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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-PP-CSS

PUCO

AMICUS CURIAE BRIEF
OF
BROOKS FIBER COMMUNICATIONS OF OHIO, INC.

Brooks Fiber Communications of Ohio, Inc. ("Brooks") has joined in the joint Amicus Curiae filed by Time Warner Communications of Ohio, L.P., TCG Ohio and AT&T Communications of Ohio, Inc, but in addition to the joint brief, submits this brief limited to one issue raised in the hearing on February 17, 1998 hearing that that affects Brooks directly.

There is no inconsistency between the testimony of Mr. Wynn in the Ohio proceeding and of Mr. Clift in the Michigan ISP proceeding; an attempt to cast doubt in this proceeding upon Mr. Clift's sworn and un rebutted testimony in Michigan that discussions occurred with Ameritech representatives about ISP traffic should fail.

Ameritech Ohio attempted to discredit a portion of record that was developed in the Michigan complaint case¹ against Ameritech filed by Brooks Communications of Michigan, Inc. concerning nearly identical issues as in this proceeding,. In the Michigan case, Brooks had pre-filed initial testimony and rebuttal testimony of Martin W. Clift Jr.

¹ In the Matter of the Complaint of Brooks Fiber Communications of Michigan Inc. against Michigan Bell Telephone Company, d/b/a Ameritech Michigan and Request for Immediate Relief, et al. Case Nos. U-11553, U-11502, U-11522, U-11554.

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which stated that Ameritech personnel were aware of the fact that ISP traffic would be treated as local traffic. In the Michigan proceeding, Mr. Clift was cross examined by Ameritech attorneys concerning his pre-filed testimony. Among other things, Mr. Clift testified that he had discussed with Ameritech representatives² the issue of ISP traffic as local traffic within the context of the interconnection agreement that the parties were negotiating and that based upon those discussions about ISP traffic, Brooks had made concessions with respect to the interconnection agreement³.

Ameritech Ohio witness H. Edward Wynn, upon cross examination by counsel for the Complainant about the Michigan proceedings and the fact that Mr. Clift's testimony on this point was unchallenged, stated that the issue of reciprocal compensation for ISP traffic was not discussed in any negotiation sessions "of which I [Mr. Wynn] was a participant." Tr. at 66, emphasis added. Mr. Clift's unchallenged testimony in Michigan accords with this statement. Mr. Clift had conversations with two Ameritech representatives, Mr. Greg Dunny, chief business negotiator in the Brooks interconnections agreement transactions and, at an earlier time with Mr. William DeFrance who was then the supervisor of Ms Springsteen, an Ameritech witness in the Ohio case.

When Ameritech witness Mr. Wynn was asked similar a similar question on redirect, he first stated categorically that Brooks did not discuss ISP traffic during interconnection negotiations with Brooks (Tr. at 83). However, Mr. Wynn was not

² Mr. Clift testified that Mr. Greg Dunny and Mr. Bill DeFrance were the Ameritech representatives with whom he had had the conversations about ISP traffic. ³ [Michigan] Tr. page 260.

present for all of the negotiations nor, as noted above, did Mr. Clift testify that the discussions took place at a time when Mr. Wynn was present. This fact is borne out in a subsequent response on redirect when Mr. Wynn stated that Mr. Clift never had any discussions with him about ISP traffic during the interconnection negotiations (Tr. at 83).

However, on the Ohio record, Ameritech's attorney and Mr. Wynn attempted to create the impression of an inconsistency between Mr. Clift's un rebutted and sworn testimony in Michigan by implying that Mr. Wynn's testimony and Mr. Clift's testimony were not "reconcilable" when of course they are. Mr. Clift had conversed separately with Messrs. Dunny and DeFrance⁴. During the Michigan proceeding Ameritech had ample opportunity to cross examine Mr. Clift about these conversations. However, Ameritech elected not to do so. In Michigan, as well as in Ohio, Ameritech could have presented either one or both of Messrs. Dunny or DeFrance as witnesses to dispute Mr. Clift's statement. Ameritech did not do so in either case.

Rather in the Ohio proceeding, Ameritech attempted to obfuscate its disinclination to choose these obvious options by attempting to create an inconsistency between the unrefuted record in Michigan and the statements of Mr. Wynn who was not present during the conversations among Messrs. Clift, Dunny and DeFrance. By verbal smoke and mirrors Mr. Wynn's apparently rehearsed redirect examination implied that Mr. Clift's sworn statements in the Michigan proceedings were suspect⁵. The Commission

³ 3 [Michigan] Tr. Page 241.

⁴ 3 [Michigan] Tr. 260-263

⁵ Ameritech cannot claim surprise at the fact that the Michigan record was raised by ICG because at the prehearing conference on January 29, 1998, copies of the day-old Michigan ISP order which referred to Mr. Clift's statements were distributed

should not countenance this kind of chicanery. Ameritech cannot be permitted to create the impression that because Mr. Wynn was not privy to the conversations between Messrs. Clift, Dunny and Mr. Clift and DeFrance, Mr. Clift's sworn and unrefuted testimony is not true. Indeed, the Michigan Commission⁶ found that the un rebutted sworn testimony of Mr. Clift was persuasive and noted in its order

Ameritech Michigan's argument is wrong. During the negotiation of its interconnection agreement, Brooks indicated its view that calls to ISPs were local and, as such, subject to reciprocal compensation. 3 [Michigan] Tr. 260-263.

At page 8.

The Ohio Commission should likewise be persuaded that Ameritech representatives were aware that pursuant to the interconnection agreements ISP traffic would be treated as local traffic. It was only later, following the lead of another RBOC to attack ISP traffic as non local that Ameritech likewise attempted to place ISP traffic in a non local category. Ameritech should not be given the opportunity after the fact to change its position, and certainly not on the basis that its representatives unaware of how calls to ISPs might affect the balance of local traffic.

Respectfully submitted on behalf of
BROOKS FIBER COMMUNICATIONS OF OHIO, INC.



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⁶ *In the Matter of the Complaint of Brooks Fiber Communications of Michigan Inc. against Michigan Bell Telephone Company, d/b/a Ameritech Michigan and Request for Immediate Relief, et al.* Case Nos. U-11553, U-11502, U-11522, U-11554, Opinion and Order dated January 28, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Amicus Curiae Brief of Brooks Fiber Communications of Ohio, Inc, has been served upon the following parties listed below by hand delivery, fax or regular U.S. mail, postage prepaid, this 3rd day of March, 1998.

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