

**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 ) Case No. U-12320  
the federal Telecommunications Act of 1996. )  
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**AFFIDAVIT OF JAMES F. HENSON**

**ON BEHALF OF**

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

**NOVEMBER 15, 2002**

**I. INTRODUCTION**

1. My name is James F. Henson. My business address is 222 West Adams, Suite 1500, Chicago, Illinois 60606. I am employed by AT&T Corp. as Division Manager - Law and Government Affairs. In that capacity, my current responsibilities include policy implementation and support for AT&T Corp.'s regulatory initiatives related to its intrastate telecommunications services.

2. I previously filed affidavits in this proceeding on July 24, 2001 and August 9, 2002, in which I responded to several inaccurate claims made by Ameritech Michigan regarding its rates for unbundled network elements (“UNEs”) and their relationship to the requirements of § 271 of the Telecommunications Act of 1996 (the “Act”). The purpose of this affidavit is to present additional new information that relates to this general topic.

**II. PURPOSE OF AFFIDAVIT AND SUMMARY OF CONCLUSIONS**

3. In my prior two affidavits I exposed Ameritech Michigan pricing problems pertaining to Line Splitting, Line Sharing and new UNE combinations. I recommended that the Commission require Ameritech Michigan to suitably modify its tariffs and provide supporting information to correct the problems I discussed. Until such remedies are in place it would be premature at best to deem Ameritech Michigan to be in compliance with the pricing requirements of § 271 of the Act.

4. In its orders entered in this docket on October 3 and November 7, 2002, the Commission concluded that Ameritech Michigan’s pricing, particularly its

nonrecurring rates, for UNE combinations, line sharing, and line splitting were in violation of past Commission orders. For example, in the October 3, 2002 order, the Commission agreed with AT&T's and WorldCom's position that Ameritech Michigan could not charge multiple nonrecurring charges for the migration of voice services (via the UNE-Platform) from one carrier to another, even where the loop being used was currently supporting another carrier's provision of data services (i.e., on the high frequency portion of the loop): "Migration from line sharing to line splitting should not include charges to disconnect and reconnect the same pieces of the loop, when no actual work is needed for the migration. Again, this scenario should be accomplished and priced as a UNE-P migration." (10/3/02 Order, p. 23.)

5. Ameritech Michigan was required to file compliance proposals consistent with the Commission's decisions in the October 3 order, which it filed on November 3, 2002. These compliance proposals are discussed in the affidavit of Eva Fettig, filed concurrently with this affidavit. I would note, however, that Ameritech Michigan's compliance proposal does not contain specifics relating to its nonrecurring pricing for the line sharing/line splitting proposals involved. Ameritech Michigan claims that it will comply with the Commission's orders, but it remains to be seen whether this will turn out to be true.

6. In its recent November 7, 2002 order in this docket, the Commission reiterated that Ameritech Michigan must comply with the Commission's prior decisions on the nonrecurring charges that apply for UNE combinations. Indeed, the Commission chided Ameritech Michigan for what appeared to be a purposeful misreading of its orders in Case U-11831 establishing appropriate TSLRIC nonrecurring rates: "Despite

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Ameritech Michigan's creative argument about what the Commission must have meant in Case No. U-11831, the simple fact is that the Commission used the term 'new' in the usual manner. Ameritech Michigan can argue otherwise only because, at the time of the prior orders, *Ameritech Michigan did not agree that it was under any obligation to offer new combinations as the Commission used that term.* The Supreme Court rejected that view in Verizon, supra." (11/7/02 Order, p. 13 (emphasis added).)

7. Ameritech Michigan is required to file tariffs in compliance with the November 7 order on November 17, 2002.

8. Against this backdrop, I believe it is important to present the Commission with additional information regarding Ameritech Michigan's announced plans to seek increased UNE rates. The specific additional information that I am providing in this affidavit addresses recent Ameritech actions related to the repricing of UNEs. I will explain how the business uncertainty engendered by this Ameritech activity significantly harms the competitive process. In order to remedy this problem, I recommend that the Commission cap Ameritech Michigan UNE rates for three to five years as a precondition of any finding that Ameritech Michigan is in compliance with the requirements of § 271 of the Act.

### **III. AMERITECH'S RECENT ACTIONS REGARDING UNE PRICING**

9. It is evident to me that SBC and, hence, Ameritech Michigan have declared war on the unbundled network element platform ("UNE-P"). In my view, this

has manifested itself in a strategy by Ameritech to increase prices on an enormous scale.<sup>1</sup> The first tangible evidence of this course appeared a little over five months ago. On May 31, 2002 Ameritech Ohio, on its own initiative, filed “revised” wholesale prices for all UNEs. By its own admission, Ameritech Ohio is seeking to double prices for the UNE-P. Exhibit JFH-4<sup>2</sup> is a copy of Ameritech Ohio’s press release on this subject. In it, SBC President William Daley claims that Ameritech Ohio’s current UNE pricing has created a host of undesirable consequences affecting Ameritech and the state of Ohio in general. Its proposed doubling of rates will, according to Ameritech, “promote healthy, sustainable and economically rational competition.” Concurrently, Ameritech Ohio President Jim Smith told the Akron Beacon Journal “he expects SBC Ameritech to file similar proposals by the end of the year to raise wholesale prices in states where the current prices are similar to Ohio’s.”<sup>3</sup> The Ohio Office of Consumers’ Counsel and several competitive local exchange carriers (including AT&T) have moved for the dismissal of Ameritech Ohio’s UNE price increase application and the matter is presently before the Commission there.

10. In the meantime, Ameritech put its UNE-P “road show” into action and Michigan was one of the first stops. On August 29, 2002 the Detroit Free Press detailed Ameritech Michigan’s plans to file a request with the Michigan Public Service

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<sup>1</sup> Concurrently Ameritech is advocating, in both the regulatory arena and the media, that UNE *availability* be curtailed.

<sup>2</sup> Exhibits JFH-1 through JFH-3 were attached to my prior affidavits.

<sup>3</sup> “Ameritech, rivals fight anew,” Akron Beacon Journal, Betty Lin-Fisher (June 1, 2002). Mr. Smith has since been promoted to a new position responsible for federal regulatory matters at SBC, certainly an indication that he has been, and is, “in sync” with his bosses in San Antonio.

Commission that would more than double rates for the UNE-P.<sup>4</sup> The “planned” filing became reality the following day as Ameritech Michigan officially made its application to the MPSC. SBC Chairman and Chief Executive Officer Edward E. Whitacre Jr., during a visit to Detroit, also repeated his promise to make similar filings in other states. He predicted that, if SBC doesn’t get its requested increases, the consequences will include job cuts, reduced capital investments and tax revenue reductions. Furthermore, exhibiting what seems to me to be a touch of chutzpah, he suggested that “service will start to suffer.” Mr. Whitacre refers to UNE-P competition as “phony competition since the competitors just buy the lines and don’t make the investments in equipment in the states where they are operating.”<sup>5</sup> This statement just doesn’t hold up when considered along with the fact that AT&T alone has invested approximately \$400 million in Michigan local infrastructure since 2000. I won’t address Ameritech Michigan’s other claims here because the purpose of this affidavit is principally to address current UNE price predictability. The important point is that Ameritech Michigan has, by making its application to the MPSC, applied the massive SBC corporate resources to the goal of eviscerating any competitive opportunity employing UNEs.

11. As the Commission knows, Ameritech Michigan’s filing in Case No. U-13518 turned out to be woefully noncompliant with the Commission’s requirements for TSLRIC studies. Less than three weeks after Ameritech Michigan made its request, the Commission dismissed the case *with prejudice*. (9/16/02 Order, pp. 4, 5.) Although the Commission opened on its own motion an investigation into Ameritech Michigan’s

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<sup>4</sup> “SBC says layoffs possible in state; Firm wants higher fees for competitors’ access,” Detroit Free Press, Jeff Bennett (August 29, 2002).

TSLRICs, it cautioned the company that additional information would be required in any future filing: “Ameritech Michigan is directed, in any new filing, to identify cost changes attributable to increases and decreases in costs, changes attributable to changes in the cost methodology, and changes attributable to a decision to seek a modification of a prior Commission determination on an issue.” (9/16/02 Order, p. 4.) Ameritech Michigan’s response to the Commission’s order (quoted immediately above) was troubling because it appears to play down the requirement that it supply the detailed supporting information required by the Commission.

12. Specifically, Ameritech Michigan stated that the Commission’s order, “is simply a request for more information.”<sup>6</sup> Ameritech Michigan further predicted its ability to develop the Commission-required additional studies and provide additional detail on price changes attributable to: (1) increases and decreases in costs, (2) changes attributable to new methodology and (3) changes due to a requested modification of a prior Commission determination on an issue, with breakneck speed. Ameritech Michigan predicts that it will resubmit its formal request to the Commission “in mid-November [presumably 2002].”<sup>7</sup>

13. I would expect that if Ameritech Michigan truly believes that its costs have increased by the magnitude it is claiming, it would take the time and devote its considerable resources to providing more than just a little additional “information” to the Commission. In order to fully paint the detailed picture of Ameritech’s threatened

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<sup>5</sup> Id.

<sup>6</sup> “PSC stops SBC Ameritech’s plan to raise rates for competitors,” Crain’s Detroit Business Online, Amy Lane (September 17, 2002).

<sup>7</sup> “SBC tries again to raise its rate for phone rivals,” Detroit Free Press, Jeff Bennett (October 29, 2002).

increases, I have prepared Exhibit JFH-5. This exhibit is based on Ameritech's August 30, 2002 filing in Michigan. Exhibit JFH-5 compares *current* key Ameritech Michigan UNE-P rates with Ameritech Michigan's *proposed* rates. Rate increases extend as high as several thousand percent. Particularly interesting, and germane to local competition, is Ameritech Michigan's proposed nonrecurring migration charge of \$8.84 – a staggering 2,425.7% increase from its current level of \$0.35.

14. Ameritech's determination to increase UNE prices significantly is particularly odd at a time when telecommunications costs in general and UNE prices in particular are declining. For example, recent regulatory decisions have established UNE-P migration charges of \$0.37 in Indiana<sup>8</sup> and \$0.06 in Wisconsin.<sup>9</sup> Within the last two months, the Illinois Commission reduced Ameritech Illinois' price for unbundled local switching to a flat rate of approximately \$2.18, which includes a basic line port, all unbundled local switching usage and all vertical features. The Illinois Commission similarly reduced rates for interoffice transport and daily usage feed.<sup>10</sup> Ameritech's strategy of *increasing* UNE rates virtually across the board is an anachronism.

15. It is also curious indeed that after the tens of thousands of hours devoted to UNE pricing by five state Commissions, Staffs, the industry and even Ameritech itself, the Company believes that we have somehow gotten it all wrong. As the Commission is

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<sup>8</sup> Order, IURC Cause No. 40611-S1 Phase I, p. 30 (March 28, 2002). The UNE-P new installation rate in Indiana is \$0.41. *Id.*

<sup>9</sup> Ameritech Wisconsin draft compliance tariff, Docket 6720-TI-161, P.S.C. of W. 20, Part 19, Section 15, Sheet 7, Draft effective May 21, 2002, Amendment No. WI-02-730.

<sup>10</sup> Order, ICC Docket No. 00-0700, pp. 6, 22, 23 (July 10, 2002). Ameritech's proposed compliance tariff (which is currently under review by the ICC Staff) prices the Basic Line Port at \$2.18. Advice No. IL-02-1262, ILL. C.C. No. 20, Part 19, Section 3, 5<sup>th</sup> Revised Sheet No. 40 (issued August 21, 2002).

well aware, Ameritech Michigan UNE pricing has been comprehensively studied *twice* in generic proceedings. Additionally, the Commission has conducted individual dockets considering specific topics including UNE remand products, shared transport, etc. If nothing else, this latest SBC corporate initiative moots any concerns over post-271 approval anti-competitive “backsliding.” There’s nowhere to go from here but “up.”<sup>11</sup>

16. Based on UNE repricing filings made in Michigan, Illinois and Ohio Ameritech appears intent upon executing its strategy to double, on average, UNE prices through a combination of (1) importing SBC cost models from the non-Ameritech states and (2) advocating unrealistic input factors such as overstated costs of capital, inefficient “actual” fill factors, etc. Ameritech’s unorthodox new cost approaches create profound uncertainty and risk for CLECs. Every reconsideration of UNE costs presents a threat to the economic framework within which CLECs do business. CLECs need to expend substantial resources participating in proceedings that they may be only marginally interested in because failure to participate could result in unanticipated and precipitous cost increases. While Ameritech may experience occasional ennui from its endless regulatory and court proceedings, some CLECs, in contrast, may not even survive them.

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<sup>11</sup> Interestingly, Ameritech Michigan recently announced “sweeping changes” and price reductions to its existing residential customer call packages including a phone line with unlimited local calling for about \$14 per month. (“Majority of Michigan customers will be converted to unlimited local service; prices reduced by up to 30%,” Business Wire via Dow Jones, June 11, 2002). Based on Ameritech Michigan’s assertion that its costs of providing UNE-P (and hence, local exchange service) are between \$27 and \$34, then one of two conclusions logically must follow: (1) Ameritech Michigan is engaged in predatory pricing of its retail services, or (2) the UNE-P cost estimates are a complete fabrication.

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IV. **RELATIONSHIP OF UNE PRICE STABILITY TO COMPETITION**

17. The relationship of UNE price stability to competition is relatively straightforward and grounded in common sense. The telecommunications competition landscape is somewhat atypical because one dominant competitor, Ameritech Michigan, has significant control over the price that its competitors must pay for the network elements used to provide service. Left unchecked, Ameritech would, of course, simply raise UNE prices until it is no longer profitable for its competitors to do business.

18. Any businessperson deciding whether or not to undertake an activity considers potential revenues, costs and profits. Additionally, the potential for unforeseen circumstances, changes in conditions, etc., also enter into the decision. Investor-supplied capital is attracted to business opportunities yielding the highest and most predictable returns. In the case of deciding whether to undertake, expand or exit the local service business, CLECs must know the cost of the unbundled network elements they purchase from Ameritech and the terms and conditions that apply to their use. If Ameritech Michigan were successful in doubling the cost to CLECs of the UNE-P, as it is attempting to do, the competitive opportunity would be completely undermined. Even the *prospect of* a substantial UNE price increase has adverse competitive consequences. This situation becomes particularly important in the context of evaluating the timeliness of Ameritech Michigan's entry into the long distance business. Deeming Ameritech Michigan to be in compliance with the § 271 requirements related to UNE pricing cannot coexist with Ameritech's application to double UNE prices.

**V. NEED FOR A MICHIGAN UNE PRICE CAP**

19. For all of these reasons, I recommend that the Commission require Ameritech Michigan to cap its current UNE prices for a period of three to five years – if Ameritech Michigan desires to be deemed to be § 271-compliant by the Commission. Such a commitment would bring some degree of orderliness and predictability to the current Michigan CLEC business opportunity.

20. I have made similar recommendations in § 271 proceedings in other states in affidavits filed after Ameritech officially filed its application in Ohio and publicly stated its intention to take similar action in other states. Importantly, the Illinois Commerce Commission Staff recently made its own UNE price cap recommendation in the docket considering Ameritech Illinois' § 271 Application. Specifically, the Illinois Staff recommended that the Commission condition a favorable recommendation on Ameritech Illinois' § 271 Application upon a UNE rate cap of five years. The Staff based its recommendation on several reasons including the need for UNE rate stability, noting my Illinois testimony that a competitor cannot make a business case in favor of large-scale entry into a market if it cannot ascertain UNE rates.<sup>12</sup>

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<sup>12</sup> Initial Brief of the Staff of the Illinois Commerce Commission (Revised), ICC Docket No. 01-0662, pp. 237-242 (July 25, 2002).

**VI. CONCLUSION**

21. In this and my two previous affidavits in this proceeding, I discussed Ameritech pricing problems that need to be corrected related to Line Splitting, Line Sharing and UNE combinations. The Commission has issued straightforward orders responding to these concerns. Ameritech's compliance with these orders must be evaluated and validated. Furthermore, Ameritech has now sought to massively increase UNE prices in Michigan and elsewhere. This threat, when backed up by the vast corporate SBC and Ameritech resources, completely undermines the price stability and certainty essential to sustained, large-scale local entry. For this reason, any commission determination that Ameritech Michigan has met the requirements of § 271 of the Act should be conditioned on a three to five year UNE price cap. This Commission was among the first to move the competitive battle from the hearing room to the marketplace. The UNE price cap recommendation that I advocate will keep the battle where it belongs – in the marketplace.

22. This concludes my affidavit.