

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 5, 2002

1. I, Karen W. Moore, submit this Affidavit on behalf of AT&T Communications of Michigan, Inc. and TCG Detroit (“AT&T”).

CURRENT RESPONSIBILITIES AND BACKGROUND

2. My business address is 222 W. Adams Street, Chicago, Illinois 60606.

3. I am employed by AT&T Corp. as Manager, Performance Measures, in Local Services and Access Management. Since June, 1999, I have represented AT&T¹ in all performance measure collaboratives in the Central Region. I negotiate performance metrics with SBC/Ameritech for inclusion in interconnection agreements. I also compare and analyze AT&T results with SBC/Ameritech’s self-reported results. I manage the day-to-day relationship between AT&T and the SBC/Ameritech Account team members who support performance issues.

4. Prior to assuming my present duties, I held assignments at AT&T Corp. in Consumer Services as a Strategic Pricing Manager, in Law and Government Affairs as a Docket Manager in Illinois, and a variety of business account management positions of increasing responsibility, beginning in 1989 as Account Executive and ending as Sales Manager.

5. I am a 1986 graduate of the College of Liberal Arts at Boston University, where I received a B.A. in Psychology with a minor in Philosophy.

6. Since 1999, I have attended either in person or via telephone conference bridge, every performance measures collaborative affecting Michigan performance measures, as well as the other four SBC/Ameritech states. I provided AT&T’s perspective and input on every measure discussed.

¹ References to “AT&T” include AT&T Communications of Michigan and TCG Detroit and, where applicable, AT&T-owned CLECs operating in Illinois, Indiana, Ohio and Wisconsin.

7. I previously provided an affidavit addressing performance metrics in this proceeding. I have also testified on performance measure issues before the Illinois Commerce Commission in Docket Nos. 01-0120, and 01-0539. I have also submitted affidavits in the Ohio and Wisconsin Ameritech Section 271 proceedings focusing on performance and remedy plan issues.

PURPOSE OF AFFIDAVIT

8. I address the October 21, 2002 Affidavit of James D. Ehr (“Ehr Affidavit”), which purports to show that SBC Ameritech Michigan (“Ameritech Michigan”) has complied with the Michigan Public Service Commission’s (“Commission”) requirement that three consecutive months of “passing” performance must first occur as a prerequisite to any recommendation that Ameritech Michigan should receive Section 271 authorization. As I explain in detail below, Mr. Ehr systematically understates the deficiencies in Ameritech Michigan’s performance. I will provide analysis showing that Ameritech Michigan’s failures are significant and that Mr. Ehr’s explanations attempting to minimize them are wholly inaccurate. Indeed, once Mr. Ehr’s “spin” is removed, the three months of performance data submitted reveals that Ameritech Michigan not only did not “pass”, but rather patently failed the performance standards established by the Commission. I should note that I do not attempt to respond to each and every one of Mr. Ehr’s erroneous “findings” of compliance. Rather, I focus upon those measures that most directly impact AT&T’s CLEC operations. Not responding as to particular performance measures should not, then, be taken as my agreement with Mr. Ehr’s characterizations.

INTRODUCTION

9. As explained by AT&T Affiant Timothy M. Connolly, the Commission has directed Ameritech Michigan to submit three consecutive months of performance results that

comply with the performance measures adopted by the Commission. A necessary prerequisite to compliant results are data that the Commission can rely on as accurate, complete, and capable of replication. However, as explained by Mr. Connolly, it is clear that the data underlying Ameritech Michigan's reported results have not been shown to possess those characteristics, and there are many indications that they do not. Accordingly, in our view, Ameritech Michigan has failed to supply the data or the means necessary to place the Commission in a position to know exactly how poorly (or well) Ameritech Michigan's systems are performing.

10. Therefore, although throughout the discussion below I refer to Ameritech Michigan's results in responding to refute Mr. Ehr's assertions of compliance, let me make this fundamental caveat clear from the outset so as not to have to repeat myself throughout my affidavit. As Mr. Connolly indicates, it is evident, both from the findings of Ameritech Michigan's chosen auditor, Ernst & Young in the Final Report issued on October 21, 2002, as well as from the BearingPoint, Inc. ("BP") "Final Report," that the published results are unreliable and therefore inaccurate and incomplete. Ameritech Michigan simply has not met the threshold criteria for permitting the Commission to assess its performance, and it is premature to draw any conclusions of compliance (or, for that matter, non-compliance). Nevertheless, for purposes of my affidavit I essentially take Ameritech Michigan's reported results at face value.² My responses as to compliance (or non-compliance) thus use Ameritech Michigan's self-reported results, non-validated results, because those are the only results we possess.

PERVASIVE FLAWS IN THE EHR AFFIDAVIT'S ANALYSIS AND APPROACH

² Obviously, the Commission cannot "wish away" the repeated findings of BP and Ernst & Young that Ameritech's systems are unreliable. I was forced to do so in order to prepare this affidavit. If I did not, it would be impossible to reply in any logical fashion to Mr. Ehr.

11. Prior to addressing specifically various contentions contained in Mr. Ehr's Affidavit, I must emphasize that Ameritech Michigan, through the Ehr Affidavit, has ignored the criteria established by the Commission and instead created its own "standards" for what constitutes passing performance. Ameritech Michigan's unilaterally created criteria, which have never even been proposed by Ameritech Michigan prior to the submission of the Ehr Affidavit, are as follows.

12. First, Mr. Ehr incorrectly bestows a passing grade (or "HIT," as denoted in Attachments A-L of the Ehr Affidavit performance data reports) on performance measures for which Ameritech Michigan met the standard in *two* of the *three required* months. In its February 9, 2000 Order, however, this Commission clearly required Ameritech Michigan to submit three *consecutive* months of data reporting its compliance with all required performance measures (*see* Commission February 9, 2000 Order at 13) – not, as Mr. Ehr states, merely "three months of performance data" (Ehr Aff. ¶ 26). Thus, nearly all of Mr. Ehr's references to objectives having been met rest on a standard that has been conjured up by Ameritech Michigan, without any input or agreement from the Commission, or the CLECs, and that had not even been suggested as a possible standard prior to filing his affidavit.

13. As discussed subsequently, Mr. Ehr systematically analyzed the performance data using this "two out of three" standard, and the charts included as the Attachments to the Ehr Affidavit reflect the use of that standard. I have prepared charts that employ the correct "three out of three" standard, which not surprisingly result in a significantly lower percentage of performance measures passed. Those charts are attached as Exhibit KWM-01.

14. Specific instances of the dramatic impact this improper lower standard on the reported results are pointed out below. However, I cite one important example here to illustrate

the point. Mr. Ehr reports that for UNE-P, an item he acknowledges as central to CLEC operations, Ameritech Michigan met “93.5 percent of its performance standards relating to provisioning and maintenance.” (Ehr Aff. ¶ 29). When the correct “three out of three” standard is applied, however, that percentage falls to 86%. Approached differently, applying the “three out of three” standard to end-to-end data for UNE-P (*i.e.* data that encompassed the entire pre-ordering, ordering, provisioning, maintenance and billing process), Ameritech Michigan meets the Commission’s standard at only a 83% rate. A chart demonstrating performance using the end-to-end UNE-P data is attached hereto as Exhibit KWM-02.

15. Second, for numerous PMs, Mr. Ehr averages the results for the three months in the evaluation period, and then compares that overall average to the benchmark or parity standard. This practice also deviates from the Commission’s requirement of three consecutive months of compliant performance data. Indeed, such an average (which appears to be unweighted), obscures several instances of Ameritech Michigan’s failure to meet a PM standard for one or more months. For example, Mr. Ehr states that, over the three month interval, ISDN BRI Loop installation trouble reports averaged 9.40% vs. 10.12% for Ameritech Michigan retail loops, meeting the parity standard. (Ehr Aff. ¶ 127.) In actuality, Ameritech Michigan reported installation troubles for CLECs in June at 15% and for Ameritech Michigan retail at 9.03%, and in July 8.82% and 12.53%, and in August 6.7% and 9.17%. Averaging the results not only obscures the one month of failure, but also hides the huge variation in performance.

16. Third, Mr. Ehr improperly suggests numerous times that, because Ameritech Michigan came close to meeting a PM parity or benchmark standard, the Commission can rely on these “near misses” as “effective hits.” These “near misses” played a large role in Mr. Ehr’s contention that Ameritech Michigan, given the “totality of the circumstances,” is in compliance.

(Ehr Aff. ¶ 31.) This approach ignores the principles of statistics, which provide that “not much of miss” is still a miss that, in this instance, indicates discrimination against CLECs. Further, all misses are significant misses because the benchmarks were established as the minimum required to provide nondiscriminatory access in support of competition. Additionally, applying the logic of Mr. Ehr’s approach equally to both sides of the issue would require the Commission to discount “near hits” as “effective misses,” which would diminish Ameritech Michigan’s overall performance. Of course, Mr. Ehr does not so characterize “near hits.”

17. Most problematic about this “close is close enough” approach invented by Ameritech Michigan is that it effectively rewrites the performance measurements without any input from the Commission, Staff, the CLECs, and other interested parties. That is, by claiming that a “near miss” should be considered a “pass,” Ameritech Michigan is taking the standards and adjusting them downward. In other words, Ameritech Michigan is attempting unilaterally to change the performance measures that were collaboratively developed in months of workshops.

18. Ameritech Michigan’s re-writing of the performance standards also ignores the fact that the measurements already have a built-in margin for error. For example, a benchmark measurement with a 95% standard already has room for Ameritech Michigan to offer service that is less than perfect and still “pass.” Here, however, Ameritech Michigan is creating an additional margin for error on top of the margin for error already agreed to by the Commission and the CLECs.

MR. EHR'S ASSERTIONS REGARDING PERFORMANCE DATA ARE FLAWED AND SELF-SERVING

19. As initial comment, I note that Mr. Ehr claims that Ameritech Michigan “retains the performance data results provided to every Michigan CLEC and the data required to support auditing and CLEC reconciliation of reported results for three years as required by the Michigan

Commission.” (Ehr. Aff. ¶ 19.) That statement, however, is contradicted flatly by BearingPoint. I refer to BearingPoint Exception number 19, which has been open for a year, where BearingPoint found that Ameritech Michigan does not retain source data in its original form. More recently, BearingPoint has uncovered that Ameritech Michigan’s controls are still lax with respect to Observation 668, where BearingPoint 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 to trace errors in the reported results. I also believe Mr. Ehr’s conclusion cannot be relied upon because of BP Exception 47, Version 2, where flaws in Ameritech Michigan’s systems limit the amount of extracted data for numerous performance measurements to a file of 2 gigabytes. This limitation taints 48 performance measurements, and means performance results do not include data beyond 2 gigabytes. This capacity problem in Ameritech Michigan’s systems, however, will ultimately infect *all* Ameritech Michigan’s performance measurements, as the amount of data grows over time.

THE DATA PRESENTED IN THE EHR AFFIDAVIT DOES NOT EVIDENCE COMPLIANCE WITH THE SECTION 271 CHECKLIST

20. I respond in the discussion which follows to the specific performance measurements discussed by Mr. Ehr in the same order he presented them. My discussion is therefore not in any kind of order of priority to AT&T.

Interconnection

21. Exhibit KWM-03 provides a listing of the Attachments to the Ehr Affidavit, which are discussed below. There are two reported numbers. The first one is what Mr. Ehr asserts is the result. The second number is the correct result using the three-months standard

ordered by the Commission. As Exhibit KWM-03 reveals, Ameritech Michigan does not even come close to offering three months of compliant data.

22. Mr. Ehr states that the data regarding interconnection provide “ample information to conclude that Ameritech Michigan” meets the interconnection requirements. (Ehr. Aff. ¶33.) In fact, that data, contained in Section C to the Ehr Affidavit, reveal an overall compliance rate of 50% -- hardly “ample evidence” of meeting the standard.

23. Mr. Ehr attempts to shift blame for Ameritech Michigan’s failure to meet trunk installation due dates onto CLECs. He asserts that “most” “misses” result from instances where a CLEC “negotiates” a later due date for installation, but the calculation is based on the original due date. (Ehr Aff. ¶ 36.) Nowhere does Mr. Ehr indicate how many “most” is, nor does he explain why Ameritech Michigan is not following the Business Rules, which do not provide for such an exclusion. Moreover, Mr. Ehr’s argument presumes that Ameritech Michigan has secured the CLECs agreement to change the due date for such “negotiated” later due dates, but that premise is unsubstantiated and may well be another unilateral “Interpretation” formulated by Ameritech Michigan. Thus, Mr. Ehr’s attempts to explain away Ameritech Michigan’s failure to comply are unconvincing.

Access to OSS – Pre-Ordering/Ordering

24. Turning to the first OSS checklist item, Pre-Ordering, Mr. Ehr claims that, for the pre-ordering analysis using the available electronic interfaces (*e.g.* EDI/CORBA and Web Verigate) under PM 2, there are several reporting categories and specific benchmarks for those subcategories. (Ehr Aff. ¶ 43.) That is misleading, however, because the newly implemented OSS interface (LSOG5) has no performance measurement results, in that the current six month PM review process has not yet concluded, and therefore it has not yet produced agreed-upon,

Commission-approved benchmarks. Indeed, even if agreement had been reached, those changes would not yet have been implemented.³ In short, no data exist that would allow the CLECs, Ernst & Young or BearingPoint to assess the function of the newest, and therefore most relevant, interface with respect to pre-ordering performance.

25. Mr. Ehr contends that Ameritech Michigan responds timely to pre-order inquiries because it met the established benchmark for “two out of three” months for “36 of the 38 categories with sufficient reported volume to permit analysis.” (Ehr. Aff. ¶ 44.) The failure to identify which categories had “sufficient reported volume” prevents any meaningful response in kind to this assertion. What *can* be said is that Ameritech Michigan met only 187 of the 246 total OSS measures for all three months – a percentage of 76%, clearly indicating that Ameritech Michigan’s performance is inadequate.

26. Mr. Ehr also fails to mention that Ameritech Michigan calculated the pre-order response time using methods that are inconsistent with the Business Rules that describe and define how the measurement should be taken. The Ernst & Young Report recognizes that the Business Rules require the start time to begin once the request is received by Ameritech Michigan on its side of the electronic commerce network (*i.e.* just inside the Ameritech Michigan firewall). Ernst & Young Final Report, Attachment B, Interpretation No. 2. Citing “system limitations,” Ameritech Michigan does not record the start time until after the request has gone through the translator inside the firewall. (*Id.*) BearingPoint also notes this non-compliance in its Exception 113, and states that Ameritech Michigan’s “placement of the pre-order timestamps understates the actual duration of pre-order transactions experienced by CLECs and defined in the approved business rules.” (BP Exception 113 V2 Disposition Report at 2.)

³ The parties to the six month review agreed that any changes would apply prospectively after BP

27. Ameritech Michigan has refused to conform its measurement process to the Business Rules, so the reported results ignore significant components of the pre-order query and response process and reflect a shorter overall response time interval than that actually experienced by the CLECs. That action cheats the system of benchmarks established under the Business Rules, and prompted BearingPoint to note that Ameritech Michigan “is currently mis-reporting Performance Measure 2 to CLECs and regulatory agencies, which negatively affects these parties’ abilities to accurately assess [Ameritech Michigan’s] service quality and any monies due via remedies.” (Exception 113 V2 Disposition Report at 2.) In short, Mr. Ehr’s claim that Ameritech Michigan has satisfied the benchmarks under PM 2 is plainly erroneous.

28. Further, regarding the two pre-ordering categories for which Ameritech Michigan admits failure, both of which concern PM 2-15 (Percent Responses Received Within “X” Seconds-Request for Customer Service Record-EDI LSOG4.CORBA), Mr. Ehr lays the blame on the release of the new LSOG5 interface architecture. This may explain the failure, but it certainly does not excuse it. Ameritech Michigan cannot subject CLECs to diminished performance every time a system upgrade occurs, and it should not be permitted to explain away performance failure on this basis. System upgrades occur often, and therefore if system upgrades can excuse non-compliance, the effectiveness of the performance measures is significantly diminished, if not eliminated entirely.

29. With respect to Firm Order Confirmations (FOCs), Ameritech Michigan admits failing PM 5-22 (Percent FOCs Returned Within “X” Hours – Electronic Submitted Request Simple Res and Bus LNP Only (1-19 Lines) – Manually Processed) for two of the three months, but contends that the miss was “not significant.” (Ehr Aff. ¶ 50.) As discussed above, any miss

concludes its OSS test.

is significant in that it indicates Ameritech Michigan's systems are discriminatory because the benchmark represents the minimum required for sustainable competition. Further, the rate for PM 5-22 fluctuated over the three month period (97% in June, 92.9% in July, and 94.9% in August). In the absence of any explanation for such fluctuation, I believe these varied results occur as a result of Ameritech Michigan assigning personnel "as needed" to process orders manually. This, of course, means the reliability of the systems and procedures used by Ameritech Michigan are called into serious question because such a "band aid" approach creates an unreasonable risk of backsliding after Section 271 approval if Ameritech Michigan reassigns its personnel back to the retail side.

30. Mr. Ehr attempts to explain away Ameritech Michigan's misses regarding the return of Rejection Notices (PM 10.1 and PM 10.2) by characterizing them as "near misses" and claiming that they are not "material" because the benchmark used is too stringent – the proper benchmark being the one used for the return of FOCs. (Ehr. Aff. ¶¶ 52-54.) In addition to basing his response solely on the fallacy of the "near miss," Mr. Ehr's call for the use of a different benchmark is premature and irrelevant. Mr. Ehr's desire to change the performance measure is premature because the six month review is not concluded, and no such change has been approved by the Commission. Mr. Ehr's conclusion is irrelevant because the reported results also fail the benchmark for return of FOCs – and therefore Ameritech Michigan does not even meet the standard Mr. Ehr proposes.

31. In his discussion of Completion Notices (Ehr. Aff. ¶ 55), Mr. Ehr conveniently omits mention of PM 7 (Percent Mechanized Completions Returned Within One Hour of Completion in Ordering Systems). Mr. Ehr's "omission" is not surprising, since the company failed this test for both resale and combinations, which includes UNE-P. Significantly, the

combinations disaggregation was missed in two out of three months, including an 87% performance in July. As Mr. Ehr states in his affidavit, 92% of orders processed by Ameritech Michigan are for UNE-P, and the failure at 87% compared to a 97% benchmark for an automated completion notice return process has a significant negative effect on the CLEC community.⁴

32. With regard to Line Loss Notices, which are necessary to ensure that the losing carrier ceases to bill the customer, and therefore prevent customers from being double-billed, Mr. Ehr's analysis is entirely off base. As an initial matter, his discussion (and the reported data) focus entirely on the timeliness of the Line Loss Notices actually sent, but a significant number of such notices were *never* sent. Accordingly, the number of "late" notices does not include those never sent, and the performance is thus overstated. Further, Mr. Ehr meekly asserts that performance "improved" from June to July, mustering for support only that the July results exceeded the benchmark for two of the three submeasures. (Ehr Aff. ¶ 57.) This, of course, is not a passing grade. I should also note that Ameritech Michigan is restating its August results, and although Mr. Ehr claims that there will be no significant change in performance, neither the CLECs nor the Commission have this information. In any event, Ameritech Michigan failed PM MI 13 badly, which indicates that the Line Loss notification process is not stable within Ameritech Michigan and the Commission can have no confidence that CLEC customers won't be double billed as a result.

33. Flow-through (PM 13 (Order Process Percent Flow-Through)) presents another area of Ameritech Michigan's complete failure to meet the performance standards, and Mr. Ehr

⁴ In the discussion of PM 7.1 regarding Completion Notices, Mr. Ehr states that Ameritech Michigan met the benchmark standard during the three month interval analyzed (Ehr. ¶ 55), but in fact the UNE disaggregation was missed in one of the three months.

does not bother trying to say otherwise.⁵ Instead, he argues that the failure is irrelevant because, he asserts, the FCC has looked at factors other than flow-through analysis when assessing a Section 271 application. (Ehr Aff. ¶ 62.) The fact remains, however, that under the standards adopted by this Commission, Ameritech Michigan failed to meet the parity standard for *any* month in *any* of the categories. Worse, UNE-P flow through performance actually has *declined* since June.⁶ Other order types are unstable and significantly below retail performance and any reasonable benchmark. Flow through for Resale, for example, ranged from a high of 86% to a low of 72%. The clear implication is that flow through is not yet stable for all products across all Ameritech Michigan product categories, regardless of Ameritech Michigan's performance with UNE-P.

34. Ameritech Michigan failed three measurements relating to notice of completion of maintenance in even worse fashion – PM M1 14-01, PM MI 14-02, and PM 15-05. Notices for UNE-P (PM 14-05), which is by far the largest product category here, declined from a “high” of 89% in June to 57% in July and 63% in August. Mr. Ehr does not even try to explain or to divert attention from the drastic failures in performance, offering only that, on account of the unreliable performance reporting systems (discussed above), Ameritech Michigan's performance results

⁵ It is important to note that PM 13 measures the percentage of orders that are *designed* to flow through Ameritech Michigan's ordering systems. Therefore any failure to flow through these orders is significant.

⁶ While troubling, this is hardly surprising. As the Commission is aware, Ameritech Michigan's parent company, SBC is “on the war path” to eliminate local residential and small business competition via UNE-P. *See*, Reply Comments of SBC, filed in FCC Docket Nos. 01-338, 86-98, 98-147. This is the FCC's “Triennial Review” proceeding. In its Reply Comments, SBC asks for preemption under what it claims is federal law of the existing rights of Michigan and other states to call for additional UNE availability and greater competition than allowed by the FCC. The decline in UNE-P performance may be a portent of things to come, and certainly is something the Commission must ensure will be discovered and corrected if found to be due to anticompetitive motivations at Ameritech Michigan.

might “depict poorer performance than actually experienced by Michigan CLECs.” (Ehr Aff. ¶ 65.) Mr. Ehr therefore implicitly acknowledges the need for completion of the BearingPoint testing so that reliable data can be used. BearingPoint has issued two Observations that relate to incorrect implementation by Ameritech Michigan of PM MI-14 (“Percent Completion Notifications Returned Within X Hours of Completion of Maintenance Trouble Ticket”). Observation 637 (“SBC Ameritech is improperly applying exclusions in the calculation of Performance Measurement MI 14”) and Observation 642 (“SBC Ameritech’s posted results for Performance Measurement MI 14”) do not follow the January, February or March 2002 published metrics business rules. Both of these remain open awaiting a response from Ameritech Michigan that it has remedied the business rule discrepancies. BearingPoint indicates that retesting will be required. Moreover, given that Ameritech Michigan has performed horribly and cannot fix the problems due to an admitted ignorance of the causes of those problems, the Commission should not allow Ameritech Michigan a pass now where performance is not only poor, but there is no hope for improvement absent additional testing.

35. Also with respect to billing, Mr. Ehr acknowledges Ameritech Michigan’s deficient 84% performance under PM 17-01 (Billing Completeness), but complains that the standard is improper and contends that the impact is immaterial because it only causes a delay in payments sent to Ameritech Michigan. (Ehr Aff. ¶ 69.) Mr. Ehr fails to say whether Ameritech Michigan’s performance would satisfy even its proposed standard and, more importantly, the late billing increases accounting costs for CLECs, it does not just result in late payments to Ameritech Michigan. Mr. Ehr’s blithe dismissal of this problem is, therefore, incorrect, and its performance failure is competition affecting.

Access to Unbundled UNEs

36. In his discussion of the Unbundled Local Loops checklist item, Mr. Ehr claims that Ameritech Michigan met the performance standard in two out of the three months for 93.6% of the applicable measures (either parity or benchmark). (Ehr Aff. ¶ 72.) Under the proper three out of three months standard, however, that performance falls to 86%. This is certainly not a passing grade, and is not evidence of adequate service quality.

37. With respect to UNE-P Business Field Work, Mr. Ehr claims that Ameritech Michigan achieved parity during the June 2002 through August 2002 time period. (Ehr Aff. ¶ 76.) However, in August Ameritech Michigan actually failed PM 35-07 (Percent Trouble Reports Within 30 Days (I 30) of Installation – UNE-P – Business Field Work). The Field Work Repair criteria is the most telling criterion for parity in repair because it requires scheduling of work with a technician, who then must be directed to physically make the repair. Field Work Repair thus presents one of the most direct opportunities for discrimination, and compliant Ameritech Michigan performance in this area takes on additional importance as a result.

38. Ameritech Michigan also failed all three months for PM 37-4 (Business Trouble Report Rate – UNE-P), although Mr. Ehr obscures that fact through the presentation of data in table form. (Ehr. Aff. ¶ 77.) Mr. Ehr claims that the 1.2% trouble report rate experienced by CLECs is not a significant problem, but that represents an average of the three months that ranges from 1.31% to 1.01% -- each time exceeding the rate experienced by Ameritech Michigan. Over all categories, at best the performance results for UNE-P are mixed, and do not establish that CLECs have non-discriminatory access.

39. Mr. Ehr attempts a “near miss” argument with regard to PM 55.1-04 (Average Installation Interval DSL – No Line Sharing – Without Conditioning), saying that Ameritech

Michigan fell “just short” of the 5 day benchmark. (Ehr Aff. ¶ 89.) Mr. Ehr’s claims prove false once the actual installation times, which he did not identify, are compared to the benchmark: 7.09 days for June (40% longer); 6.99 days for July (again 40% longer); and 6.12 days for August (25% longer). These results reveal that Ameritech Michigan is not even close to meeting the benchmark for PM 55.1-04.

40. Ameritech Michigan’s performance under PM 59-04 (Recent Trouble Reports Within 30 Days Of Installation – DSL – No Line Sharing) again forced Mr. Ehr into contending that Ameritech Michigan’s performance, while insufficient, constituted a near miss. Mr. Ehr states that the July and August performance numbers have improved and that it missed the 6% benchmark by only ½ of a percentage point, and he offers red herrings such as the percentage of loop orders that did not experience any trouble reports. (Ehr Aff. ¶ 96.) Mr. Ehr’s claims ring hollow in light of the generous nature of the 6% benchmark, compared to the error rate for the average UNE loop (*i.e.* a non-DSL loop) of approximately 4%. Also, the performance for June produced an abysmal 14.52% error rate which, when coupled with the failure to meet the benchmark for any period, demonstrates that Ameritech Michigan’s performance for PM 59-04 is significantly flawed.

41. Concerning DSL Loop Maintenance and Repair, Mr. Ehr states that the sample size is too small to support a reliable parity determination, but goes on to argue that such data demonstrates parity for DSL repair times. (Ehr Aff. ¶ 103.) Obviously, if the sample size is too small to say Ameritech Michigan failed, it is also too small to say it passed as well.⁷

⁷ Additionally, Ameritech Michigan missed two of the five repair commitments for CLEC DSL line sharing trouble reports. The failure to adequately handle such a small volume, absent an explanation for the failure can in itself raise serious questions about Ameritech Michigan’s performance.

42. Mr. Ehr resorts to a “near miss” analysis for his discussion of Timeliness of Access to Ordering and Pre-Ordering Information, for which he states that the average loop qualification time for PM 1.01-01 (Average Response Time for Manual Loop Make-Up Information) was .21 of a day longer for CLECs than for the Ameritech Michigan affiliate. (Ehr Aff. ¶ 106.) That statement ignores Ameritech Michigan’s failure to meet parity for *any* of the three months, with June being almost three days longer and July almost four. The near parity may result from the very small number of affiliate requests, but that cannot be determined because Ameritech Michigan does not provide the affiliate data.

43. Regarding Missed Installation Appointments for Digital Loops, Mr. Ehr correctly notes that parity for several of these measures was indeed achieved, but the performance levels for both the CLECs and Ameritech Michigan are unacceptably low. (Ehr. Aff. ¶¶ 114-23.) For instance, parity was achieved for PM 58-06 (Percent Ameritech-Caused Missed Due Dates – BRI Loops with Test Access) and for PM 58-08 (Percent Ameritech-Caused Missed Due Dates – DS1 Loops), but the missed due dates for BRI Loops was 4.5% for CLECs and almost 15% for Ameritech Michigan retail – not a very good result. Similarly, PM 62-06 (Average Delay Days for Ameritech-Caused Missed Due Dates – DS1 Loops with Test Access) achieved parity, but with an unacceptably high number of delay days – 13 for CLECs and 22 for Ameritech Michigan. In other words, *Ameritech Michigan is offering poor service (albeit at “parity”) to both its retail and wholesale customers.* In the same vein, Mr. Ehr claims that the failure to meet the three day benchmarks for PM 55 (Average Installation Interval) and PM 56 (Percent of Installations Completed Within The Customer Requested Due Date) are “inconsequential” because “Ameritech’s retail loops clearly are more adversely affected than CLECs.” (Ehr Aff. ¶ 118.) Mr. Ehr offers no explanation for why abysmal service is inconsequential. Indeed, the low

level of performance exhibited by Ameritech Michigan in these areas is indicative of the poor quality of the systems involved. Further, there can be no assurance that the parity shown now is not the result of Ameritech Michigan's re-assignment of resources to CLEC transactions for Section 271 purposes, and that those resources will not be re-assigned back to Ameritech Michigan after approval.

44. Ameritech Michigan also failed to meet benchmarks for Average Completion Intervals for each of the three months with regard to PM 55-02.1 (Average Installation Interval – 2 Wire Digital Loops – 1-10 Loops), PM 56-02.1 (Percent Installations Completed Within The Customer Requested Due Date – 2 Wire Digital Loops – 1-10 Loops) and PM 55-03 (Average Installation Interval – DS1 Loops). Ameritech Michigan claims to meet the standards for PM 56-03 (Percent Installations Completed within the Customer Requested Due Date – DS1 Loops) for a single month. While Mr. Ehr seeks solace in what he characterizes as a small degree of error (Ehr Aff. ¶124-126), these results demonstrate a clear, consistent failure to meet the standards, and thus indicate a flaw in Ameritech Michigan's systems and processes. Further, and again as discussed above, these failures are by definition significant because the benchmarks establish a *minimum* standard to support competition. Failures with respect to multiple measures over multiple months indicate a systematic failure to install on time.

45. Ameritech Michigan could not meet the standards concerning the Installation of Analog Loops. Specifically, Ameritech Michigan failed the 95% benchmark for PM 56-01.2 (Percent Installations Completed Within the Customer Requested Due Date – 2 Wire Analog Loops – 11-20 Loops) for two out of the three months. Mr. Ehr repeats his well-known refrain that the performance was not far off the mark, and points to a strong showing in PM 56-01.1, which concern installations of smaller groups of loops. Rather than bolstering Ameritech

Michigan's performance, however, Mr. Ehr's argument only serves to highlight what the data show – that Ameritech Michigan has trouble completing larger orders on time.

46. Mr. Ehr states that the data for PM 61-05 (Average Delay Days for Missed Due Dates Due to Lack of Facilities – 8.0 dB Loops) showed that the average delay for CLECs in this area was “comparable” to the delay affecting Ameritech Michigan's loops. (Ehr. Aff. ¶ 141.) Again, however, the CLEC delays were significant and parity must have been reached due to small sample sizes for Ameritech Michigan (*e.g.* July CLEC results showed an average of 8 days of delay, whereas Ameritech Michigan retail was only 6.65 days, but parity was achieved).⁸ Further, the CLEC data contain huge fluctuations in delays – June at 3.66 days, July at 8 days and August at 5 days – revealing that Ameritech Michigan's systems and processes are not very stable.

47. Ameritech Michigan failed to meet the installation interval benchmark of three days for PM 55-01.1 (Average Installation Interval – 2 Wire Analog Loops – 1-10 Loops) in *any* of the three months. Mr. Ehr characterizes the three day benchmark as “aggressive” and a “target” that Ameritech Michigan missed by a sufficiently narrow margin so as not to impact competition. (Ehr Aff. ¶ 142.) Nothing supports the description of the three-day time period as “aggressive,” however, and Mr. Ehr's characterization of the period as a “target” actually elicits the actual purpose behind the standard -- and thereby reveals why his justification fails. If an attempt falls short of a “target,” the result may nonetheless be viewed as acceptable. In contrast,

⁸ SBC has refused in the past to provide affiliate (or retail) data for calculation of performance results, citing confidentiality. While we cannot know with certainty that affiliate data points are smaller, we can infer that due to the large difference between 8 days and 6.65 on its face. Thus, in this example, parity can only result if the sample size for the affiliate is small. This is because a small sample size provides less confidence in the statistical result than does a larger sample size, which in turn demands that results from small sample sizes be afforded wider margins of difference than those from large sizes to have the same confidence level in declaring disparity.

falling short of a *benchmark* such as the three-day period here is *not* acceptable because the benchmark represents a *minimum* that must be reached in order to support competition.

Ameritech Michigan's systems and processes consistently have failed to meet this Commission-established performance benchmark.

48. Ameritech Michigan also failed to meet installation interval benchmarks with respect to hot cuts. Mr. Ehr claims a pass for PM 55.2 -01.2 (Average Installation Interval for Loop with LNP – Coordinated Hot Cuts (CHC) – 11-20 Loops) on the basis of his “two out of three” standard (Ehr Aff. ¶ 148), but the interesting aspect of Ameritech Michigan's performance here is that Ameritech Michigan met the eight day standard for June and August, but failed in July with a 9.42 interval after orders increased to 245 from 179 in June. As with PM 56-01, this performance suggests that Ameritech Michigan cannot effectively handle heavy or increased volumes. Mr. Ehr also praises what he considers to be the fine “near miss” performance with respect to PM 55.2-01.1 (Average Installation Interval for Loop with LNP – Non-CHC Coordinated Conversions), yet Ameritech Michigan met none of the passing criteria during the three-month period.

49. Mr. Ehr attempts to expunge Ameritech Michigan's failures with respect to PM 114-01 (Percent Premature Disconnects – LNP With Loop – FDT) by noting that the data was restated because the actual start time could not be derived prior to September 20, 2002. (Ehr Aff. ¶ 149.) Mr. Ehr then states that operational changes were made to capture the actual start time data and a “conservative” start time was estimated for the past months, which suddenly produced near-perfect results. (*Id.*) Of course, these results were based on the estimate, and therefore no conclusions should be reached until compliance is confirmed. Also, Mr. Ehr does not explain

what changes were made or why they will be effective. Mr. Ehr also praises Ameritech Michigan for operating flawlessly under PM 114-02 (Percent Premature Disconnects – LNP with Loop – CHC), although that performance says nothing about the quality of Ameritech Michigan's systems because the subject processes begin when the CLEC initiates the disconnect, and therefore, by definition, the disconnect can never be premature.

Other checklist items

50. Finally, Mr. Ehr promotes overall performance rates of 92.6% for Number Portability and 95.9% for Resale. (Ehr Aff. ¶¶ 165, 168.) However, when the correct three out of three months standard is applied, those rates fall to 76% and 80%, respectively, which plainly constitute substandard performance. This again demonstrates that Ameritech Michigan's performance does not indicate compliance with the Commission's standards or those of Section 271.

Summary and Recommendation

51. Ignoring the fact that the systemic operational flaws render any reliance on Ameritech Michigan's reported results misplaced, Ameritech Michigan has not met the Commission's requirement that it provide three consecutive months of complaint performance results. In fact, Ameritech Michigan has not even come close.

52. Ameritech Michigan's failure to offer acceptable performance is not an insurmountable or interminable problem, however. I recommend that the Commission order Ameritech Michigan to work closely with BearingPoint expeditiously to fix its performance defects. I believe that if Ameritech Michigan is willing to commit the necessary resources, it can repair its systems in a matter of weeks.

53. This concludes my affidavit.

