

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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| In the Matter of the Application of |) | |
| |) | |
| AMERITECH NEW MEDIA |) | |
| ENTERPRISES, INC. |) | File No. W-P-C-7107 |
| |) | |
| to construct, operate, own and maintain |) | |
| facilities necessary to provide cable |) | |
| television service for Glendale Heights, |) | |
| Illinois. |) | |

ORDER

Adopted: October 10, 1996

Released: October 31, 1996

By the Commission:

I. INTRODUCTION

1. Before the Commission is an Application for Review filed by the Cable Television and Communications Association of Illinois ("CTCAI"). CTCAI asks the Commission to review an order issued by the Common Carrier Bureau, Network Services Division (the "Division") on September 12, 1995.¹ In that order, the Division denied a Consolidated Petition to Deny a total of six Ameritech applications that sought authority to construct cable television facilities, including the above-captioned application.² For the reasons set forth below, we dismiss CTCAI's Application for Review as moot.

II. BACKGROUND

2. On August 29, 1995, the Commission issued a public notice listing the above-captioned Section 214 application as accepted for filing pursuant to Section 63.16 of the Commission's rules. Section 63.16 provided streamlined procedures for carriers proposing to

¹ Ameritech New Media Enterprises, Inc., File No. W-P-C-7107, DA 95-1954 (Com. Car. Bur., Net. Serv. Div., Released Sept. 12, 1995).

² The Petition to Deny was filed by CTCAI, the Michigan Cable Television Association ("MCTA"), and the Ohio Cable Telecommunications Association ("OCTA").

construct "stand-alone" cable television facilities in their telephone service areas.³ On September 1, 1995, CTCAL, MCTA, and OCTA filed a Consolidated Petition to Deny six Ameritech Section 214 applications, including the Ameritech application to construct cable television facilities for Glendale Heights, Illinois. The petitioners argued, *inter alia*, that Ameritech was precluded from relying upon Section 63.16 to the extent that Ameritech's proposed cable television system was not, in fact, a "stand-alone" system as that term was defined in Section 63.16.

3. Under the fourteen-day automatic approval procedures set forth in Section 63.16, Ameritech's application for Glendale Heights, Illinois was deemed approved on September 12, 1995. Also on September 12, 1995, the Division released an order denying the Consolidated Petition to Deny with respect to the cable television facilities that Ameritech proposed for Michigan and Illinois.⁴

III. APPLICATION FOR REVIEW

4. In its Application for Review, CTCAL requests review of the Order of September 12, 1995, in which the Division denied CTCAL's petition to deny Ameritech's Section 214 application for Glendale Heights, Illinois. CTCAL contends that the Division erred in refusing to investigate CTCAL's allegations that the proposed cable television system is not a "stand-alone" system within the meaning of Section 63.16.⁵ Accordingly, CTCAL asks the Commission to reverse the Division's order and revoke Ameritech's Section 214 authorization pending resolution of the issues raised in its Application for Review.⁶

IV. POSITIONS OF THE PARTIES

5. In its opposition, Ameritech disputes CTCAL's claims that the proposed cable television system will not be a "stand-alone" system stating that the proposed facilities fully comply with the definition of a "stand-alone" cable system as set forth in Section 63.16(b) of

³ A "stand-alone" cable system was defined at 47 C.F.R. § 63.16(b) as "one that does not share central office assets (USOA Accounts 2210 through 2232, 47 C.F.R. §§ 32.2210-32.2232) or cable and wire facilities (USOA Accounts 2410 through 2441, 47 C.F.R. §§ 32.2410-32.2441) with the carrier's regulated telephone business."

⁴ Ameritech New Media Enterprises, Inc., File Nos. W-P-C-7099, W-P-C-7103, W-P-C-7104, W-P-C-7105, W-P-C-7106, W-P-C-7107, DA 95-1954, *Order* (Com. Car. Bur., Net. Serv. Div., Released Sept. 12, 1995).

⁵ Application for Review at 3-5.

⁶ *Id.* at 8.

the Commission's rules.⁷

6. OpTel, Inc., ("OpTel"), a company that operates private cable television systems throughout the United States through its subsidiaries, urges the Commission to investigate the "stand-alone" nature of Ameritech's proposed facilities in order to ensure that the cost of constructing those facilities is not borne by Ameritech's telephone service ratepayers to the competitive detriment of new entrants, like OpTel.⁸ OpTel also urges the Commission to "broaden its public interest inquiry under Section 214" to include the effect of stand-alone cable systems affiliated with ILECs on competition in the video programming distribution market.⁹ Accordingly, OpTel urges the Commission to revoke Ameritech's Section 214 authorization pending resolution of the issues raised in CTCAI's Application for Review.¹⁰

V. DISCUSSION

7. Upon reviewing the record established in this proceeding and in recognition of the enactment of the Telecommunications Act of 1996,¹¹ we hereby dismiss the present Application for Review as moot. On February 8, 1996, the President signed into law the Telecommunications Act of 1996 (the "1996 Act"). Section 302(a) of the Act (which added new Section 651(c) to the Communications Act of 1934, as amended) provides that common carriers "shall not be required to obtain a certificate under Section 214 with respect to the establishment or operation of a system for the delivery of video programming." This provision reflects Congress' intent to relieve carriers of the obligation to obtain Section 214 authorization in order to establish a system for the delivery of video programming. In addition, on March 11, 1996, the Commission rescinded Section 63.16, the rule under which Ameritech had received its Section 214 authorization, in the *Open Video System* proceeding

⁷ Ameritech Opposition at 2-7. Ameritech also criticizes attempts to impose requirements on "LEC stand-alone cable affiliates" more stringent than those outlined in the Commission's Fourth Report and Order. Ameritech Reply at 3. Ameritech points out that the Commission made an express finding in the Fourth Report and Order that current regulatory safeguards against cross-subsidy are sufficient to protect telephone service ratepayers when an incumbent local exchange carrier ("ILEC") provides cable service over a stand-alone system. Id.

⁸ Id. at 2-4.

⁹ OpTel Comments at 3.

¹⁰ Id. at 5.

¹¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

that was initiated to implement Section 302 of the 1996 Act.¹² Given that the system for which Ameritech received Section 214 authorization to construct constitutes "the establishment or operation of a system for the delivery of video programming,"¹³ and in light of the rescission of former Section 63.16 of the Commission's rules, we find that further review of the Section 214 issues raised by the applicant is no longer necessary.

8. Regarding CTCAI and OpTel's arguments that the Commission's pole attachment rules are inadequate to prevent telephone companies from granting preferential pole attachment rates and conditions to their cable television affiliates, we find that these arguments are not properly raised in an application for review of a Section 214 authorization. Accordingly, we do not address CTCAI and OpTel's pole attachment arguments in the present order.

VI. ORDERING CLAUSES

9. Pursuant to Section 4(i) of the Communications Act of 1934, as amended, Section 302(a) of the Telecommunications Act of 1996 (which added new Section 651(c) to the Communications Act of 1934, as amended), and Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, IT IS ORDERED that the Application for Review filed by the Cable Television and Communications Association of Illinois IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹² Implementation of Section 302 of the Telecommunications Act of 1996 Open Video Systems, *Report and Order and Notice of Proposed Rulemaking*, CS Docket No. 96-46, FCC No. 96-99, paras. 75-76 (Released March 11, 1996). Pursuant to Section 302(b)(3) of the 1996 Act, the Commission stated in the report and order portion of that proceeding: "We also hereby terminate the docket in which our video dialtone rules and policies were promulgated (CC Docket No. 87-266)." *Id.*, para. 75. Former Section 63.16 was among the rules adopted in CC Docket No. 87-266 that since were removed pursuant to Sections 302(a) and 302(b) of the 1996 Act.

¹³ 1996 Act, sec. 302, § 651(c).