

October 21, 2002

**Via Hand Delivery**

Dorothy Wideman  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, MI 48909

**Re: 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**

Dear Ms. Wideman:

Please find enclosed for filing the original and 15 copies of *SBC Ameritech Michigan's Submission of Three Consecutive Months of Actual Performance Results and Independent Performance Audit Reports Issued By Ernst & Young LLP and Proof of Service*.

If you should have any questions, please contact me. Thank you.

Very truly yours,



William J. Champion III

WJC/mds  
Enclosures  
cc: Parties of Record

C o u n s e l l o r s   A t   L a w

DETROIT   BLOOMFIELD HILLS   LANSING   GRAND RAPIDS   ANN ARBOR  
WASHINGTON, D. C.

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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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**SBC AMERITECH MICHIGAN'S  
SUBMISSION OF THREE CONSECUTIVE MONTHS  
OF ACTUAL PERFORMANCE RESULTS  
AND INDEPENDENT PERFORMANCE AUDIT REPORTS  
ISSUED BY ERNST & YOUNG LLP**

Consistent with the schedule established in the Commission's September 16, 2002 Opinion and Order in this case, Michigan Bell Telephone Company, d/b/a SBC Ameritech Michigan (hereinafter "Ameritech Michigan") is filing herewith three consecutive months of actual performance data, together with two Independent Audit Reports issued by Ernst & Young LLP ("E&Y") dated October 18, 2002. Comments on this performance data and the E&Y audit reports are due on November 5, 2002, and replies are due on November 20, 2002.

One of the final remaining items for Commission review, prior to Ameritech Michigan filing a Section 271 application at the FCC, is an evaluation by the Commission of actual performance results. (See February 9, 2002 Order, at ¶ 13.) Accordingly, the attached Affidavit of James D. Ehr updates the record in this case with actual performance results for the months of June, July and August 2002, the most recent three consecutive months of performance data available. The Ehr Affidavit also supplements the record with two independent third party audit reports from E&Y that examine Ameritech Michigan's compliance with the Commission's

approved performance measures business rules, and Ameritech Michigan's performance measurement reporting systems and controls.<sup>1</sup>

As the Ehr Affidavit demonstrates, Ameritech Michigan is providing interconnection, access to network elements and wholesale services to requesting Michigan competing local exchange carriers ("CLECs") in a nondiscriminatory manner in compliance with the statutory checklist requirements of Section 271 of the federal Telecommunications Act of 1996 ("the 1996 Act").

## **I. LEGAL FRAMEWORK FOR SECTION 271 ANALYSIS OF PERFORMANCE DATA**

As this Commission is well aware, Ameritech Michigan reports performance data pursuant to 150 detailed metrics established by the Commission. These performance measurements cover pre-ordering, ordering, provisioning, maintenance and repair, and billing functions Ameritech Michigan performs in connection with making Section 271 competitive checklist items available to Michigan CLECs. The measurements cover the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, unbundled network elements (including UNE-P), and resale – along with other wholesale products and services included within the competitive checklist. To demonstrate checklist compliance, Ameritech Michigan must show that it is currently furnishing, or is ready to furnish, each checklist item in

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<sup>1</sup> See "SBC Ameritech's Notice of Intent to Supplement the Record," filed in this case on July 30, 2002.

quantities that competitors may reasonably demand and at an acceptable level of quality.<sup>2</sup> The FCC uses a two-part test to evaluate compliance: First, for checklist items that are analogous to those that Ameritech Michigan provides to itself, its customers or its affiliates, the nondiscrimination standard requires Ameritech Michigan to offer requesting carriers access that is “substantially the same” in terms of quality, accuracy, and timeliness.<sup>3</sup> For checklist items that have no retail analogue, Ameritech Michigan must offer access “sufficient to allow an efficient competitor a meaningful opportunity to compete.”<sup>4</sup>

As established in numerous Section 271 orders entered by the FCC, performance measurements provide valuable evidence regarding Ameritech Michigan’s compliance or noncompliance with individual checklist items.<sup>5</sup> However, the FCC does not view any particular metric as dispositive of checklist compliance.<sup>6</sup> Nor does the FCC consider “that the parity and benchmark standards established by state commissions represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist.”<sup>7</sup> Rather, these performance standards represent informed and reliable attempts to objectively approximate whether Ameritech Michigan is serving Michigan CLECs in substantially the same time and manner compared to itself, or in a way that provides them a meaningful opportunity to compete.<sup>8</sup>

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<sup>2</sup> See, e.g., *In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 F.C.C. Rcd. 6237, ¶ 28 (2001) (“*Kansas/Oklahoma 271 Order*”).

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> *Id.* ¶ 31.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The ultimate determination of whether performance is consistent with the statutory requirements is a contextual decision based on the totality of the circumstances.<sup>9</sup>

To the extent there is no statistically significant difference between Ameritech Michigan's provision of service to Michigan CLECs and to itself, or to the extent wholesale service meets or exceeds the Commission's performance benchmark, this Commission need not look any further.<sup>10</sup> Where a statistically significant difference exists, however, the Commission should examine the evidence based on the totality of the circumstances to make its determination of whether the statutory nondiscrimination requirements are met.<sup>11</sup> This analysis includes (1) explanations as to whether these differences provide an accurate depiction of the quality of performance, (2) the degree and duration of the performance disparity, (3) whether the performance is part of an improving or deteriorating trend, (4) whether performance differences are slight, or occur in isolated months, and thus suggest only an insignificant competitive impact, and (5) whether the reported performance data is impacted by factors beyond Ameritech Michigan's control.<sup>12</sup>

In short, the determination of whether Ameritech Michigan has demonstrated compliance with the statutory standards of Section 271 is ultimately a judgment that the FCC makes -- with important input from this Commission in its consultative role -- based on its expertise in promoting competition in local markets and in telecommunications regulation generally.<sup>13</sup> The FCC however has not established, nor does it believe it appropriate to establish, specific objective criteria for what constitutes "substantially the same time and manner" or a "meaningful

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶¶ 31-32.

<sup>13</sup> *Id.* ¶ 29.

opportunity to compete.”<sup>14</sup> Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances, considered in their totality.<sup>15</sup>

## **II. AMERITECH MICHIGAN’S PERFORMANCE RESULTS SATISFY SECTION 271 REQUIREMENTS**

The attached Affidavit of Mr. Ehr demonstrates that Ameritech Michigan is providing nondiscriminatory interconnection, unbundled access and wholesale services to Michigan CLECs in compliance with the checklist requirements of Section 271.

The Ehr affidavit focuses on the most recent three months for which performance data are available (June, July, and August of 2002). In each of these months, there were nearly 1,100 separate submeasures at the state aggregate level for which data was collected and results were calculated. Ameritech Michigan’s performance measurement results at the state aggregate level for the three-month period June 2002 through August 2002 are presented in Attachment A of the Ehr Affidavit.<sup>16</sup> These performance results are further broken down by each checklist item in Attachments C-L of the Ehr Affidavit.

Ameritech Michigan has maintained high performance levels in Michigan. As is apparent from the volume data in Attachments A-L, the bulk of CLEC activity in Ameritech Michigan relates to use of the Unbundled Network Element-Platform, along with the use of

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<sup>14</sup>

*Id.*

<sup>15</sup>

*Id.*

<sup>16</sup>

The Ehr affidavit analyzes performance results on a statewide basis consistent with the approach required by the FCC. Ameritech Michigan also reports performance results on a geographic disaggregated basis as required by the Michigan Commission’s business rules. The geographic results for June through August as attached hereto as Attachment A-1.

unbundled loops. The results for both of these offerings are grouped under Checklist Item 4. Ameritech Michigan met or exceeded approximately 93.5 percent of its performance standards related to provisioning and maintenance in these key areas. Overall, Ameritech Michigan met or exceeded over 94 percent of its standards for provisioning activities, and over 95 percent of its standards for maintenance: the two functions that are most visible to the consumer. Ameritech Michigan's performance was particularly strong in meeting due dates for installation or repairs. Further, Ameritech Michigan substantially met or exceeded performance standards with respect to pre-ordering activities, in which CLEC service representatives obtain information about an end user, typically while the end user is on the phone. And Ameritech Michigan issued order confirmations and order completion notices on a timely basis, both overall and with respect to high-volume products and services like the UNE-P.

Ameritech Michigan's performance results are similarly strong for each of the other major categories of services provided to Michigan CLECs. For example, the rate of call blockage on interconnection trunks has consistently been one-hundredth of one percent, well below the one percent benchmark. Ameritech Michigan met or surpassed benchmark performance levels in at least two of the past three months for 91.7% of both the coordinated conversions (i.e., hot cuts) and local number portability (LNP) measurements with at least ten data points. Ameritech Michigan achieved parity (or benchmark standards) in at least two of the three months (June 2002 through August 2002) for all (100%) those measures having sample sizes of at least ten data points in the Operator Services/Directory Assistance, Directory Assistance Database, and E-911 measure categories. Finally, Ameritech Michigan met or surpassed nearly 96 percent of its performance standards with respect to resold services.

Although Ameritech Michigan experiences some performance “misses,” the Ehr Affidavit considers those “misses” in their totality and demonstrates that they are not significant or consistent deviations from the applicable standard, that corrective action has been taken where appropriate, and that many of the “misses” occurred in low-volume categories. Therefore, based on the totality of the facts and circumstances, Ameritech Michigan is in compliance with nondiscrimination requirements of the Section 271 competitive checklist.

### **III. AMERITECH MICHIGAN’S REPORTED PERFORMANCE RESULTS ARE RELIABLE**

As the Ehr Affidavit further demonstrates, Ameritech Michigan has implemented the Michigan business rules and has instituted internal controls to ensure that its reported performance results are accurate and reliable. Ameritech Michigan’s reporting system is open to inspection by Michigan CLECs and this Commission. In particular, as required by the Commission in Case No. U-11830, Ameritech Michigan’s performance measures results are subject to an annual audit. Further, if CLECs have concerns regarding performance measures, the issues may be raised at the six-month review sessions. Ameritech Michigan will also conduct a data reconciliation upon CLEC request to address the accuracy of any reported data disputed by any CLEC.

In addition to these controls, Ameritech Michigan has committed to continuing those sections of the BearingPoint OSS Test dealing with performance metrics, in particular tests PMR 4 and 5,<sup>17</sup> subject to future direction from the Commission or Commission Staff. Thus, any open

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<sup>17</sup> The Performance Metrics Review (“PMR”) is one portion of the comprehensive OSS Test conducted by Bearing Point. The PMR section is made up of 5 separate evaluations.

issues associated with PMR 1 –5 can be handled outside of the 271 review process. As Ameritech Michigan has previously stated, resolution of these open issues does not have to be completed in order for the 271 process to proceed.

Finally, Ameritech Michigan is supplementing the record in this docket with independent audit reports of its performance measurement results for March – May 2002. E&Y provided two final “Report of Independent Accountants” to Ameritech Michigan. Copies of these two final audit reports dated October 18, 2002 are attached as Attachments N and P to the Ehr Affidavit.<sup>18</sup> Many of the findings noted by E&Y have already been addressed; E&Y has reviewed the corrective action taken and those corrections are reflected in the June-August data presented here. Further, as represented during the technical workshops during the week of October 14, 2002, Ameritech Michigan has engaged E&Y to audit each of the remaining corrective actions Ameritech Michigan implements in response to E&Y October 18, 2002 audit reports.

E&Y’s first independent audit report, covered an examination of SBC Ameritech’s conformity with the Michigan Business Rules, Version 1.8, in reporting its performance measurements results for the months of March, April and May 2002 in Michigan. E&Y’s audit report concluded that: “In our opinion, considering the Company’s interpretations of the Business Rules discussed in Attachment B and except for the material noncompliance described in Attachment A, the Company complied, in all material respects, with the Business Rules during the Evaluation Period.” E&Y then listed individual exceptions that were defined as “material” to a specific performance measurement, either because they changed the measurement’s status from

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<sup>18</sup> Attachment O contains E&Y’s Supplemental Report, which was requested by the collaborative participants on August 21, 2002. A change log that show the changes from the September 23, 2002 draft reports will be provided by E&Y no later than October 25, 2002.

“make” to “miss” or because they affected the performance level by 5 percent or more. Mr. Ehr’s Affidavits discusses each area of noncompliance in Attachment A and each interpretation in Attachment B in the context of the performance results as a whole. (See Attachments Q and R to the Ehr Affidavit.) Based on that discussion, and taken in context, Ameritech Michigan’s reported performance results are reasonably accurate and reliable. For example, E&Y’s audit of Ameritech Michigan’s implementation of the Business Rules identified the following issues:

#### Section II. Restatements

- Restatements of March-May 2002 results that Ameritech Michigan already had made, and such restatements changed the original parity or benchmark attainment/failure. The impact of these changes however were small: less than 1% of the PMs reported for March, 2.1% of the PMs reported for April and 1.1% of the PMs reported for May
- Restatements of March-May 2002 results that Ameritech Michigan already had made, but such restatements did not impact parity or benchmark attainment/failure. The Report identifies 13 different issues affecting various PMs, however none of these impacted final results.

#### Section III. Prospective Changes

- Performance that was reported in error during the Evaluation Period, where the error has been corrected by Ameritech Michigan on a prospective basis, but has not yet been restated. E&Y has verified that the corrective action has been taken, except were noted. E&Y identifies 18 different issues in this category affecting various PMs.

#### Section IV. Other Identified Issues

- Performance that was reported in error during the Evaluation Period, where the error has not been corrected nor have results been restated by Ameritech Michigan. E&Y identifies 32 issues in this category affecting various PMs.

A detailed assessment of and response to each exception (other than the restatements already implemented at the time of the E&Y Report and these, by definition, are already reflected in the data in this filing) is provided in Attachment Q to Mr. Ehr’s affidavit. Therefore, when viewed in proper context, Ameritech Michigan’s performance reporting is accurate and

reliable. For example, E&Y's business rule audit demonstrates that a very small number of restatements, less than 2%, resulted in a change from a "make" to a "miss." Likewise, E&Y's transaction testing demonstrate that Ameritech Michigan's performance results are accurate. For example, of the 64,560 performance measure ("PM") transactions tested, E&Y noted 815 exceptions, or an overall error rate of 1.26%. In 10 out of the 18 PM families that E&Y audited the noted error rate was 0%. In particular the major OSS functions were strong: pre-order (7%); ordering (2%); provisioning (0%); maintenance (0%) and billing (0%). As Mr. Ehr's Affidavit demonstrates, virtually all of the errors identified with pre-ordering and ordering have been addressed, and the remaining identified errors have been or will be corrected in the next few months.

E&Y's Attachment B to its Report discussed and listed "interpretations made by management related to their application of the Business Rules." Based on their review, E&Y did not consider these interpretations to be "exceptions" to compliance with the Business Rules. Attachment R to Mr. Ehr's Affidavit provides Ameritech Michigan's reasoning for each interpretation made. Many of these have been discussed in the current six-month review, with preliminary agreement reached by the collaborative participants on updates to the Business Rules to reflect the interpretation Ameritech Michigan has made. With the exception of a few of the performance measure/interpretation issues listed in E&Y's Attachment B to its Report. Ameritech Michigan believes each interpretation listed is correct and appropriate. The specific few items where the interpretation has been determined to require updating will be changed to better reflect the letter and intent of the business rules are identified as such in Attachment R to Mr. Ehr's affidavit. These changes, however, do not materially affect the performance data

presented, and in most cases will result in improved performance – in other words, the interpretations used for the performance data herein are conservative.

E&Y's second independent audit report assessed the effectiveness of Ameritech Michigan's controls over the processes used to calculate and report performance measurement results in accordance with the Business Rules. E&Y identified two processes that may lack certain controls. As shown in Mr. Ehr's Affidavit, these control issues are limited. In the first area dealing with computer programming, the appropriate staff supporting the affected PMs have been educated on the Ameritech Michigan performance measurements, the Ameritech Michigan performance reporting process, and the Ameritech Michigan change management process. They have implemented required changes to the PMs and have been effectively managing the implementation of these PMs for the past 4 months.

The second area addressed manual collection and processing of data. As Mr. Ehr's Affidavit demonstrates, Ameritech Michigan has increased its focus on manual performance measurement processes. Where efficient and economically feasible, those processes have been automated. Where they have not been automated, additional manual controls have been designed and implemented (e.g. process check sheets, multiple data input reviews, etc.). At the same time, these measures must be kept in perspective. Manual summarization of performance data occurs where the volume of transactions involved is not sufficient to warrant a mechanized process. The measurement categories involved here were not significant in the context of the overall data reported.

#### **IV. CONCLUSION**

The local market in Michigan is open and competitors have gained approximately 28% of the access lines in Ameritech Michigan's service area. This significant and dramatic increase in market share reflects the fact that Ameritech Michigan is providing nondiscriminatory access to each of the competitive checklist items, consistent with the requirements of Section 271. The data herein bear out what the market has already made clear.

The purpose of the Commission's review in this proceeding is to fulfill its obligation to consult with the FCC pursuant to Section 271(d)(2)(B) of the 1996 Act when Ameritech Michigan files a Section 271 application at the FCC. Ameritech Michigan intends to file its application at the FCC in December of this year.<sup>19</sup> Based on the record created over the past two and a half years, including the performance data and audit results included with this filing, Ameritech Michigan respectfully requests that this Commission recommend that such application be approved by the FCC.

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<sup>19</sup> See "SBC Ameritech Michigan's Supplemental Notice of Intent to File Application Under Section 271 of the Telecommunications Act of 1996," filed in this docket on July 30, 2002 indicating it planned to file at the FCC in the fourth quarter of this year.

Respectfully submitted,

Craig A. Anderson (P28968)  
AMERITECH MICHIGAN  
444 Michigan Avenue, Room 1750  
Detroit, Michigan 48226  
(313) 223-8033

DICKINSON WRIGHT PLLC



By: \_\_\_\_\_  
John M. Dempsey (P30987)  
William J. Champion III (P31934)  
Attorneys for Ameritech Michigan  
215 S. Washington Square, Suite 200  
Lansing, MI 48933-1816  
(517) 371-1730

Dated: October 21, 2002

LANSING 34060-104 306696

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, )
to consider Ameritech Michigan's compliance )
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the federal Telecommunications Act of 1996. )
\_\_\_\_\_)

PROOF OF SERVICE

STATE OF MICHIGAN )
) ss.
COUNTY OF INGHAM )

Mindy D. Smith, being first duly sworn, deposes and says she is employed at Dickinson Wright PLLC; and that on October 21, 2002 she served a copy of copies SBC Ameritech Michigan's Submission of Three Consecutive Months of Actual Performance Results and Independent Performance Audit Reports Issued By Ernst & Young LLP upon the attached service list via email and first class mail by depositing the same in a United States postal depository, enclosed in an envelope, bearing postage fully prepaid in Lansing, Michigan.

Mindy D. Smith (handwritten signature)

Mindy D. Smith

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 21st day of October, 2002.

Kristi A. Grieve (handwritten signature)

Kristi A. Grieve, Notary Public
Ingham County, Michigan
My Commission Expires: 11/12/04

**SERVICE LIST – MPSC CASE NO. U-12320**

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|---|---|
| <p><b><u>MCLEODUSA</u></b><br/>William R. Ralls<br/>Leland R. Rosier<br/>Clark Hill PLC<br/>2455 Woodlake Circle<br/>Okemos, MI 48864<br/>Phone: (517) 381-9193<br/>Fax: (517) 381-0268<br/>Email: Williamralls@aol.com<br/>Lrosier@clarkhill.com</p> <p>Brad Kruse<br/>McLeodUSA<br/>6400 C Street SW<br/>Cedar Rapids, IA 52406-3177<br/>Phone: (319) 790-7939<br/>Fax: (319) 790-7901<br/>Email: bkruse@mcleodusa.com<br/>Csharp@mcleodusa.com<br/>Jladage@mcleodusa.com</p> | <p><b><u>SPRINT COMMUNICATIONS CO., L.P.</u></b><br/>Roderick S. Coy<br/>Haran C. Rashes<br/>Clark Hill PLC<br/>2455 Woodlake Circle<br/>Okemos, MI 48864<br/>Phone: (517) 381-9193<br/>Fax: (517) 381-0268<br/>Email: rcoy@clarkhill.com<br/>Hrashes@clarkhill.com</p>   |
| <p><b><u>MPSC STAFF</u></b><br/>Steven D. Hughey<br/>Assistant Attorney General<br/>Public Service Division<br/>6545 Mercantile Way, Suite 15<br/>Lansing, MI 48911<br/>Phone: (517) 334-7650<br/>Fax: (517) 334-7655<br/>Email: hugheys@ag.state.mi.us</p>   | <p><b><u>ATTORNEY GENERAL</u></b><br/>Orjiakor N. Isiogu<br/>Assistant Attorney General<br/>Special Litigation Division<br/>6<sup>th</sup> Floor, G. Mennen Williams Bldg.<br/>525 W. Ottawa Street<br/>Lansing, MI 48913<br/>Phone: (517) 373-1123<br/>Fax: (517) 373-9860<br/>Email: isioguo@ag.state.mi.us</p>   |
| <p><b><u>NEXTLINK MICHIGAN, INC.</u></b><br/>Michael S. Ashton<br/>Fraser Trebilcock Davis &amp; Foster, P.C.<br/>1000 Michigan National Tower<br/>Lansing, MI 48933<br/>Phone: (517) 482-5800<br/>Fax: (517) 482-0887<br/>Email: mashton@ftdf.com</p>  | <p><b><u>XO MICHIGAN INC.</u></b><br/>Michael S. Ashton<br/>1000 Michigan National Tower<br/>Lansing, Michigan 48933<br/>Phone: (517) 482-5800<br/>Fax: (517) 482-0887<br/>Email: mashton@ftdf.com</p> <p><b><u>TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN</u></b><br/>Harvey J. Messing<br/>Loomis, Ewert, Parsley, Davis &amp; Gotting, P.C.<br/>232 S. Capitol Ave., Suite 1000<br/>Lansing, MI 48933<br/>Phone: (517) 482-2400<br/>Fax: (517) 482-7227<br/>Email: hjmessing@loomislaw.com</p> |

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| <p><b><u>AT&amp;T COMMUNICATIONS OF MICHIGAN, INC. And TCG DETROIT</u></b><br/> Arthur J. LeVasseur<br/> Fischer, Franklin &amp; Ford<br/> Guardian Building, Suite 3500<br/> 500 Griswold Street<br/> Detroit, MI 48226<br/> Phone: (313) 962-5210<br/> Fax: (313) 962-4559<br/> Email: artlev@voyager.net</p> <p>John J. Reidy, III<br/> AT&amp;T Communications<br/> 222 W. Adams, Suite 1500<br/> Chicago, IL 60606<br/> Phone: (312) 230-2647<br/> Fax: (312) 977-8521<br/> Email: jjreidy@att.com</p> | <p><b><u>WORLDCOM</u></b><br/> Albert Ernst<br/> Dykema Gossett PLLC<br/> 800 Michigan National Tower<br/> Lansing, MI 48933<br/> Phone: (517) 374-9155<br/> Fax: (517) 374-9191<br/> Email: aernst@dykema.com</p> <p>James R. Denniston<br/> WorldCom<br/> 205 North Michigan Ave., Suite 3700<br/> Chicago, IL 60601<br/> Phone: (312) 470-6531<br/> Fax: (312) 470-4929<br/> Email: jdenniston@mcimail.com</p> |
| <p><b><u>QWEST COMMUNICATION CORP and LCI INTERNATIONAL TELECOM CORP</u></b><br/> Michael S. Ashton<br/> Fraser Trebilcock Davis &amp; Foster, P.C.<br/> 1000 Michigan National Tower<br/> Lansing, MI 48933<br/> Phone: (517) 482-5800<br/> Fax: (517) 482-0887<br/> Email: mashton@ftdf.com</p>   | <p><b><u>CLEC ASSOCIATION OF MICHIGAN</u></b><br/> William R. Ralls<br/> Roderick S. Coy<br/> Clark Hill PLC<br/> 2455 Woodlake Circle<br/> Okemos, MI 48864<br/> Phone: (517) 381-9193<br/> Fax: (517) 381-0268<br/> Email: Williamralls@aol.com<br/> Rcoy@clarkhill.com</p>   |
| <p><b><u>AIRTOUCH CELLULAR, INC.</u></b><br/> Roderick S. Coy<br/> Thomas E. Maier<br/> Clark Hill PLC<br/> 2455 Woodlake Circle<br/> Okemos, MI 48864<br/> Phone: (517) 381-9193<br/> Fax: (517) 381-0268<br/> Email: rcoy@clarkhill.com<br/> Tmaier@clarkhill.com</p>   | <p><b><u>TELIGENT, INC.</u></b><br/> William R. Ralls<br/> Leland R. Rosier<br/> Clark Hill PLC<br/> 2455 Woodlake Circle<br/> Okemos, MI 48864<br/> Phone: (517) 381-9193<br/> Fax: (517) 381-0268<br/> Email: Williamralls@aol.com<br/> Lrosier@clarkhill.com</p>   |

|  |   |
|--|---|
| <p><b><u>TRA</u></b><br/> Andrew O. Isar<br/> Director – State Affairs<br/> Telecommunications Resellers Association<br/> 7901 Skansie Avenue, Suite 240<br/> Gig Harbor, WA 98335<br/> Phone: (253) 851-6700<br/> Fax: (253) 851-6474<br/> Email: aisar@harbor-group.com</p>            | <p><b><u>COVAD COMMUNICATIONS COMPANY</u></b><br/> Albert Ernst<br/> Leonard C. Wolfe<br/> 800 Michigan National Tower<br/> Lansing, Michigan 48933<br/> Phone: (517) 374-9100</p>  |
| <p><b><u>MICHIGAN PAY TELEPHONE ASSOC.</u></b><br/> William R. Ralls<br/> Leland R. Rosier<br/> Clark Hill PLC<br/> 2455 Woodlake Circle<br/> Okemos, MI 48864<br/> Phone: (517) 381-9193<br/> Fax: (517) 381-0268<br/> Email: Williamralls@aol.com<br/> Lrosier@clarkhill.com</p>       | <p><b><u>BUILDING COMMUNICATIONS, INC.</u></b><br/> Michelle E. Vocht<br/> Lynn H. Shecter<br/> Roy, Shecter &amp; Vocht, P.C.<br/> 36700 Woodward Ave., Ste. 205<br/> Bloomfield Hills, MI 48304<br/> Phone: (248) 540-7660<br/> Fax: (248)<br/> Email: vocht@rsmv.com<br/> Shecter@rsmv.com</p> |
| <p><b><u>WINSTAR WIRELESS OF MICHIGAN, INC.</u></b><br/> William R. Ralls<br/> Leland R. Rosier<br/> Clark Hill, PLC<br/> 2455 Woodlake Circle<br/> Okemos, MI 48864-5941<br/> (517) 381-9193<br/> (517) 381-0268<br/> Email: Williamralls@aol.com<br/> Lrosier@clarkhill.com</p>        | <p><b><u>MICHIGAN CABLE TELECOMMUNICATIONS ASSOC.</u></b><br/> David E.S. Marvin<br/> Fraser Trebilcock Davis &amp; Foster, P.C.<br/> 1000 Michigan National Tower<br/> Lansing, MI 48933<br/> Phone: (517) 482-5800<br/> Fax: (517) 482-0887<br/> Email: dmarvin@ftdf.com</p>                    |
| <p><b><u>COAST TO COAST TELECOMMUNICATIONS, INC.</u></b><br/> Roderick S. Coy<br/> Haran C. Rashes<br/> Clark Hill PLC<br/> 2455 Woodlake Circle<br/> Okemos, MI 48864<br/> Phone: (517) 381-9193<br/> Fax: (517) 381-0268<br/> Email: rcoy@clarkhill.com<br/> Hrashes@clarkhill.com</p> | <p><b><u>LONG DISTANCE OF MICHIGAN, INC.</u></b><br/> Roderick S. Coy<br/> Haran C. Rashes<br/> Clark Hill, PLC<br/> 2455 Woodlake Circle<br/> Okemos, MI 48864-5941<br/> Phone: (517) 381-9193<br/> Fax: (517) 381-0268<br/> Email: rcoy@clarkhill.com<br/> Hrashes@clarkhill.com</p>            |

**MEDIAONE TELECOMMUNICATIONS  
OF MICHIGAN, INC.**

Roderick S. Coy  
Haran C. Rashes  
2455 Woodlake Circle  
Okemos, MI 48864-5941  
Phone: (517) 381-9193  
Fax: (517) 381-0268  
Email: rcoy@clarkhill.com  
Hrashes@clarkhill.com

Timothy P. Collins  
MediaOne Telecomm. of Michigan, Inc.  
29777 Telegraph, Suite 4400B  
Southfield, MI 48034  
Email: tcollins@mediaone.com

**CORECOMM MICHIGAN, INC.**

William R. Ralls  
Leland R. Rosier  
Clark Hill, PLC  
2455 Woodlake Circle  
Okemos, MI 48864-5941  
Phone: (517) 381-9193  
Fax: (517) 381-0268  
Email: Williamralls@aol.com  
Lrosier@clarkhill.com

Thomas O'Brien  
CoreComm Michigan, Inc.  
450 West Wilson Bridge Road  
Worthington, OH 43085  
Phone: (614) 430-5101  
Fax: (614) 847-4393  
Email: thomas.o'brien@corecomm.com

**COMPTEL**

Robert J. Aamoth  
Andrew M. Klein  
Daniel M. Steinway  
Kelley, Drye & Warren LLP  
1200 Nineteenth Street, NW, Suite 500  
Washington, D.C. 20036  
Phone: (202) 955-9600  
Fax: (202) 955-9792  
Email: raamoth@kellydrye.com  
Aklein@kellydrye.com  
Dsteinway@kelleydrye.com

Terry Monroe  
Vice President, State Affairs  
The Competitive Telecommunications  
Association (CompTel)  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036  
Phone: (202) 296-6650  
Fax: (202) 296-7585  
Email: tmonroe@comptel.org

**MICHIGAN CONSUMER FEDERATION**

Kathleen F. O'Reilly  
414 "A" Street, Southeast  
Washington, DC 20003  
Phone: 202-543-5068  
Email: kforeilly@igc.org

Rick Gamber  
Michigan Consumer Federation  
4990 Northwind Drive, Suite 225  
East Lansing, MI 48823  
Phone: 517-324-9930  
Email: mcf@acd.net

**Z-TEL COMMUNICATIONS, INC.**

Michael S. Ashton  
1000 Michigan National Tower  
Lansing, Michigan 48933  
Phone: (517) 482-5800  
Fax: (517) 482-0887  
Email: mashton@ftdf.com

|  |  |
|--|--|
| <p><b><u>IP COMMUNICATIONS</u></b><br/> Michael S. Ashton<br/> 1000 Michigan National Tower<br/> Lansing, Michigan 48933<br/> Phone: (517) 482-5800<br/> Fax: (517) 482-0887<br/> Email: <a href="mailto:mashton@ftdf.com">mashton@ftdf.com</a></p> <p>Howard J. Siegel<br/> Howard Siegel<br/> Vice President of Regulatory Policy<br/> IP Communications Corporation<br/> 9430 Research Blvd.<br/> Echelon II, Suite 120<br/> Austin, Texas 78759<br/> 512/418-0376<br/> 781/394-6428 (fax)<br/> Email: <a href="mailto:hsiegel@ip.net">hsiegel@ip.net</a></p> | <p><b><u>FOCAL COMMUNICATIONS CORPORATION OF MICHIGAN</u></b><br/> Michael S. Ashton<br/> 1000 Michigan National Tower<br/> Lansing, Michigan 48933<br/> Phone: (517) 482-5800<br/> Fax: (517) 482-0887<br/> Email: <a href="mailto:mashton@ftdf.com">mashton@ftdf.com</a></p> <p>Jan Van Duzer<br/> Senior Counsel<br/> Focal Communications Corporation of Michigan<br/> 200 N. LaSalle, Suite 1100<br/> Chicago, IL 60601</p> |
| <p><b><u>TELNET WORLDWIDE, INC.</u></b><br/> Gary L. Field<br/> LOOMIS, EWERT, PARSLEY,<br/> DAVIS &amp; GOTTING, P.C.<br/> 232 South Capitol, Suite 1000<br/> Lansing, Michigan 48933<br/> (517) 482-2400</p>   | <p><b><u>TALK AMERICA</u></b><br/> Michael S. Ashton<br/> 1000 Michigan National Tower<br/> Lansing, Michigan 48933<br/> Phone: (517) 482-5800<br/> Fax: (517) 482-0887<br/> Email: <a href="mailto:mashton@ftdf.com">mashton@ftdf.com</a></p>   |