

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to consider AMERITECH MICHIGAN's compliance)
with the competitive checklist in Section 271 of)
the federal Telecommunications Act of 1996.)
_____)

Case No. U-12320

AFFIDAVIT OF KAREN W. MOORE

ON BEHALF OF

AT&T COMMUNICATIONS OF MICHIGAN, INC. AND TCG DETROIT

November 15, 2002

Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

A. My name is Karen W. Moore. My business address is 222 W. Adams Street, Chicago, Illinois, 60606.

Q. ARE YOU THE SAME KAREN W. MOORE THAT PREVIOUSLY SUBMITTED TWO AFFIDAVITS IN THIS CASE?

A. Yes.

Q. WHAT WILL YOU ADDRESS IN THIS AFFIDAVIT?

A. I last submitted an affidavit addressing Ameritech's performance and implementation of remedy plan over a year ago. Much has happened regarding Ameritech's performance and implementation of remedy plans both here in Michigan and in the other states in which Ameritech operates. I will therefore provide new information on these topics. Specifically, I will discuss performance issues that Bearing Point ("BP") has unveiled in its test of Ameritech's operating support systems ("OSS"). I will also discuss the remedy plan decisions of other states, including Ameritech's recent change in position on the most hotly contested issue here in Michigan, the k table exclusion on remedy payments. Finally, I will offer my recommendations on whether the existing remedy plan incents Ameritech to offer adequate wholesale service to Michigan competitive local exchange carriers ("CLECs"), and, if not, what changes should be made to accomplish this goal.

I. BP'S OSS TEST REVEALS THAT AMERITECH'S PERFORMANCE DATA IS INVALID, UNRELIABLE AND INACCURATE

Q. HOW IS AMERITECH'S PERFORMANCE GAUGED BY THE COMMISSION, THE CLECS AND BP?

A. As the Commission is aware, Ameritech, along with the CLECs and the Attorney General's office, jointly sponsored performance measurements that should be relied upon to determine whether the company offers adequate wholesale service. The measurements were developed by Ameritech – in great part based upon its affiliate Southwestern Bell Telephone Company's ("SWBT") performance measurements adopted in Texas – and collaboratively developed here in Michigan. Hence, the performance measurements used by BP in determining whether Ameritech offers adequate service are truly the result of an industry-wide collaborative effort.

Q. HAS BP BEGUN TESTING AMERITECH'S PERFORMANCE SYSTEMS?

A. Yes. Since my first affidavit was filed over a year ago, BP has been testing Ameritech's OSS to determine if the company is providing nondiscriminatory service to its competitors. In my capacity as head of AT&T's Central Region performance management area, I have carefully reviewed BP's exceptions and observations to determine the impact of this testing on AT&T's ability to compete in Michigan.

Q. WHAT HAVE BP'S EXCEPTIONS REVEALED ABOUT AMERITECH'S PERFORMANCE?

A. As I discuss below, BP's test of Ameritech's OSS has unveiled numerous defects in Ameritech's documentation, systems and processes for performance measurements.

Q. IS BP'S TEST OF AMERITECH'S OSS CONTINUING?

A. Yes. I think it is important to note that on October 30, 2002 BP issued a report on its ongoing test of Ameritech's OSS. This report is not a final document showing that Ameritech Michigan has "passed" the test. It is really a progress report detailing incomplete results. My colleague Mr. Timothy Connolly discusses this Report.

Instead of focusing on the October 30, 2002 Report, what I discuss here are the relevant BP exceptions and observations that impact Ameritech's reporting of performance and its remedy payments to AT&T.

Q. DO AMERITECH'S SYSTEMS RETAIN SOURCE DATA TO ALLOW CLECS TO VERIFY THE ACCURACY OF ITS REPORTED PERFORMANCE RESULTS?

A. No. According to BP,¹ Ameritech does not retain source data in its original form. This, in turn, makes it impossible to audit data, including any effort to trace errors in the reported results. More problematic is BP's observation that this failure means Ameritech may not be able to regenerate performance measurement reports as required.

Ameritech did not dispute BP's finding. Ameritech originally agreed that it had not implemented the necessary data retention architecture for systems covered by a third of its performance measurements. Ameritech's December 11, 2001 response to BP's exception report states: "In regard to retention of the performance measurement data in its original form, Ameritech has confirmed that the type of architecture described above has been implemented for approximately two-thirds (67%) of the performance measurements currently being reported. Ameritech continues its investigation to verify that the data for the additional approximately one-third (33%) of the measurements is being retained in its original form."

Ameritech's second response to this Exception, dated July 25, 2002, contends that Ameritech's data retention improvement efforts have increased the number of performance measures where data is fully retained to 94%. More recently, Ameritech's third response to this Exception, dated October 30, 2002, asserts that its data retention has been "fixed", with 100% of the data being fully retained.

¹ See BP Exception Report 19, attached as part of AT&T Exhibit KWM-04.

We await BP's confirmation that Ameritech has met this fundamental requirement.

Q. DOES AMERITECH HAVE ADEQUATE PROCEDURES GOVERNING PERFORMANCE MEASUREMENT CALCULATION AND REPORTING?

A. No. According to BP,² Ameritech is continually restating performance measurement results. BP therefore requested from Ameritech documentation and other information about the Company's processes and procedures, including information on the flow of the data supporting Ameritech's various calculations, re-calculations and, in some instances, re-re-calculations.

BP's findings reveal an across-the-board breakdown in Ameritech's performance measurement systems. BP found that "the documentation provided for approximately half of the performance measures is inaccurate, incomplete or does not exist." The problem, unfortunately, is not limited to Ameritech's documentation. BP found that Ameritech's personnel "did not possess the requisite knowledge to adequately describe how performance measurement data is processed through Ameritech systems and to describe how Ameritech calculates performance measurement results." Because Ameritech repeatedly restates its performance measurement results, there is no way to determine which of the many "results" for various performance measurements are accurate. In short, this

² See BP Exception Report 20, attached as part of AT&T Exhibit KWM-04.

reveals a complete inability to verify the accuracy of Ameritech's performance measurement reporting.³

Q. GIVEN AMERITECH'S CURRENT PROCESSES, CAN CLECS AND THE COMMISSION REASONABLY EXPECT THAT THE COMPANY'S PERFORMANCE IS BEING REPORTED ACCURATELY?

A. No. While minor mistakes may be expected from time to time, restatements should be infrequent and should be an exception to the rule rather than the rule -- as appears to be the case currently. The only explanation for Ameritech's evident need to continually restate its performance measurement results is that Ameritech's *systems* for measuring and reporting its performance apparently are fundamentally flawed. From other Observation and Exception Reports published by BP (see, e.g., Observations 125, 136, Exceptions 19, 20), I believe that many of Ameritech's errors in computing and reporting its performance measurement data arise from the extensive application of manual processes that it employs. More recently, BP has uncovered that Ameritech Michigan's controls are still lax with respect to Observation 668, where BP is unable to replicate the result for PM 4 because Ameritech Michigan inadvertently overwrote the data for the January 2002 result. This, in turn, makes it impossible to audit data, including any effort

³ On September 10, 2002, Ameritech offered a supplemental response to Exception 20. Ameritech provided no new information on fixing this protracted issue, but instead noted: "When viewed in proper context, Ameritech's restatements that impact the accuracy or reliability of reported results are very small, changing the outcome on less than one half of one percent of reported results. Ameritech is committed to continuing its efforts to reduce restatement activity on an ongoing basis as outlined in the above initiatives. When Ameritech's restatement activity is analyzed as provided above, it is clear that the number of restatements does not indicate that Ameritech's reported performance results are materially inaccurate or incomplete. Ameritech's actions have satisfied the base elements identified by BP in Exception #20 and respectfully requests that this Exception be closed."

to trace errors in the reported results. It appears that Ameritech continues to build its internal systems almost entirely on such manual processes and activities.

Q. DOES AMERITECH'S CHANGE MANAGEMENT PROCESS WORK?

A. Ameritech's performance failures extend to its change management process.

According to BP,⁴ Ameritech's change management process does not provide for monitoring and communicating changes made to upstream data files that impact metrics. Indeed, BP's interviews of responsible Ameritech personnel revealed that there is no requirement for communications regarding changes that impact reporting between those managers in charge of the OSS systems and those managers handling performance metrics. This lack of communication and, thus, information about changes between Ameritech's OSS managers and its performance reporting managers results in a greater likelihood of incorrect reporting of results.⁵

Q. DO AMERITECH'S SYSTEMS LACK THE CAPACITY TO RETAIN DATA?

A. Perhaps one of the most troubling performance reporting failures detected by BP⁶ are flaws in Ameritech's systems limiting the amount of extracted data for numerous performance measurements to a file of 2 gigabytes. This limitation

⁴ See BP Exception Report 41, attached as part of AT&T Exhibit KWM-04.

⁵ On September 16, 2002, BP asked that Ameritech "provide supporting documentation outlining the processes and procedures for monitoring source systems for changes that could impact performance metrics reporting. In addition, BP Consulting requests a description of any updated procedures that have been implemented to ensure this problem does not occur in the future."

⁶ See BP Exception Report 42, attached as part of AT&T Exhibit KWM-04.

taints 48 performance measurements, and means performance results do not include data beyond 2 gigabytes. This capacity problem in Ameritech's systems, however, will ultimately infect **ALL** Ameritech's performance measurements, as the amount of data grows over time. Interestingly, although this exception was "closed" on June 27, 2002, BP's disposition report indicates that the issue was never resolved, but instead "will be addressed through Exception Report 47, version 2".⁷

Q. DO AMERITECH'S PERFORMANCE REPORTING SYSTEMS HAVE THE NECESSARY CONTROLS AND EDITS TO ENSURE THAT DATA IS RECEIVED AND SUCCESSFULLY LOADED?

A. No. According to BP,⁸ numerous performance measurements lack the necessary controls and edits to ensure that the records used in the calculations of performance metrics are transferred error free. Absent such controls and edits, Ameritech cannot ensure that data errors from operational systems into the systems used to calculate performance metrics are error free.

Ameritech has not fixed this problem. BP recently reported that Ameritech does not follow its change management procedures regarding testing as outlined in its change management manual. BP noted: "The absence of appropriate procedures and tools for testing changes to calculation programs, processes and systems prior

⁷ See BP Exception Report 42, closure dated June 27, 2002, attached as part of AT&T Exhibit KWM-04.

⁸ See BP Exception Report 47, attached as part of AT&T Exhibit KWM-04. The defects in Ameritech's systems noted in this exception evidently are evidently chronic, since a second version of this exception was issued on June 17, 2002. I include this in my attachments.

to migration into production calls into question the accuracy of SBC Ameritech's Mor/Tel, "Out-of-Scope," and Regulatory Reporting System (RRS) performance measurements as presently reported. Additionally, this absence may also negatively affect SBC Ameritech's ability to implement changes to these performance measurements in the future."⁹

Q. HAS BP RELEASED NEW INFORMATION REGARDING EXCEPTION 47 SINCE JULY 1, 2002?

A. Yes. Additional information regarding Exception 47 was released by BP on August 16, 2002. BP states that Ameritech notified CLECs and state commissions via their CLEC website that all POTS based provisioning performance measures, and measures 92, 100, and 101 would be restated for April, May, and June 2002. Why? Because the data from LASR/LSOG 5 was erroneously excluded from RRS. As KMPG states "Given that this issue was not announced until July 22, 2002, it appears that this problem went unnoticed for three months".

It is clear to me that the many organizations within Ameritech whose actions impact performance reporting do not communicate with the appropriate managers responsible for performance reporting. The development of LASR/LSOG 5 happened over many, many months, and it is clear that the impact on performance

⁹ See BP Exception Report 47, Version 2, dated June 17, 2002, attached as part of AT&T Exhibit KWM-04.

reporting of these new systems was not adequately assessed before production was begun.

Q. WHAT IS AMERITECH'S RESPONSE TO THIS NEW INFORMATION?

A. On September 19, 2002, Ameritech notified BP that it refuses to fix the problem, contending: "Ameritech reiterates its position that the issue identified in BP Consulting Additional Information (v3) sent 8/16/02 does not relate to lack of controls on data transfer identified in Exception 47. As such, Ameritech has no new procedures to provide to BP Consulting since there was no need to supplement its current controls and processes for the transfer of data as a result of this issue."

Q. DOES AMERITECH UPDATE ITS METRICS BUSINESS RULES ACCURATELY AND ON A TIMELY BASIS?

A. No. According to BP,¹⁰ Ameritech failed to update the metrics business rules on a timely basis for a six month period ending in March, 2002. This failure directly harms CLECs because, as correctly noted by BP, "[f]ailure to update Metrics Business Rules documentation in accordance with documented implementation dates and with the exact wording approved by the state commissions may inhibit the ability of a CLEC or regulator to perform timely and accurate analysis of metrics results."

¹⁰ See BP Exception Report 157, dated July 29, 2002, attached as part of AT&T Exhibit KWM-04.

Q. HAS BP REPORTED ADDITIONAL PROBLEMS WITH AMERITECH'S PERFORMANCE DATA?

A. Yes. There are currently dozens of observation reports open in the performance metrics test. Review of the observations shows an unending stream of performance measures -- which results BP cannot duplicate -- apart from whether or not the inputs are correct. BP has issued observation reports 459, 465, 467, 468, 470, 537 - 539, 547, 561, 566 - 568, 576 (and 576 Version 2), 577, and 591.¹¹ BP states that it is unable to replicate Ameritech's January 2002 reported results for a number of key performance measurements ("PMs"): (1) PM 28 -- Percent Installations Completed Within the Customer Due Date; (2) PM 5.2 -- Percentage of Unsolicited FOCs by Reason Code; (2) PM 27 -- Mean Installation Interval; (3) and PM 73 -- Percentage Missed Due Dates -- Interconnection Trunks; (4) PM 50 -- Percent Ameritech Cause Missed Due Dates>30 Days; (5) PM 12 -- Mechanized Provisioning Accuracy; (6) PM 18 -- Billing Timeliness; (7) PM MI 12 -- Average Time to Clear Service Order Errors UNE-P disaggregation; (8) PM 98 -- Percentage Trouble LNP (I-Reports) in 30 Days of Installation; (9) PM 55.1 -- Average Installation Interval -- DSL; (10) PM 25 -- Local Operations Center (LOC) Grade of Service (GOS); (11) PM IN 1 --Percent Loop Acceptance Testing (LAT) Completed on the Due Date; (12) PM 60 -- Percent Ameritech Missed Due Dates Due To Lack Of Facilities; (13) PM 9 --

¹¹ These observation reports are attached as part of Exhibit KWM-04. This is an illustrative list. Many additional observations exist, including a number of new observations detailing the same issue. (See, e.g., BP Observations numbers 611, 613, 614, 614 Version 2, 621, 622, 625, 626, 627, 627 Version 2, 632, 633, 639 -- 641, 644 -- 646, 667 -- 669, 679, 685, 686, and 693).

Percent Rejects; (14) PM 22 -- Local Service Center (LSC) Grade of Service (GOS); and (15) PM 13.1 -- Total Order Process Percent Flow Through.

According to BP, CLECs and the Commission rely upon Ameritech's performance measure results to assess the quality of service provided by Ameritech. BP notes that its inability to replicate report values indicates that Ameritech's calculations for these performance measures may be inaccurate.¹²

Q. WHAT, IF ANYTHING, DO THESE OBSERVATIONS INDICATE?

A. BP reported last November in Exceptions 19 and 20 that Ameritech was not capturing and reporting performance data accurately. These observations – which have been issued as recently as a few weeks ago -- unfortunately show that Ameritech has not fixed its performance reporting systems. Thus, the Commission cannot rely upon any Ameritech representations that it is offering adequate service to CLECs. Moreover, it has become abundantly clear that no party is able to verify Ameritech's performance information. This, in turn, means Ameritech is unable to meet requirements to accurately capture and report performance compliance.

Q. DO YOU BELIEVE AMERITECH WILL FIX ITS SYSTEMS?

A. Unfortunately, no. I believe Ameritech plans to ignore this problem. BP noted in Exception Reports 113, dated May 21, 2002 and 113 Version 2, dated July 1,

¹² BP makes this statement in all of the observations I mention in the text and in the previous footnote.

2002 (attached as part of Exhibit KWM-04), “Ameritech’s calculation of Performance Measure 2 (“Percent Responses Received within ‘X’ Seconds – OSS Interfaces”) for January – March 2002 does not follow the approved metrics business rules.” On September 10, 2002 BP closed Exception Report 113, Version 2, but did so because Ameritech refused to fix the problem. BP noted: “The information provided by SBC Ameritech within its response to Exception Report 113, Version 2 dated August 19, 2002 does not change the analysis outlined in this Exception Report. As there is no further work for BP Consulting to perform regarding the issue outlined within Exception Report 113, BP Consulting is closing this Exception Report.” This means that BP closed an exception not because the problem has been resolved, but because Ameritech refuses to fix it.

Q. DO YOU HAVE AN OPINION WHY AMERITECH’S PERFORMANCE SYSTEMS CONTAIN SO MANY DEFECTS?

A. Yes. I believe the cause of the many problems with Ameritech’s performance metric systems are a direct result of SBC forcing Ameritech to use Texas measurements, which were designed with SWBT systems in mind, and cannot be adjusted after the fact onto Ameritech systems. Ameritech claims that its final Plan of Record will have one platform for all thirteen states, including Michigan, and then performance measurement data will be collected, stored, and reported uniformly. Given Ameritech’s flawed systems, and its continual delay in

implementing improvements, I have little confidence that Ameritech's Plan of Record will work on a timely basis.

Q. WHAT CAN THE CLECS DO TO ASSIST AMERITECH IN FIXING THESE PERFORMANCE PROBLEMS?

A. The CLECs are entirely powerless to deal with these Ameritech problems, in part because Ameritech does not provide data to Michigan CLECs in the manner provided to CLECs by SBC's affiliates in other states. SBC cannot provide what is commonly referred to as "raw data" to CLECs operating in Ameritech territory in the same manner it provides "raw data" to CLECs in SWBT and Pacific Bell areas. This "raw data" is the wholesale records used to report performance. It consists of a given CLEC's order by order detail, which can be used by the CLEC to compare Ameritech's self reported results with the CLEC's own internal data. CLECs in SWBT and Pacific Bell areas can request all the raw data used to calculate results simply by filling out a form on SBC's CLEC website. The data is then delivered to them in a week or so.

Q. HAS AMERITECH OFFERED THIS CAPABILITY TO MICHIGAN CLECS?

A. Ameritech has told the Commissions and CLECs repeatedly over the last two years that this process will be available to CLECs in Ameritech's territory "soon". While we cannot yet make this request of Ameritech, Ameritech also prohibits us from simply requesting all of our raw data. We can request raw data for a

particular performance measure and, if Ameritech agrees, it will provide the data to the CLEC. But Ameritech will not provide the CLECs the entire set of raw data, as SBC does for all of its other states. In addition, SWBT and Pacific Bell provide, as part of a raw data request, those data points that are excluded from the performance calculation, according to the Business Rules. Ameritech Michigan does not; therefore it is close to impossible to reconcile AT&T's data with Ameritech Michigan's.

Q. DO YOU HAVE AN OPINION ABOUT AMERITECH'S PERFORMANCE SYSTEMS BASED UPON YOUR EXAMINATION OF AMERITECH'S PERFORMANCE SYSTEMS AND BP'S REPORTS?

A. Yes. The problems with Ameritech systems identified by BP and the additional ones revealed during the course of my examination means that neither the Commission nor the CLECs can verify performance metrics results provided by Ameritech. I recommend that to prevent future backsliding once Ameritech obtains Section 271 authorization, the Commission in this proceeding should require that such audits be annual for a five-year period, beginning one year after 271 authority is received. On the fourth anniversary of receiving 271 authorization, I recommend that the Commission conduct a proceeding to determine, based upon Ameritech's performance metric reporting, if the auditing requirement should continue.

**II. ACTIVITIES IN OTHER STATES REGARDING ADOPTION OF A
PERMANENT REMEDY PLAN FOR AMERITECH**

**Q. WHAT IS THE STATUS OF REMEDY PLAN PROCEEDINGS IN OTHER
STATES?**

A. Illinois, Indiana, and Wisconsin all have addressed adoption of a permanent remedy plan governing Ameritech. I will briefly summarize the status of each state's proceeding, along with an update on Ohio. In addition, I will briefly discuss recent events in Texas, where that state made significant changes to the SWBT remedy plan, and also touch upon the status of the issue here in Michigan.

Q. WHAT IS THE STATUS OF THE REMEDY PLAN ISSUE IN ILLINOIS?

A. On July 12, 2002 the Illinois Commerce Commission ("ICC") issued an order in Docket No. 01-0120 establishing a section 271 performance remedy plan for Ameritech. The following modifications to the Texas Plan were ordered:

1. The ICC required mini-audits and annual audits paid by Ameritech, with the exception that mini-audits are to be paid jointly by the CLECs and Ameritech.
2. The ICC allowed for automatic "opting-in" to the remedy plan, with a written 20 day notice.
3. The ICC ruled that this remedy plan is the remedy plan adopted for Section 271 purposes.
4. The ICC eliminated the Texas Remedy Plan's two largest exclusions on remedy payments -- the K-Table and statistical testing on benchmarks.
5. While agreeing with Ameritech that prioritization of performance measurements is allowed for calculating remedies, the ICC doubled the

per occurrence amount of both Tier I payments to CLECs and Tier II payments to the State of Illinois.

6. ICC made the annual cap on remedies of 36% of revenue to be procedural, not absolute.
7. The ICC struck the exclusion in the original Ameritech proposal making the remedies paid exclusive, with any other rules or requirements waived.
8. ICC agreed that remedy payments should be by check "or other form of cash".
9. The ICC eliminated most exclusions of liability, requiring the company to meet its burden of proof in showing that remedies are not due because of some unforeseen event, such as bad weather.

Despite the adoption of Ameritech's proposed 36% limit on remedy payments – albeit a procedural cap -- Ameritech nevertheless has appealed the decision to state court. I have been advised by counsel that the appeal will be decided no earlier than sometime in 2003.

The ICC is also addressing remedy plans in its ongoing wholesale service quality rulemaking, Docket No. 01-0539. That proceeding arises from newly enacted Section 13-712(g) of the Illinois Public Utilities Act, which provides: "The Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules." ICC staff and the other parties have filed testimony, with broad agreement among the parties (other than Ameritech) that the rules should require that the remedy plan adopted in ICC Docket No. 01-0120 be incorporated by reference into the rule for Ameritech. The case has been fully briefed, and it is likely that a final rule will be adopted sometime in 2003.

The third Illinois case addressing remedy plans is the ICC 271 proceeding, Docket No. 01-0662. The issue of what remedy plan should apply for Ameritech for Section 271 purposes was originally severed from Phase I of the docket. Given the recent order in ICC Docket No. 01-0120 establishing a Section 271 remedy plan for Ameritech, I expect this subdocket will be closed.

Q. EVEN THOUGH IT WILL BE CLOSED IN LIGHT OF THE DECISION IN ICC DOCKET NO. 01-0120, WHAT NEW POSITION DID AMERITECH OFFER IN THE ILLINOIS SECTION 271 PROCEEDING?

A. Ameritech evidently has changed its position on elimination of the k table. In Commission Case No. U-11830, Ameritech argues that the k table exclusion on remedies should be retained. In its testimony filed on June 28, 2002 in ICC Docket No. 01-0539, however, Ameritech proposed that the k table be eliminated.¹³ This change in position is noteworthy, given Ameritech's opposition in Case No. U-11830 to the CLEC proposal to eliminate the k table here in Michigan.

Q. IS AMERITECH PROPOSING THE ELIMINATION OF THE K TABLE IN OTHER FORUMS?

A. Yes. Ameritech has executed a remedy plan with a small Wisconsin-based CLEC, TDS Metrocom. I first became aware of this bilateral agreement in a filing

¹³See, Direct Testimony of James D. Ehr, ICC Docket No. 01-0662 (June 28, 2002).

made by Ameritech in ICC Docket No. 01-0120, but it has cropped up in other states. It is my understanding that this agreement is available in Michigan and the other four states in which Ameritech operates. In addition, Ameritech also filed what appears to be the same agreement – but this time with another CLEC, Time Warner -- in IURC Cause No. 41657.¹⁴ While I do not endorse this agreement because of other provisions contained in it, Ameritech is voluntarily eliminating the k table exclusion as part of it. This is significant, in that here Ameritech explicitly offers to Michigan CLECs a remedy plan not containing a k table exclusion.

Q. WHAT IS THE STATUS OF THE REMEDY PLAN ISSUE IN INDIANA?

A. On October 16, 2002, the Indiana Utility Regulatory Commission (“IURC”) established a Section 271 Remedy Plan for Ameritech.¹⁵ The IURC, using the general structure of the Texas Plan, made a number of modifications from the Texas proposal, including:

- 1) Ameritech is not allowed any exclusions on paying other than acts of God;
- 2) No statistical testing on benchmarks is allowed;
- 3) A procedural, rather than absolute, annual cap of 36% of revenue is established. Similarly, a monthly procedural cap of 1/6 of the annual cap is established;
- 4) Ameritech must pay remedies by check, unless the CLEC agrees to a different means;

¹⁴ See, *Motion Of Ameritech Indiana For The Commission To Receive And Consider Additional Information Regarding Performance Remedy Plan Prior To Entry Of An Order*, IURC Cause No. 41657 (Filed October 15, 2002).

¹⁵ Order, IURC Cause No. 41657.

- 5) In order to assist Ameritech and the CLECs in resolving disputes, a 21-day dispute resolution process was established;
- 6) Agreed with Ameritech's proposal to prioritize performance measurements, although chronic noncompliance escalates incrementally and indefinitely with non-compliance and de-escalates down to base level incrementally with compliant performance.
- 7) Use of a streamlined opt-in process with implementation occurring 20 days after CLEC notification, and the remedy plan effective the first full month after it goes into effect;
- 8) Establishment of a rigorous root cause analysis process when Ameritech offers chronically poor wholesale service;
- 9) Expedited and fair restatement procedures, including a requirement that Ameritech provide real data, and possible imposition of an additional remedy payment for chronic restatements (defined as those that occur more than twice;
- 10) Elimination of the k table exclusion on remedies;
- 11) An Explicit finding that this remedy plan is the Section 271 public interest remedy plan for Ameritech;
- 12) When analogs exist, wholesale parity assessments are made to retail or SBC affiliate, whichever is better;
- 13) There is no fixed termination date for the plan, although annual reviews of the details are required;
- 14) There is an explicit provision of non-foreclosure of other CLEC claims or remedies;
- 15) Chronic noncompliance escalates incrementally and indefinitely with non-compliance and de-escalates down to base level incrementally with compliant performance; and
- 16) Advanced/nascent measures are treated separately, taking into account potential small sample sizes. Amounts generated are not subject to procedural trigger.¹⁶

¹⁶ Despite the IURC's adoption of many of its proposals, including Ameritech's annual cap on payments, the company has requested rehearing. An IURC decision on this request is expected before the end of the year.

Q. WHAT IS THE STATUS OF THE REMEDY PLAN ISSUE IN OHIO?

A. On October 10, 2000, a number of Ohio CLECs petitioned the PUCO to adopt a permanent performance measure remedy plan.¹⁷ In that Petition, the Ohio CLECs proposed that the PUCO implement the Joint CLEC Remedy Plan. In a docket entry dated January 25, 2001, the PUCO deferred setting a schedule on the issue.

On July 19, 2001 and again on August 29, 2002, CLECs attempted to activate the proceeding and requested speedy adoption of a permanent remedy plan.¹⁸ At the present time, however, I am unaware of the PUCO establishing a schedule for this important issue. Thus, unlike all of the other Ameritech states, Ohio is not actively considering adoption of an Ameritech remedy plan specifically for its state at this time.

Q. WHAT IS THE STATUS OF THE REMEDY PLAN ISSUE IN WISCONSIN?

A. By order dated September 25, 2001, the Public Service Commission of Wisconsin (“PSCW”) established a remedy plan for Ameritech. The Commission made a number of modifications to the Texas Plan, including:

- 1) Rejected Ameritech’s proposal to lower remedies by having statistical testing on benchmarks;

¹⁷ See, Joint CLEC Petition for Resolution of Unresolved Performance Measures and Remedy Plan Issues at pp. 18-21, Case No. 00-942-TP-COI (PUCO, October 10, 2000).

¹⁸ See, Joint CLEC Brief Requesting Resolution of Disputed Issues, Case No. 00-942-TP-COI (PUCO, July 19, 2001); and Motion of Worldcom, Inc., AT&T Communications of Ohio/TCG Ohio, Time Warner Telecom, ICG Telecom Group, KMC Telecom III, Inc., XO Ohio, Inc., Allegiance Telecom of Ohio, Inc., and LDMI Telecommunications, Inc. for Leave to File Supplemental Information *Instantly* Regarding the Remedy Plan and for Briefing Schedule, *Id.*

- 2) Eliminated the biggest exclusion on remedies in the Texas Plan, the so-called "K-table";
- 3) Required a comparison of Ameritech's retail and "CLEC" affiliates for purposes of establishing remedies;
- 4) Eliminated Ameritech's proposal to allow unilateral withholding of remedies because of their claim that CLECs are somehow acting in bad faith, and instead required Ameritech to first prove such an allegation;
- 5) Ruled that the existence of a remedy plan does not affect availability of other remedies and rights of the CLECs;
- 6) Rejected Ameritech's proposal forcing CLECs to prioritize remedies, with all performance measurements having "low" priority;
- 7) Rejected Ameritech's proposal forcing CLECs to amend their interconnection agreements to obtain remedies, and instead made the remedy plan immediately available upon Wisconsin Commission adoption;
- 8) Agreed with the CLEC proposal that Ameritech directly pay remedies to CLECs, not merely credit their account; and
- 9) Implemented a per occurrence methodology for calculating remedies that, in those instances where Ameritech provides inadequate service to CLECs, requires Ameritech to pay remedies for all transactions, not only "misses".

Ameritech appealed the Wisconsin Commission Order to state court. I have been informed by counsel that, relying entirely upon Wisconsin law, the state district court judge ruled that the unique per-occurrence methodology ordered by the PSCW violates certain state statutes. It is my understanding that the PSCW and the CLECs have appealed this lower court decision to the Wisconsin Court of Appeals. A final decision on this particular appeal is expected in 2003.

Q. WHAT IS THE STATUS OF THE REMEDY PLAN ISSUE IN TEXAS?

A. On October 17, 2002, the Texas PUC made a number of changes to the “Texas” remedy plan. These changes make the Plan more robust.¹⁹ The major changes are:

- 1) The k table exclusion will not apply to any Tier 1 measurement missed for two or more consecutive months. SWBT has to pay remedies for the second miss (and thereafter), and the k table exclusion cannot apply until 2 consecutive months of compliance;
- 2) Ranking of the misses, for purposes of applying the k table exclusion, is to be based on the dollar value of the violation, not high/medium/low or number of “occurrences”, as formerly provided in the “Texas” Plan; and
- 3) Performance measurements with fewer than 10 transactions remain outside the k table exclusion scheme -- they do not count for purposes of calculating the k table exclusion, and SWBT always pays when it misses a measure with fewer than 10.

On November 1, 2002 SWBT filed for rehearing of this decision. In its rehearing, SWBT is attempting to get the entire k table reinserted in the remedy plan, despite the fact that the Texas PUC merely adjusted some elements of the k table.

Indeed, SWBT seems to oppose the very position it advocates in Illinois, Indiana and Wisconsin: elimination of the k table exclusion.²⁰ A rehearing decision is expected later this year.

Q. IS THIS COMMISSION REVIEWING THE REMEDY PLAN ISSUE?

¹⁹ See, *Section 271 Compliance Monitoring of Southwestern Bell Telephone Company*, Public Utility Commission of Texas Project No. 20400 (Order, October 17, 2002).

²⁰ See, *Southwestern Bell Telephone, L.P. D/B/A Southwestern Bell Telephone Company Motion For Reconsideration And Clarification Of Order No. 45*, Texas PUC Project No. 20400 (Filed on November 1, 2002).

A. Yes. By order dated February 25, 2002, the Commission asked interested parties whether a multiplier should be imposed in the existing Ameritech remedy plan to incent adequate wholesale service performance to CLECs. Various parties have filed comments, and a final decision is expected in the near future.

Q. DOES AMERITECH'S VOLUNTARY OFFER IN ILLINOIS, INDIANA AND WISCONSIN TO ELIMINATE THE K TABLE EXCLUSION IMPACT THE EXISTING MICHIGAN REMEDY PLAN?

A. I believe it does. By recommending in Illinois, Indiana and Wisconsin remedy plans that do not have the k table exclusion, I hope and expect Ameritech will also withdraw its support of the k table exclusion here in Michigan.

III. THE EXISTING REMEDY PLAN DOES NOT INCENT AMERITECH TO OFFER ADEQUATE WHOLESALE SERVICE TO CLECS

Q. DOES THE EXISTING REMEDY PLAN INCENT AMERITECH TO PROVIDE ADEQUATE WHOLESALE SERVICES TO CLECS?

A. No. First, I must emphasize that the results produced by Ameritech's existing remedy plan are completely unverifiable. Ameritech refuses to allow AT&T and other CLECs to independently verify the retail data used for comparison to wholesale data when determining performance results, claiming the data is so confidential that it cannot be released, even under seal. For example, in ICC Docket No. 01-0120, AT&T requested raw data to verify Ameritech's calculation

of performance measurement results and the parity statistic. Ameritech refused, asserting that while it is appropriate for them to have both CLEC data and their own proprietary data, somehow CLECs should not be permitted access to the *same* information, even under seal. This state of affairs means that once BP concludes its OSS test, CLECs will be unable to independently verify the accuracy of Ameritech's remedy payments.

Q. IS THERE EVIDENCE THAT THE EXISTING REMEDY PLAN FAILS TO INCENT AMERITECH TO OFFER ADEQAUTE WHOLESALE SERVICE TO CLECS?

A. The evidence pointedly shows the harmful effects of the existing remedy plan. I reviewed remedy payment data for AT&T and TCG from January through August, 2002. As one can see from the attached, confidential exhibit, remedy payments in Illinois, Michigan, and Ohio (after the k table exclusions were applied) range anywhere from 0.00% to 98.43% in any given month. AT&T/TCG received just 21% of total remedy payments due before the k table exclusions for the period I reviewed.²¹

It is obvious from the record of payments that there can be no incentive for Ameritech to perform, as the results are perverse and unpredictable. Repeated failures of the same measure, month after month, may or may not be remedied

²¹ See, Confidential Exhibit KWM-05, attached.

because of the k table. This result is clearly not the intent of the Commission when it adopted a remedy plan for Ameritech.

Q. DOESN'T AMERITECH'S CONTINUAL RESTATEMENTS OF ITS PERFORMANCE RESULTS FIX PERFORMANCE PROBLEMS, WHICH IN TURN INCENTS THE COMPANY TO IMPROVE ITS WHOLESALE SERVICE QUALITY?

A. No. Ameritech is certainly not letting its restatement problems impact its "bottom line". Ameritech has indicated to the CLECs that it expects to be able to "net out" payments made to the CLECs after restating performance data. Ameritech's intent seems to be to pay the CLECs, with interest, when restatements show failures, and after recalculating all performance ever reported, remedies are owed. However, in the event restated results show overpayments to CLECs due to Ameritech's reporting errors, Ameritech intends to net those overpayments out as well.

As a hypothetical example, (and I welcome Ameritech's corrections to my example, if they have any) let's say CLEC Z has been receiving remedy payments from Ameritech since January 2000. After uncovering a reporting error from May 2000, Ameritech owes CLEC Z an additional \$25,000 for failing PM 5 and \$5,000 for failing PM 27. All other things being equal, Ameritech will pay CLEC Z \$30,000, plus interest. To broaden this example, let's say Ameritech uncovered further reporting errors in July 2000 for PM 36, where they overpaid CLEC Z

\$5,000, PM 72 in December 2000 where they overpaid CLEC Z \$10,000, and PM 13 in February 2001 where they overpaid CLEC Z \$20,000.

Ameritech will take ALL of the errors, both in their favor and in CLEC Z's favor, every month, every time there is a performance measure restated back to the beginning of the plan, and net them out. In this (relatively) simple example, Ameritech will pay CLEC Z nothing, because the amount owed CLEC Z (\$30,000) is less than the overpayment (\$35,000) due to Ameritech's errors. In addition, Ameritech will capture the \$5,000 'left over' and apply it to future months restatements, lowering any amounts owed to CLEC Z for incorrect reporting in the past by a corresponding \$5,000.

Aside from the question of whether or not Ameritech should be allowed to net out payments in this manner, it should be clear to the Commission that this dubious accounting method, where Ameritech restates performance results over and over and over, month after month after month, results in payments that can never be relied upon, can constantly change, and absolutely negates the "self executing" nature of a performance remedy plan. Ameritech should not be allowed to continue this method of netting out overpayments and underpayments due to its own errors. If allowed at all, mistakes in Ameritech's favor should be limited to three months after the initial report for a given month. Otherwise, Ameritech's only incentive is to continually restate remedies out of existence.

Q. WHAT CHANGES TO THE EXISTING REMEDY PLAN DO YOU RECOMMEND WILL PROVIDE AN INCENTIVE TO AMERITECH TO OFFER ADEQUATE WHOLESALE SERVICE TO CLECS?

A. In joint comments filed on April 1, 2002 in Case No. U-11830 AT&T and WorldCom recommended that the Commission do the following:

- (a) reinstate the multiplier ordered in its April 17, 2001 Opinion and Order;
- (b) modify the existing Ameritech remedy plan by eliminating the “k table” exclusion on remedies;
- (c) order that an independent third party audit of the Ameritech Michigan Remedy Plan be begun promptly; and
- (d) conduct a hearing to verify the accuracy of Ameritech performance metrics gathering, retention and reporting systems, as well as examine the company’s remedy plan payment data.²²

In addition to this proposal, I also recommend the Commission consider adopting the Section 271 Plan recently adopted by the ICC in Docket No. 01-0120, or, alternative, the Section 271 Plan adopted last month by the IURC in Cause No. 41657.

Q. DOES THIS CONCLUDE YOUR AFFIDAVIT?

A. Yes.

²² See, Comments of AT&T and WorldCom, pp. 1-2.