the "Association" or "Complainant"), hereby submits this Memorandum Contra to the August 1, 1997 pleading entitled "Ameritech Ohio's Motion for an Order Temporarily Staying the Commission's July 17, 1997 Opinion and Order, and July 31, 1997 Entry on Rehearing, and a Request for an Expedited Ruling". This motion for a temporary stay should be denied for a variety of reasons.

I. The Commission Has No Jurisdiction to Address the Ameritech Ohio Motion for a Temporary Stay.

The Commission is without jurisdiction to entertain this Motion or any other motion in Case No. 97-654-TP-CSS. Once Ameritech Ohio filed its Notice of Appeal in Case No. 97-1618 at the Ohio Supreme Court on August 1, the Commission no longer has jurisdiction

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Date Processed 8-7-97
Operator SW

over this matter¹. Either the Ohio Supreme Court or the Commission has jurisdiction over the matter, not both. One can not have both the Court and the Commission issuing simultaneous orders over the same matter. The appeal process is commenced by the timely filing of a notice of appeal. See Section 4903.11, Revised Code. No other agency or court has power to suspend an order of the Commission. See Section 4903.12, Revised Code. This is further underscored by the fact that Sections 4903.16 through 4903.19, Revised Code contemplates the possibility of a stay or suspension of an order or decision of the Commission but only by the Ohio Supreme Court, and not by this Commission. The Commission no longer has jurisdiction to address Ameritech Ohio's motion for a temporary stay.

II. Section 4903.10, Revised Code Does Not Provide the Commission With Authority to Grant the Ameritech Ohio August 1 Motion for a Temporary Stay.

Ameritech Ohio's reference to Section 4903.10, Revised Code is not applicable. That section deals with the filing of an application for rehearing before the effective date of the order as to which a rehearing is sought. The August 1 motion for a temporary stay is not an application for rehearing; Ameritech Ohio previously filed a motion for a stay of the Commission's order together with its application for rehearing on July 21. The Commission denied Ameritech Ohio's July 21 application for rehearing and found that the motion for a stay pending consideration of the application for rehearing was rendered moot. Thus, when the Commission had the jurisdiction to do so, it correctly rejected Ameritech Ohio's request for a stay.

¹ The Commission has previously held that when a motion for reconsideration/application for hearing in a complaint case is denied by operation of law, the case is no longer within Commission jurisdiction and jurisdiction passes by law to the Ohio Supreme Court. See Nenadel v. CEL, Case No. 84-1293-EL-CSS, Entry, July 8, 1996, at Finding 10.

III. No “Irreversible Harm” Will Result in the Absence of a Stay; However, Irreparable Harm to the Public Will Result if a Temporary Stay is Granted.

Ameritech Ohio also argues that in the absence of a temporary stay, “irreversible harm will be done”. This is simply untrue. On the contrary, the Complainant submits that if a stay is granted by this Commission, irreversible harm will be done to the public interest.

If no stay is granted by this Commission, Ameritech Ohio will need to notify its customers that it will no longer be able to honor any AmeriChecks the customers receive from New Media. If the Court ultimately reverses this Commission, Ameritech Ohio can simply renotify customers and resume acceptance of such checks. The costs of printing and distributing the notice to customers and the costs of identifying AmeriChecks and distinguishing them from other bank checks have not been established and do not rise to the level of “irreversible harm”. In addition, there has been no factual demonstration that “customer goodwill” or billing or customer relation problems will exist. No irreparable harm will occur.

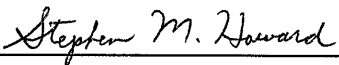
On the other hand, if a stay is granted and the Court affirms the Commission’s July 17 Opinion and Order, the public interest will be irreparably harmed. The Commission has found that Ameritech Ohio is violating Ohio law by allowing New Media subscribers to pay less for their local telephone service than Ameritech Ohio customers that do not subscribe to New Media, even though the telephone service received by both customers is identical and by giving its telephone customers who can and do subscribe to New Media cable television an undue or unreasonable preference or advantage over those of its telephone customers who cannot or do not choose to subscribe to New Media. To grant a stay and allow Ameritech Ohio to continue to perpetuate its unlawful activities will in fact irreparably harm the public interest.

IV. Conclusion.

The Association submits that this Commission is without jurisdiction to entertain Ameritech Ohio's August 1 motion for a temporary stay and that neither the law nor the facts support the granting of such motion.

The Complainant respectfully requests that the Commission deny Ameritech Ohio's August 1, 1997 motion for a temporary stay.

Respectfully submitted,



William S. Newcomb, Jr.

Stephen M. Howard

VORYS, SATER, SEYMOUR AND PEASE

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

Attorneys for The Ohio Cable Telecommunications
Association

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing Memorandum Contra has been served
via facsimile and by U.S. mail, postage prepaid, upon the following persons this 5th day of

August, 1997:

Mark S. Stermm
Daniel R. Conway
Stephanie L. Mott
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

Michael T. Mulcahy
Ameritech Ohio
45 Erieview Plaza, Suite 1400
Cleveland, Ohio 44114

Terry L. Etter, Esq.
Assistant Consumers' Counsel
Ohio Consumers' Counsel
77 S. High Street, 15th Floor
Columbus, Ohio 43266-0550



Stephen M. Howard