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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

In the matter of the complaint of )  
MCI metro ACCESS TRANSMISSION )  
SERVICES, INC., to compel payment of )  
reciprocal compensation, )

Complainant, )

v. )

AMERITECH OHIO, )  
Respondent. )

Case No. 97-1723-TP-CSS

In the Matter of the Complaint of )  
TIME WARNER COMMUNICATIONS )  
OF OHIO, L.P., )

Complainant, )

v. )

AMERITECH OHIO, )  
Respondent. )

Case No. 98-308-TP-CSS

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**MOTION TO CONSOLIDATE OF TIME WARNER  
COMMUNICATIONS OF OHIO, L.P.**

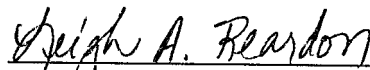
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Time Warner Communications of Ohio, L.P., dba Time Warner Telecom of Ohio ("Time Warner Telecom"), moves the Commission, pursuant to O.A.C. 4901-1-12, for an Order consolidating the captioned complaint proceedings for decision, and further requests an expedited ruling on this motion in accordance with O.A.C. 4901-1-12(C). The specific grounds in support of this motion and request for expedited ruling are more particularly set forth in the accompanying memorandum, attached hereto and incorporated herein.

Respectfully submitted,

TIME WARNER COMMUNICATIONS OF  
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**MEMORANDUM IN SUPPORT OF**  
**MOTION TO CONSOLIDATE**

ICG Telecom Group ("ICG"), MCImetro Access Transmission Services, Inc. ("MCIIm"), and Time Warner Telecom have each filed separate carrier-to-carrier complaints against Ameritech Ohio ("Ameritech"), docketed respectively as Case No. 97-1557-TP-CSS, Case No. 97-1723-TP-CSS, and Case No. 98-308-TP-CSS. At the early stage of the first-filed ICG proceeding, the Commission rejected motions to consolidate that proceeding with the virtually identical later-filed complaints by MCI and then by Time Warner Telecom. As these three actions have progressed, it has become clear that each case deals with the same core set of common questions of law and fact, and ultimate dispositive issue: i.e., whether Ameritech is required to pay reciprocal compensation for local traffic terminated to internet service providers (ISPs) who are customers of ICG, MCIIm or Time Warner Telecom, pursuant to the respective interconnection agreements between Ameritech and these carriers.<sup>1</sup>

Consolidation of these cases for decision-making purposes on the dispositive issue presented in each case would serve both the parties' and the Commission's interests in achieving administrative efficiency and economy. [These cases have already been delayed substantially and consolidation should ensure that each complainant's case is resolved in a more timely manner.] The ICG-Ameritech and MCIIm-Ameritech complaint cases are ripe for determination following hearings conducted in each matter, while the Time Warner Telecom-Ameritech proceeding is essentially in similar condition.<sup>2</sup>

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<sup>1/</sup> There can no longer be any genuine or credible dispute that the issues in these cases are identical.

<sup>2/</sup> Time Warner and Ameritech have each been granted leave to file a Reply Brief within eight days of the Commission's decision in *ICG v. Ameritech*, Case No. 97-1557-TP-CSS. Time Warner hereby waives its opportunity to file this Brief contingent upon the Commission granting the instant motion.

Under R.C. 4903.22 and Ohio Civ. R. 42(A), the Commission has the inherent authority and discretion to consolidate these proceedings. Ohio Civ. R. 42(A), and its federal counterpart, both provide that:

When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters at issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

These three proceedings clearly involve common questions of law **and** fact. Thus, consolidation of these carrier-to-carrier complaint proceedings by the Commission is not only appropriate, but would also have the salutary effect of avoiding unnecessary delay in the determination of the merits of these proceedings, as well as promoting administrative economy and expediency in the resolution of these cases.

Under the federal counterpart to Ohio Civ. R. 42(A), the United States Court of Appeals for the Sixth Circuit has recently reaffirmed that "consolidation of cases involving the same factual and legal questions ... is a matter within the discretion of the trial court." *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6<sup>th</sup> Cir. 1993). The court went on to say that "a court may issue an order of consolidation **on its own motion**, and despite the protestations of the parties." (emphasis supplied; citation omitted) *Id.* The rationale expressed by the *Cantrell* court in consolidating those actions applies foursquare to these proceedings.

Consistent with O.A.C. 4901-1-12(C), the Commission is asked to rule upon this motion in an expedited fashion.<sup>3</sup> The Commission has indicated that it will discuss the issue of reciprocal compensation at its August 5, 1998 meeting. This discussion will include comments

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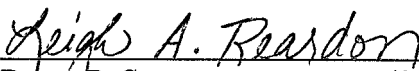
<sup>3/</sup> Under O.A.C. 4901-1-12(C), Time Warner Telecom is unable to certify that "no party has any objection to this motion."


from representatives of ICG, MCI, Time Warner Telecom and Ameritech, as well as a question and answer session with Commissioners. If consolidation is deemed by the Commission to be appropriate, expedited ruling upon this motion for consolidation will ensure that either at its August 5, 1998 meeting, or in its deliberations thereafter, the Commission will consider all three cases at one time.

For all these reasons, Time Warner Telecom urges the Commission to either grant this motion to consolidate the captioned cases for decision, or *sua sponte*, to consolidate these cases in the ultimate decision to be rendered upon the reciprocal compensation issue presented by these proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION TO CONSOLIDATE OF TIME WARNER COMMUNICATIONS OF OHIO, L.P. AND MEMORANDUM IN SUPPORT was served upon the following parties, or their counsel of record to these actions, via facsimile, this 21<sup>st</sup> day of July, 1998:

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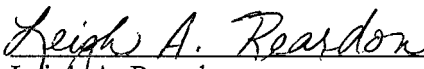
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