

**DRAFT**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
)  
Application by SBC Communications, Inc., )  
Michigan Bell Telephone Company d/b/a )  
Ameritech Michigan, and Southwestern Bell ) CC Docket No. \_\_\_\_\_  
Communications Services, Inc. d/b/a Ameritech )  
Long Distance for Provision of In-Region )  
InterLATA Services in Michigan )

**AFFIDAVIT OF MARCIA J. STANEK  
ON BEHALF OF AMERITECH**

**STATE OF ILLINOIS )**  
**)**  
**COUNTY OF COOK )**

**AFFIDAVIT REGARDING NON-DISCRIMINATORY ACCESS  
TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY**

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I, Marcia J. Stanek, being of lawful age and duly sworn upon my oath, do hereby depose and state the following:

1. My name is Marcia J. Stanek, and I have been employed by Illinois Bell/Ameritech Illinois and Ameritech for over 22 years. My current position is in Network Regulatory Policy and Planning, where I am responsible for issues related to pole, duct, conduit and right-of-way (“ROW”) arrangements between Ameritech and the competitive local exchange carriers (“CLECs”).

### **PROFESSIONAL EXPERIENCE**

2. I began working for Illinois Bell in 1979. From 1979 to 1983, I was a Communications Consultant in Business Marketing. From 1983 through 1986, I was an Assistant Manager in Marketing Revenue Forecasting. From 1987 to 1990, I was employed as a Staff Manager in Marketing Revenue Forecasting. From 1990 to 1991, I was a Staff Manager in Marketing Advertising, and from 1991 through 1992, I was a Staff Manager in Public Policy Rates and Tariffs. From 1993 to 1994, I served as a Docket Manager in Public Policy. From 1994 to 2000, I was the Product Manager in Wholesale Marketing for poles, conduit and rights-of-way. Since 2000, I have been in Network Regulatory Policy and Planning, where I am also responsible for poles, conduit and rights-of-way.

### **EXECUTIVE SUMMARY/PURPOSE OF AFFIDAVIT**

3. Michigan Bell Telephone Company d/b/a Ameritech Michigan or Ameritech (“Ameritech”)<sup>1</sup> provides nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by Ameritech at just and reasonable rates. Compliance is shown by the information contained in this Affidavit. In addition, Ameritech provides the following

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<sup>1</sup>Michigan Bell Telephone Company, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc. Michigan Bell offers telecommunications services and operates under the names "Ameritech" and "Ameritech Michigan" pursuant to assumed name filings with the state of Michigan.

performance measurements (“PM”) to track this process: Percentage of requests processed within 35 days (PM #105), defined as the percentage of requests for access to poles, ducts, conduits and rights-of-way processed within 35 days, and average days required to process a request (PM #106), defined as the average time it takes to process a request for access to poles, ducts, conduits and rights-of-way. These performance measures are described in greater detail in the Performance Measurement affidavit of Salvatore Fioretti.

4. My affidavit describes how Ameritech has satisfied the competitive checklist requirement that it provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [Ameritech] at just and reasonable rates in accordance with the requirements of Section 224.” 47 U.S.C. § 271(c)(2)(B)(iii). Pursuant to Section 224(c)(1) of the Telecommunications Act of 1996 (“federal act”), Michigan regulates the rates, terms and conditions for access to poles, ducts, conduit and right-of-way, and Ameritech is in compliance with all applicable state requirements. More specifically, in an effort to satisfy this requirement, Ameritech developed an interconnection agreement appendix (“Appendix ROW”) for access to poles, ducts, conduits and rights-of-way. Several CLECs that have recently included the Appendix ROW in their interconnection agreements with Ameritech include American Fiber Network and Nation Net Communications Corporation. The Appendix ROW is consistent with the First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) and the federal Act. In addition, access is available through an Ameritech tariff, which is also fully compliant with all applicable state and federal regulations (MPSC No. 20R, Part 2, Section 6).

## **BACKGROUND**

5. Ameritech has a long history of providing access to its poles, ducts, conduit and rights-of-way. More specifically, Ameritech has been providing such access at least since the adoption of the Pole Attachment Act (47 U.S.C. sec. 224) in 1978. Ameritech has also provided access to its poles, ducts, conduits and rights-of-way in accordance with and pursuant to the Michigan Pole Attachment Act, 1980 PA 470, MCLA 460.6(g) (effective March 31, 1981) and the Michigan Telecommunications Act, 1991 PA 179, as amended by 1995 PA 216, MCLA 484.3361, as amended by 2000 PA 295 (MTA). By letter dated January 19, 1981, the Michigan Public Service Commission (“MPSC”) certified to the Federal Communications Commission (“FCC”) that it was regulating pole attachments in Michigan. The FCC has recognized the MPSC’s jurisdiction at least since February 11, 1985<sup>2</sup>. Ameritech’s first tariff offering pole attachments and conduit occupancies to other carriers was effective on February 20, 1986. Ameritech has had tariffs in effect continuously since that date. There are no pending complaints before the MPSC.
6. The federal Act modified the Pole Attachments Act, giving the FCC jurisdiction to regulate the rates, terms and conditions of attachments by telecommunications carriers as well as cable television operators. The federal Act also required nondiscriminatory access to these attachments.
7. On August 8, 1996, the FCC released its First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996)

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<sup>2</sup> See *States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Order on Reconsideration, 14 FCC Rcd at 18089, para. 115 (1999) (stating that “[o]ur rule does not require . . . [previously certified] . . . states to formally re-certify in order to assert their jurisdiction over access); 47 U.S.C. § 224(c).

(“First Report and Order”). Paragraphs 1119-1240 of that First Report and Order pertain to poles, ducts, conduits, and rights-of-way.

8. The Appendix ROW developed by Ameritech is available to any telecommunications carrier (including those who have signed a prior agreement with Ameritech) and contains terms and conditions consistent with Section 224 and the First Report and Order. The Appendix ROW also reflects issues resolved through various interconnection negotiations and state arbitration proceedings. At the request of a telecommunications carrier, Ameritech will negotiate modifications to the Appendix ROW. In addition, any cable television provider or telecommunications carrier may access Ameritech’s poles, ducts, conduits and rights-of-way via Ameritech’s Tariff MPSC No. 20R, Part 2, Section 6, which contains rates, terms and conditions for pole attachments and conduit. Detailed operational information is further defined in “Guidelines for Access to Ameritech Structure,” at <http://asac.ameritech.com>.

#### **APPENDIX ROW OVERVIEW**

9. Ameritech’s Appendix ROW and its tariff reflect input from numerous telecommunications providers. Each features provisions that allow all parties to make plans based upon existing Ameritech records and facilities and provides for access, except in exceptional circumstances where capacity is not available or cannot be made available for reasons of safety, reliability, or other valid engineering concerns.
10. **Access to Rights-of-Way.** Section 2.1 of the Appendix ROW and Sheet 1 A of the Tariff provide that to the extent legally permissible, access to poles, ducts and conduits includes access to the associated rights-of-way. Under the Appendix ROW, Section 2.1 and the Tariff, Sheet 1 A, Ameritech will also provide access to rights-of-way (independent of pole or conduit use) on a nondiscriminatory, first-come, first-served basis so long as space is

available and the underlying agreement with the third party provides for such access. This is consistent with the First Report and Order, ¶¶ 1178-1181, which states that the access obligations will apply when, as a matter of state law, the utility owns or controls the rights-of-way to the extent necessary to permit such access. As discussed below, in those limited instances when Ameritech has obtained exclusive rights-of-way (i.e., for huts or other large facilities), Ameritech may recover a pro rata portion of its original costs for such rights-of-way.

11. **Specifications.** Section 3 of the Appendix ROW and Sheet 9 of the Tariff set forth the same specifications for CLECs to follow in attaching to poles or using conduit space as Ameritech applies to itself.
12. **Access to Records.** Ameritech's Appendix ROW and Tariff provide for access to records, which includes maps and engineering records relating to Ameritech's poles, ducts, conduits, and rights-of-way (Appendix ROW, Section 10; Tariff, Sheet 11 C.10.). The requesting party simply contacts Ameritech and requests a records review for a given location or locations. The records provided are the same working records, at the same locations, that Ameritech engineering personnel use to design their own construction projects. If the records contain confidential or proprietary information, this information will be redacted before the requesting party may view the records. The records provided under the Appendix ROW and Tariff are those records that are necessary to determine where structure (i.e., poles or conduit) exists and what may be available for use. Access to records is not conditioned on the submission of an application for access to specific pole attachment or conduit occupancy space. In order for a requesting party to make efficient planning decisions, access to

Ameritech records is permitted days, weeks or even months in advance of submitting an application for space.

13. **The Application Process.** The Applicant is required to submit an application in writing and receive an occupancy permit from Ameritech before attaching facilities to specified poles or placing facilities within specified Ameritech ducts or conduits (Appendix ROW, Section 5: Tariff, Sheet 10, C.6). Ameritech offers and provides assistance and guidance to CLECs in the application process. Ameritech requires the party requesting access to provide sufficient details for Ameritech to analyze the Applicant's proposed use of the space based on capacity, safety, reliability, and engineering considerations. Ameritech verifies the availability of the space (by performing a field survey), determines what make-ready work, if any, is needed, and plans and engineers such make-ready work and estimates the costs associated with the work.

14. **Access Denials Based on Issues of Capacity, Safety, Reliability, and Engineering Considerations.** The First Report and Order concluded that "any utility may take into account issues of capacity, safety, reliability, and engineering when considering attachment requests, provided the assessment of such factors is done in a nondiscriminatory manner." First Report and Order ¶ 1176. Further, the FCC's Pole Attachment Complaint Procedures, which incorporate certain provisions of the First Report and Order, specifically state that "a utility may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes." 47 C.F.R. 1.1403(a). Both the First Report and Order and the FCC Pole Attachment Complaint Procedures further require that a utility's denial of access "shall be

specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.” 47 C.F.R. 1.1403(b). First Report and Order ¶ 1224. The Appendix ROW and Tariff permit Ameritech to deny access only on these grounds and require Ameritech, in the event of an access denial, to provide the party seeking access with a written denial statement which meets the above requirements (Appendix ROW Section 2.2; Tariff, Sheet 6 C.1). Ameritech applies the same capacity, safety, reliability, and engineering standards to Applicants’ requests for access that it applies to its own use of facilities. Consistent with the First Report and Order, ¶¶ 1151-1152, the Appendix ROW (Section 3.2) and Tariff (Sheet 9, C.5) require Ameritech and the Applicant to comply with nationally recognized safety and engineering requirements such as the National Electrical Safety Code, and other federal, state or local requirements.

15. **Allocation of Space.** The First Report and Order, ¶ 1170, does not permit an incumbent local exchange carrier (“ILEC”) to favor its future business needs over a competitor’s current needs by reserving space on or in its own facilities. Therefore, to ensure that all available space is fairly allocated among all users, the Appendix ROW and Tariff incorporate a nondiscriminatory means by which cable operators and telecommunications carriers, including Ameritech, may be assigned pole attachment or conduit occupancy space. Under the Appendix ROW (Section 6) and the Tariff (Sheet 10 C.7), any pole, duct, conduit, or right-of-way space which is not already occupied or assigned is available for assignment to Ameritech or other telecommunications carriers and cable operators. Space that is assigned is not available for use by other parties. When a written request for access is submitted, the structure requested by the Applicant will be assigned to that Applicant, pending successful

completion of the normal structure access process (i.e., field survey, make-ready). Assignments of space expire if the space is not used within 6 months of issuance of the occupancy permit, which is provided after any necessary make-ready work is completed (Appendix ROW, Section 11.1.2, Tariff, Sheet 11, C.11). Similarly, if Ameritech assigns space to itself, the assignment is subject to expiration 6 months after the date any necessary make-ready work is finished. As noted above, this is the same assignment policy that is applied to CLECs. Once the assigned space expires for the Applicant or Ameritech, it is available for assignment or occupancy by any other interested, qualified party.

16. **Responses to Requests for Access.** As required by the First Report and Order, ¶ 1224, Ameritech must respond to the Applicant no later than 45 days after receiving the Applicant's request (Appendix ROW, Section 2.2.3; Tariff, Sheet 6 C.1). If access is granted, Ameritech will advise the Applicant in writing what capacity expansions, make-ready work, or facilities modifications, if any, are required for the specific benefit of the Applicant and an estimate of the associated charges. If access is denied, Ameritech's response will include all relevant evidence and information supporting the denial, including an explanation of how such evidence and information relates to the denial for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards (Appendix ROW, Section 2.2.3; Tariff, Sheet 6 C.1). In those unusual situations in which a denial appears likely, Ameritech will promptly contact the Applicant so that alternatives can be discussed in compliance with the First Report and Order, ¶ 1163.

17. **Capacity Expansion.** Pursuant to the First Report and Order, ¶ 1161, the Appendix ROW (Section 2.4.1) and the Tariff (Sheet 6 C.3), Ameritech will, at the Applicant's request and expense, modify its poles or conduit system to accommodate the Applicant's facilities

consistent with the same capacity, safety, reliability, and engineering considerations that Ameritech would apply to itself if the work were performed for Ameritech's own benefit. Capacity expansions will be performed within the same time intervals which would apply if Ameritech was performing the work for itself. If Ameritech cannot start or complete the work in time to meet a requesting party's needs, the requesting party may make alternative arrangements to have the work performed by an "authorized contractor" selected from a list of contractors mutually approved by Ameritech and the requesting party using the same criteria Ameritech applies to itself when it selects a contractor for its own use.

18. **Make-Ready Work.** In general, Ameritech will be responsible for make-ready work, and the Applicant will pay for the performance of that work. Make-ready work will be performed within the same time intervals that would apply if Ameritech was performing the work for itself. The Applicant, as a qualified contractor, or a mutually approved qualified contractor, will be permitted to perform make-ready work when Ameritech cannot perform the work quickly enough to meet the Applicant's needs. In addition, the Applicant may offer to perform make-ready work proposed by Ameritech Michigan in accordance with Ameritech's specifications, and Ameritech will not, without due cause and justification, refuse to accept the Applicant's offer to perform the work. This provision results in a natural test for performance intervals; i.e., if an Applicant thinks the costs are too high or the completion interval is too long, the Applicant can do the make-ready work itself as outlined in section 2.4.1 of the Appendix ROW. To prevent delay and ensure the ability of others to use or plan for the use of Ameritech's poles, ducts, conduits, and rights-of-way, the Applicant must tell Ameritech to go forward with the proposed make-ready work within 45

days or contact Ameritech within the same time frame to negotiate alternative modifications or make-ready work.

19. As discussed above, the Applicant is required to pay for any capacity expansion or make-ready work required to accommodate the Applicant's facilities. If dead or inactive cables (i.e., cables no longer in use, but that have not been removed from the conduit system due to damaged or shifted ducts) are blocking the conduit, the Applicant, at its expense, may repair or have the duct repaired to free such cables from constricted or frozen situations and remove the cables. This practice is consistent with Section 224(i) of the Pole Attachments Act which establishes a statutory "cost-causer pays" principle with respect to rearrangement or replacements required as the result of an additional attachment or the modification of an existing attachment sought by any other entity, including the owner of the pole, duct, conduit, or right-of-way. (47 U.S.C. § 224(i)).
20. An authorized or mutually agreed upon contractor may be a current Ameritech contractor, the Applicant itself or an Applicant's contractor that meets the same requirements for insurance and bonding as Ameritech requires of its own contractors. The authorized or mutually agreed upon contractor may perform any make-ready work that Ameritech would normally perform in preparing poles, ducts, or conduits for the attachment or placement of the Applicant's facilities. Ameritech reserves the right to perform any make-ready work that would involve Ameritech's working lines. Under Section 3 of the Appendix ROW and Sheet 9 of the Tariff, the Applicant is responsible for providing properly trained personnel to install, maintain, or remove the Applicant's facilities on Ameritech's poles and in Ameritech's conduit.

21. **Operational Issues After Access Has Been Granted.** Paragraph 1151 of the First Report and Order states that carriers who construct facilities on Ameritech's poles, ducts, conduits, and rights-of-way should comply with standards relating to capacity, safety, reliability, and general engineering principles. Remaining consistent with these standards, the Applicant is responsible for the construction of its own facilities on or in Ameritech's poles or conduit (Appendix ROW, Section 3; Tariff, Sheet 9).
22. Under Section 3.1 of the Appendix ROW and Sheet 9 C.4. of the Tariff, each party is responsible for maintaining its own facilities, and paying and supervising all personnel involved in performing such maintenance activities.
23. Section 7 of the Appendix ROW and Sheet 10 C.8. of the Tariff permit all parties to make short-term use of maintenance ducts for repair and maintenance activities. In general, maintenance ducts are only available for emergency use by all parties with facilities in a conduit section.
24. Section 11.4 of the Appendix ROW and Sheet 11 C.11 of the Tariff place responsibility on attaching parties for the removal of their own facilities and authorizes Ameritech, on 60 days notice, to remove an Applicant's facilities in those rare cases when the Applicant is required to remove its facilities (i.e., as a result of a default) and fails to do so.
25. **Notices Prior to the Modification or Alteration of Poles, Ducts, Conduits, or Rights-of-Way.** The Pole Attachments Act and FCC Pole Attachment Complaint Procedures require utilities to provide advance written notice to attaching cable system operators and telecommunications carriers before modifying or altering poles, ducts, conduits, and rights-of-way. 47 U.S.C. § 224(h); 47 C.F.R. 1.1403(c). The First Report and Order, ¶ 1209, states that absent a private agreement establishing different notification procedures, written

notification of a modification must be provided to attaching parties at least 60 days before commencement of the modification. Notice prior to a modification is incorporated in the Appendix ROW in Section 2.5 and in the Tariff on Sheet 7 C. 3.

26. **Allocation of Modification Costs.** As discussed above, the Pole Attachments Act establishes a statutory “cost-causer pays” principle with respect to the rearrangement or replacement of attachments required as the result of an additional attachment or the modification of an existing attachment sought by any other entity, including the owner of the pole, duct, conduit, or right-of-way. 47 U.S.C. § 224(i). The Pole Attachment Complaint Procedures and the First Report and Order also address modification costs. 47 C.F.R. 1.1416(b); First Report and Order ¶¶ 1211-1216. The First Report and Order requires that the parties benefiting from the modification assume the costs of the modification and that if more than one party benefits, each party benefiting bear its proportionate share of the costs. In general, the party initiating the request will be the party benefiting. First Report and Order ¶ 1211. The Appendix ROW incorporates these obligations in Section 2.7, and the Tariff does so on Sheet 8.

27. **Reimbursement from Parties Using Additional Capacity Created at the Expense of Other Parties.** The First Report and Order provides that parties who pay for modifications may be entitled to obtain reimbursement from other parties, including the owner of the pole or conduit facility in question who later uses additional capacity created at the expense of the initiating party. First Report and Order ¶ 1214. This reimbursement provision is incorporated in Section 2.7 of the Appendix ROW and on Sheet 8 of the Tariff.

28. **Fees, Charges, and Billing.** Michigan has elected to regulate poles, ducts, conduits, and rights-of-way through the certification process as permitted by 47 U.S.C. § 224(c).

Ameritech complies with all the applicable requirements of the MTA and Michigan statutes regarding access to structure, as well as meets all the requirements of Section 224 and the FCC's rules and orders. Currently, Ameritech's attachment rates for use by telecommunications carriers in Michigan are \$1.48 per pole attachment per year, and \$0.08 per foot of innerduct per year. These are the same rates Ameritech charges cable television operators. In his affidavit, Richard Florence addresses the cost study methodology used by Ameritech when establishing these rates.

29. **Charges for Access to Rights-Of-Way.** The First Report and Order does not address charges for access to rights-of-way. Moreover, in its recent Pole Attachment Telecommunications Rate Order, the FCC declined to adopt detailed standards that would govern all rights-of-way situations. Instead, the FCC stated that it would address complaints about rates for attachments to a utility's rights-of-way on a case-by-case basis. See Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments, Report and Order, 13 FCC Rcd 6777, 6832, ¶ 121(1998). Ameritech does not charge for access to rights-of-way owned or controlled by Ameritech when access to the Ameritech right-of-way is provided in connection with access to an Ameritech structure, such as a pole or conduit. Charges for access to Ameritech rights-of-way not associated with access to an Ameritech structure will be determined on a case-by-case basis, taking into account the size of the area to be used by the CLEC and the number of existing users of Ameritech's easement and other relevant factors. Ameritech will also charge any reasonable, documented administrative costs incurred in processing a request for access such as records searches, copying costs, and other expenses actually incurred in the process of providing access to rights-of-way. This practice

is consistent with 47 U.S.C. § 224(d)(1), which permits the recovery of costs attributable to attachments to rights-of-way.

30. Ameritech is also fully compliant with the rule set forth in the First Report and Order, ¶ 1157, which states that “a utility may not favor itself over other parties with respect to the provision of telecommunications or video programming services.” As discussed above, Ameritech has complied with this rule by providing access to telecommunications carriers and cable system operators to Ameritech’s poles, ducts, conduits, and rights-of-way at rates, and under terms and conditions, that do not place such carriers and cable operators at a competitive disadvantage as compared to Ameritech and its affiliates.

### **CONCLUSION**

31. The Appendix ROW and Ameritech Tariff reflect Ameritech’s responsiveness to issues raised by parties in interconnection negotiations. The terms, conditions, and operational procedures set forth in Ameritech’s Appendix ROW and Tariff satisfy the “Competitive Checklist” requirements for access to poles, ducts, conduits, and rights-of-way.

32. This concludes my affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on \_\_\_\_\_, 2001.

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\_\_\_\_\_  
Marcia J. Stanek  
Area Manager - Network Regulatory

STATE OF ILLINOIS  
COUNTY OF COOK

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public