

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investi-)
gation Into Ameritech Ohio's Compliance)
With Several Subsections of Chapter)
4901:1-5, Ohio Administrative Code, Con-) Case No. 95-711-TP-COI
cerning the Minimum Local Exchange)
Company Telephone Service Standards.)

FINDING AND ORDER

The Commission finds:

- (1) By entry dated August 10, 1995, the Commission found that an investigation of the quality of service being provided by Ameritech Ohio (Ameritech) was warranted. The Commission stated that, based upon reports, data, and complaints received, its staff had raised concerns regarding Ameritech's:
 - (a) clearing of out-of-service reports,
 - (b) keeping new service installation appointments,
 - (c) meeting the business office center answer time requirements,
 - (d) meeting the repair service center answer time requirements,
 - (e) provision of directory listings,
 - (f) handling of "trouble reports", and
 - (g) adequacy of training and oversight of the business office representatives.

The staff alleged that Ameritech is not complying with certain sections of the Commission's Local Exchange Company Minimum Telephone Service Standards (MTSS), namely, Rules 4901:1-5-09, 4901:1-5-20, 4901:1-5-22(C), (D), and (H), and 4901:1-5-23, Ohio Administrative Code (O.A.C.).

The Commission directed Ameritech to file a report on or before August 24, 1995, regarding the staff's issues and setting forth a plan to remedy any areas of noncompliance.

- (2) By entry dated August 31, 1995, the attorney examiner scheduled a hearing in this case for September 19, 1995.
- (3) On September 1, 1995, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. The attorney examiner granted the motion on September 19, 1995.
- (4) On September 27, 1995, the parties presented a stipulation and recommendation for the Commission's consideration to resolve all of the issues in this matter.
- (5) By finding and order dated October 5, 1995, the Commission approved the parties' stipulation. Under the terms of the approved stipulation, Ameritech agreed that:
 - (a) A schedule of financial penalties applied for the period of September 1995 through August 1996. The schedule established new benchmarks for out-of-service repairs (Rule 4901:1-5-22[H][1], O.A.C.), new service installations (Rule 4901:1-5-22[C][1][a], O.A.C.), installation appointments kept (Rule 4901:1-5-22[C][6], O.A.C.), repair speed of answer (Rule 4901:1-5-22[D][1][d], O.A.C.), and business office speed of answer (Rule 4901:1-5-22[D][1][c], O.A.C.) and applied varying penalties for failures to meet the benchmarks throughout that period.
 - (b) For any failed performances under the standards listed above from February through August 1996, the staff and OCC reserved the right to pursue additional enforcement in this docket or another docket in order to redress substantial non-compliance levels.
 - (c) Ameritech shall file a report within 30 days of the end of each month of its performance under the benchmarks and, if required under the terms of this stipulation, its civil forfeiture check.
 - (d) The on-going obligations of this stipulation shall continue until superseded by Commission rule

or order or upon the expiration of three years from the adoption of the stipulation, whichever occurs sooner.

- (e) OCC reserved the right to file a new complaint case regarding matters not addressed in this case or in the pending OCC complaint case filed against Ameritech for failure to meet minimum telephone service standards, Case No. 95-707-TP-CSS, as well as to seek enforcement for Ameritech's failure to comply with the stipulation.
- (6) Ameritech filed reports on its performance for the period of September 1995 through August 1996, as required by the stipulation. On April 16, 1996, the staff filed a report regarding Ameritech's performance during the first several months following approval of the stipulation. Both Ameritech's and the staff's reports indicate that Ameritech did not meet all of the interim benchmarks. The staff reported that repair service and out-of-service clearance continued to be a problem. In addition, the staff was concerned that many Ameritech customers were experiencing severe service problems, even though the company's performance on the whole appeared to be improving. Finally, the staff found that the extreme volume of customer contacts to the Commission's Public Interest Center did not seem to rationally correspond with some of the performance data being reported by Ameritech.
- (7) On January 14, 1997, the staff and OCC jointly filed a request for an evidentiary hearing. The requesting parties stated that the staff continues to have concerns with Ameritech's performance under the MTSS, specifically noting Ameritech's performance regarding new installations and out-of-service repair. The staff also reported that it has identified several additional areas of concern relative to the company's procedures and methodologies for reporting its performance under the MTSS, including missing data and interpretation of the standards. The requesting parties noted that Ameritech has reported violations of the MTSS since August 1996, when the stipulation expired, but has not paid any penalty for those violations. The staff and OCC noted that they have been

working to resolve these issues with Ameritech, but have not yet reached a resolution. For these reasons, the staff and OCC requested an evidentiary hearing.

- (8) On February 11, 1997, the staff and Ameritech filed a stipulation and recommendation ("stipulation") for the Commission's consideration. The staff and Ameritech agreed to the following terms which they recommended to the Commission "to fully resolve the service and reporting issues which have been raised in this proceeding":
- (a) Ameritech will pay a \$300,000 civil forfeiture within 30 days of the Commission's acceptance of the stipulation for its inadvertent failure to accurately report MTSS service results and for not meeting certain MTSS standards in certain exchanges during the period of September through December 1996. The staff and Ameritech agreed that the forfeiture fully and finally resolves all MTSS compliance issues for the period of time up to December 31, 1996.
 - (b) Ameritech agrees to comply with all record retention requirements of Rule 4901:1-5-22(B), O.A.C. Specifically, the company agrees to retain for at least one year all records that relate to MTSS performance.
 - (c) Rule 4901:1-5-22(C)(1)(a), O.A.C., requires that local exchange companies complete 90 percent of the applications for installation of access line service in any exchange within five business days ("five-day rule"). The staff and Ameritech agree that, as a result of Ameritech's inadvertent reporting of MTSS service results under the five-day rule, Ameritech may have also misreported the 1995 Service Quality Factor ("SQF") as part of its June 1996 annual Price Cap Index filing in Case No. 93-487-TP-ALT, *Application of Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation*. Because of its failure, Ameritech agreed to adjust the SQF by

adding a negative adjustment of 0.1 percent to the SQF of the Price Cap Index to be filed by May 1, 1997. The staff and Ameritech believe that the adjustment will result in an approximate \$540,000 reduction in the maximum revenues that can be realized by the company under its price cap plan effective July 1, 1997. The staff and Ameritech agree, however, that this reduction will be no less than \$450,000.

- (d) The staff and Ameritech consider all issues regarding the inadvertent failure to correctly report the MTSS service results under the five-day rule to be fully resolved by the negative 0.1 percent adjustment. The staff and Ameritech further agree that the adjustment to the Price Cap Index fully resolves all known issues regarding the SQF portion of the company's price cap plan for the period up to December 31, 1996. However, the Commission's acceptance of the stipulation does not preclude any party in Case No. 93-487-TP-ALT, who is not a party to the stipulation, from objecting or challenging any aspect of the company's price cap adjustment to be filed in May 1997.
- (e) The staff will conduct an audit of Ameritech's MTSS reporting procedures during the first part of 1997. The staff and Ameritech agree that the company will not be subject to any additional financial penalties for the period of time until the audit is finalized, except for any SQF adjustments based upon the company's MTSS performance during 1997. Should the audit disclose additional 1996 misreporting which can be reasonably verified with company data, the company agrees to make a further compensatory SQF adjustment.
- (f) Finally, Ameritech agrees to comply with all future MTSS revisions.

- (9) On February 20, 1997, Ameritech filed a memorandum contra OCC's request for a hearing. Ameritech addressed only OCC's request for a hearing because it had reached an agreement with the staff. Ameritech argues that, since this proceeding is solely a Commission investigation, OCC has no independent standing to continue the investigation or to dictate whether a hearing should be held if the Commission should adopt the stipulation. If the Commission determines that further participation by OCC should be permitted, then Ameritech argues that OCC should be limited to commenting on whether the stipulation meets the Commission's criteria for approval of a stipulation. These criteria are: (1) whether the stipulation represents the product of serious bargaining by capable, knowledgeable parties, (2) whether the settlement, as a package, benefits ratepayers and the public interest, and (3) whether the settlement violates any important regulatory principle or practice. *Cleveland Electric Illuminating Company*, Case No. 88-170-EL-AIR (January 31, 1989).
- (10) By entry dated February 21, 1997, the Commission ordered that comments on the stipulation be filed by March 5, 1997.
- (11) On March 5, 1997, OCC filed its comments on the stipulation and its response to Ameritech's memorandum contra OCC's request for a hearing. OCC contends that whether Ameritech "inadvertently" misreported data to the Commission is an open question because there is no evidence in this case to support such a finding. OCC believes that discovery needs to be conducted and a hearing held before the Commission can conclude that Ameritech inadvertently misreported the data.

OCC agrees that it is appropriate that Ameritech pay a civil forfeiture to the state of Ohio because Ameritech did not comply with the Commission's rules and regulations. However, OCC contends that the civil forfeiture does not ameliorate or otherwise address the poor service quality received by Ameritech's customers. OCC states that it appears that the payment of the civil forfeiture will result in the nullification of other remedies made available to Ameritech's customers in prior stipulations approved by the Commission in its consideration of Ameritech's service quality problems. These other remedies are: the provision of a cellular telephone to

any customer enrolled in the repair priority program who is out of service for more than 48 hours, a \$45 White Pages omission credit, a \$20 credit to customers out of service for 72 or more hours, and a \$15 credit to customers for whom Ameritech missed an installation appointment and who were in an exchange where Ameritech missed the MTSS five-day rule.

OCC argues that, in addition to the minimum \$450,000 reduction in company revenues to be caused by the negative 0.1 percent adjustment to the 1996 SQF for the five-day rule violation, the Commission should also reflect a similar negative 0.1 percent adjustment for 1995.¹ OCC argues that, because Ameritech has admitted that it misreported the five-day rule data for 1995 and 1996, the Commission should reflect a negative 0.1 percent adjustment for 1995 instead of the negative 0.017430 percent reported by Ameritech.

OCC acknowledges that the staff's audit of Ameritech could result in a further compensatory SQF adjustment, but cautions that the audit provision insulates Ameritech from paying individual customers for its failure to meet MTSS standards. OCC states that the most troubling aspect of the stipulation is the absence of remedies for Ameritech's customers who have not received quality service. OCC argues that the stipulation should have endorsed the customer-specific provisions of prior stipulations and included the following benefits for Ameritech customers: (a) waiver of installation charges for customers whose service is not installed within specific time periods, (b) cumulative credits for customers whose service is not installed within specific time periods, (c) credits for customers whose service is not repaired within a stated time, (d) credits for customers with whom

¹ The American Association of Retired Persons ("AARP") initially raised this issue on January 27, 1997, when it filed a motion in Ameritech's alternative regulation case, Case No. 93-487-TP-ALT, requesting that the Commission reexamine the determination of the adjustment for the five-day rule in the calculation of the SQF percentage for 1995. AARP contends that the reexamination is necessary because of Ameritech's admission in *Ameritech Communications of Ohio, Inc.*, Case Nos. 96-327-CT-ACE and 96-658-CT-ACE, that the SQF reporting data for the five-day rule for 1995 may not have been correct and that Ameritech could owe a greater penalty for 1995.

Ameritech misses an appointment and/or repair commitment, (e) media communications to inform customers of the terms and conditions of the agreement, and (f) credits for customers who were out of service for 72 hours or more.

- (12) In response to Ameritech's memorandum contra OCC's motion for a hearing, OCC states that the stipulation does not resolve major issues in the case because the stipulation fails to provide any remedies to specific customers and does not address any mechanisms or incentives for Ameritech to improve its service quality. OCC states that there is not even a claim that Ameritech's service quality problems have been resolved. In response to Ameritech's argument that OCC has no independent standing to continue the investigation or to dictate whether a hearing should be held, especially after the Commission staff agrees to a stipulation, OCC states that the Commission has previously granted OCC intervention in this case. Further, OCC contends that the mere filing of a stipulation by some parties does not eliminate the rights and privileges of the non-stipulating parties. Finally, OCC argues that Ameritech's attempts to limit OCC's response to commenting on whether the stipulation meets the Commission's criteria for approving a stipulation is merely an attempt by Ameritech to obfuscate the real issue, i.e., the quality of its service. OCC concludes that it has clearly demonstrated that the stipulation does not meet, at least, the public interest prong of the stipulation test and, therefore, an evidentiary hearing should be ordered.
- (13) On March 5, 1997, AARP requested that the Commission consider AARP's February 21, 1997, reply memorandum to Ameritech's memorandum contra the AARP's motion filed on January 27, 1997, in Case No. 93-487-TP-ALT as its comments to the stipulation in this case. A similar request was made by Edgemont Neighborhood Coalition on March 10, 1997. Inasmuch as AARP and Edgemont jointly filed the February 21, 1997, reply memorandum in Case No. 93-487-TP-ALT, the Commission will consider Edgemont's request as part of the AARP's request (and we will refer to the joint arguments as AARP arguments and requests).

AARP argues in its reply that the stipulation filed by Ameritech and staff in Case No. 95-711-TP-COI cannot bind the parties or the Commission in Case No. 93-487-TP-ALT, nor can it preordain a Commission's decision on any party's arguments in Case No. 93-487-TP-ALT. AARP also argues that a separate \$450,000 adjustment to the SQF for both 1995 and 1996 is appropriate to resolve the issue of Ameritech's inaccurate reporting of data. Finally, AARP contends that it is inappropriate for the Commission to conclude that Ameritech's misreporting was inadvertent in the absence of a proper inquiry.

- (14) The Commission first needs to address the status of OCC, AARP, and Edgemont in this proceeding. This case was initiated by the Commission to provide a vehicle by which the Commission could investigate Ameritech's compliance with certain provisions of the MTSS. OCC did join in an earlier stipulation between staff and Ameritech which was approved by the Commission on October 5, 1995. As discussed above, OCC recently requested that a hearing be scheduled in this case and has filed comments to the stipulation between staff and Ameritech filed on February 11, 1997. AARP has not filed to intervene and its activity in the case has been limited to a request that the Commission consider AARP's filing in another case as its comments in this case.

When the Commission initiates a proceeding such as this, it states the issues that will be investigated. During this stage of this case, the Commission staff raised additional issues regarding quality of service with Ameritech. Negotiations between the staff and Ameritech resulted in a stipulation which has been presented to the Commission for its consideration. Inasmuch as this is a Commission-initiated proceeding, there is nothing improper about the Commission determining that the stipulation results in an appropriate resolution of the issues raised by the Commission. However, the Commission's acceptance of the stipulation is limited to this proceeding and to the staff's issues. It does not affect AARP's motion to reopen Case No. 93-487-TP-ALT, which will be

considered by the Commission at a later time. The Commission's acceptance of the stipulation also does not affect any issue that OCC may raise regarding Ameritech's service quality in another appropriate proceeding.

- (15) As discussed above, the Commission's criteria for approval of a stipulation are: (1) whether the stipulation represents the product of serious bargaining by capable, knowledgeable parties; (2) whether the settlement, as a package, benefits ratepayers and the public interest; and (3) whether the settlement violates any important regulatory principle or practice.
- (16) The Commission believes that the staff and Ameritech are capable, knowledgeable parties. Both have joined in numerous stipulations before this Commission.
- (17) OCC stated in its comments that it had demonstrated that the stipulation does not meet, at least, the public interest prong of the Commission's stipulation test. The Commission disagrees and finds that the settlement benefits ratepayers and is in the public interest. Ameritech is required to pay a civil forfeiture as a result of its failure to accurately report MTSS service results. This forfeiture will provide Ameritech with an incentive to accurately report the information in the future, which obviously is a benefit to ratepayers. Ameritech also agrees to retain the records necessary to make future filings for at least a one-year period, which should help to eliminate questions about the accuracy of the SQF in the future. In addition, Ameritech added a negative 0.1 percent adjustment to the SQF of the Price Cap Index filed in May. This adjustment will result in a reduction in the maximum level of revenues that can be realized by Ameritech. This too provides a benefit to Ameritech's customers. All these benefits show that the settlement is in the public interest. In addition, the settlement will eliminate the time and expense associated with a hearing, which also is in the public interest.

The Commission believes that the settlement is also in the public interest because it does not eliminate the remedies that were created for individual customers through prior stipulations, despite OCC's claims to the contrary. The cellular

loaner program and \$45 White Pages omission credit, which were authorized by the earlier stipulation in this case, remain unaffected by this stipulation. The cellular loaner program, the \$20 credit to customers who are out of service for 72 or more hours, and the \$15 credit to customers for whom Ameritech missed an installation appointment and who were in an exchange where Ameritech missed the MTSS five-day rule, approved by the Commission in Case No. 96-532-TP-UNC, *Implementation of Substitute Senate Bill 306*, also remain in effect to the extent that they are more stringent requirements than the related minimum telephone service standard being approved today in Case No. 96-1175-TP-ORD, *Amendment of Minimum Telephone Service Standards*. OCC argued in its comments that the Commission should consider additional credits for customers who experienced service quality problems. Although the Commission has previously approved customer credits when presented as part of a stipulation to settle issues in a case, the Commission had never formally adopted a policy on customer credits other than when a subscriber's telephone service was out of service for 24 hours or more. See, existing Rule 4901:1-5-30, O.A.C. Therefore, the Commission cannot find the stipulation to be unreasonable merely because it does not provide for new customer credits for the period covered by the stipulation. However, the Commission is establishing today, in *Service Standards, supra*, consistent with arguments made by OCC in that docket, a new policy on customer credits to be applied on a prospective basis.

The Commission also believes that the negative 0.1 percent adjustment to the 1996 SQF for the five-day rule violation benefits the public interest. This adjustment is in addition to the 1995 adjustment already made in 1996 and to the 1996 adjustment to be made later this year. OCC and AARP have not been precluded from challenging any portion of the price cap adjustment filed in May 1997.

- (18) The final prong of the Commission's test is whether the settlement violates any important regulatory principle or practice. No one filing comments mentioned that the stipulation violates any important regulatory principle or practice. The

Commission is unaware of any principle or practice that would be violated by the Commission's acceptance of the stipulation.

- (19) The Commission finds that the stipulation should be approved as a settlement of the service and reporting issues that have been raised in this proceeding.
- (20) On April 15, 1997, OCC filed a motion to compel Ameritech to respond to OCC's discovery requests. On May 5 and 15, 1997, Ameritech filed a memorandum contra and OCC filed a reply. Inasmuch as the Commission is accepting the stipulation filed in this proceeding and closing the case, OCC's motion is moot.

It is, therefore,

ORDERED, That the stipulation filed by the staff and Ameritech on February 11, 1997, is approved, as discussed above. It is, further,

ORDERED, That this case be closed of record. It is, further,

ORDERED, That a copy of this Finding and Order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

 Craig A. Glazer, Chairman

 Jolynn Barry Butler

 Ronda Hartman Fergus

 David W. Johnson

 Judith A. Jones

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