

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
to consider **AMERITECH MICHIGAN'S** compliance) MPSC Case No. U-12320
with the competitive checklist in Section 271 of)
the federal Telecommunications Act of 1996)
_____)

**XO MICHIGAN INC'S COMMENTS REGARDING THE BEARINGPOINT
INCORPORATED REPORT AND SBC AMERITECH MICHIGAN'S SEPTEMBER 5
AND OCTOBER 30, 2002 FILINGS**

I. INTRODUCTION

XO Michigan, Inc. ("XO") is a full service provider of communication services, dedicated to world class customer care and to providing communication solutions to all of its customers. XO is a facilities-based competitive local exchange carrier ("CLEC"). In 1998, XO received its license from the Michigan Public Service Commission ("Commission") and, in 1999, XO began providing services in certain SBC Ameritech Michigan ("Ameritech") exchanges. As a result, XO is very familiar with Ameritech's treatment of CLECs and urges the Commission to reject Ameritech's claim that it is in compliance with the 271 checklist.

Pursuant to its September 16, 2002, Opinion and Order, the Commission has provided interested parties this opportunity to comment on the BearingPoint, Incorporated ("BearingPoint") report and Ameritech's September 5 and October 30, 2002 filings in this docket. The BearingPoint report demonstrates that Ameritech is unable to measure its performance in providing service to CLECs. The BearingPoint

report shows substantial shortcomings in Ameritech's ability collect its data, ensure the integrity of its data and calculate the performance metrics. Like the Ernst & Young report, the BearingPoint report demonstrates that Ameritech cannot even show that it is able to accurately measure its performance. Thus, it is simply impossible for Ameritech to meet its burden of proof that it is providing nondiscriminatory access to its operations support systems ("OSS").

Similarly, Ameritech Michigan's voluminous September 5, 2002 filing does not present evidence of nondiscriminatory access to its OSS to CLECs. While the filing references that a number of access lines are served by CLECs, it does not demonstrate that Ameritech is providing nondiscriminatory access to OSS in compliance with the 271 checklist. The purpose of the Section 271 checklist is to ensure that a Bell Operating Company has in place appropriate systems and is providing nondiscriminatory access to network elements so that local competition will continue after the Bell Operating Company is given the right to provide in-region long distance service. The purpose of the checklist is not satisfied by merely showing some temporary level of competition or that a certain percentage of access lines are currently being served by CLECs. The purpose of the checklist is to ensure that the Bell Operating Company has taken the steps necessary to eliminate its monopoly power over the local market so that true competition may exist. Once this occurs, the marketplace will determine the percentage of access lines that will be served by CLECs and not the monopoly power of the Bell Operating Company. Until the competitive checklist is satisfied, Ameritech is in a position to unfairly oppress and potentially eliminate competition in the local market.

Finally, Ameritech's compliance plan filing is specious. In reality, this plan is nothing more than another effort by Ameritech to unilaterally lower the standards necessary to gain Section 271 approval. In fact, the compliance plan is a tacit admission by Ameritech that it is unable to meet the required performance standards set forth in the master test plan.

II THE BEARINGPOINT REPORT DEMONSTRATES AMERITECH'S INABILITY TO ACCURATELY MEASURE ITS PERFORMANCE

Under Section 271 of the federal Telecommunications Act of 1996, Ameritech must demonstrate nondiscriminatory access to network elements. The key to reaching a conclusion that Ameritech has satisfied this requirement is Ameritech's ability to measure its performance in providing access to unbundled network elements to CLECs. Ameritech simply cannot demonstrate that it has provided nondiscriminatory access to network elements, until Ameritech is able to accurately measure its performance.

The BearingPoint report unequivocally demonstrates Ameritech's inability to measure its performance. With respect to the five (5) tests relating to performance metric review, Ameritech is unable to pass PMR1 (data collection and storage verification and validation review), PMR4, (metrics data integrity verification and validation review) and PMR5 (metrics calculations and reporting verification and validation review). In other words, the BearingPoint report demonstrates that Ameritech's data collection and storage, data integrity and metrics calculations are unreliable. Therefore, there can be no basis for Ameritech to assert that it is providing nondiscriminatory access to network elements.

In fact, the BearingPoint report shows Ameritech's ability to accurately measure its performance is abysmal. The report shows that only 30 of the individual evaluation criteria have been satisfied. There are 136 evaluations that have been found not satisfied! In addition, there are 108 evaluation criteria classified as indeterminate. Shockingly, the BearingPoint report demonstrates that Ameritech has satisfied about 10% of the evaluation criteria relating to performance metrics reporting. It is overwhelmingly clear that Ameritech is not yet in a position to satisfy the performance metric evaluation criteria and, therefore, cannot show nondiscriminatory access to network elements.

In an effort to cover-up its colossal failure to satisfy this critical aspect of the master test plan, Ameritech submitted a report of Ernst & Young LLP. Yet an objective review of the two highly "qualified opinions" given by Ernst & Young, likewise demonstrate that Ameritech does not have methods to adequately collect its performance data and is not properly applying the Business Rules governing its performance measures. These highly "qualified opinions" contain voluminous exceptions, many of which have not been corrected and the impact of these errors upon Ameritech performance measurements remain unknown. While Ameritech tried to escape its inability to satisfy the evaluation criteria relating to performance metric reporting, the E & Y opinion also demonstrates that Ameritech cannot adequately measure the performance it provides to CLECs.

III. AMERITECH'S SEPTEMBER 5, 2002 FILING FAILS TO ESTABLISH COMPLIANCE WITH THE 271 CHECKLIST

Ameritech, as a Section 271 applicant, bears the burden of proof to show compliance with Section 271.¹ Section 271(c)(2)(B)(ii) requires Ameritech to provide “nondiscriminatory access to network elements. . .” As discussed above, Ameritech cannot possibly demonstrate nondiscriminatory access because it is unable to accurately measure the performance it provides to CLECs. This should be the end of the legal inquiry and Ameritech should be required to first demonstrate its ability to accurately measure the performance it provides to CLECs and then provide meaningful data showing nondiscriminatory access to network elements before proceeding with its 271 application.

Instead, Ameritech proceeds under the ill-conceived notion that it may ignore the objective mandates of the 271 checklist and gain approval of its 271 application if it merely demonstrates that it has not used its monopoly power to crush all competition in Michigan. Ameritech wishes to ignore the market-opening and objective requirements of the 271 checklist (i.e., the provision of nondiscriminatory access to network elements), which would provide meaningful safeguards to CLECs' ability to compete in the local markets unfettered by Ameritech's abuse or potential abuse of its monopoly power. In essence, Ameritech seeks to substitute the objective and meaningful standards of the 271 checklist with the far less meaningful standard that it is entitled to 271 relief because it has chosen, at least temporarily, not to use its monopoly power to crush all competition in Michigan.

¹ SWBT Texas 271 Order 15 FCC Rcd at 18374, ¶46, Bell Atlantic NY Order, 15 FCC Rcd at 3972, ¶46)

The public interest will suffer greatly if Ameritech is allowed to ignore the objective requirements of the 271 checklist because those standards allow CLECs the ability to provide competition in the local markets unfettered by Ameritech's ability to abuse its monopoly power. Ameritech's willingness to date to allow some competition in Michigan is no substitute for the structural safeguards mandated by the 271 checklist. Nowhere does Section 271 state that the existence of a modicum of competition relieves an applicant, such as Ameritech, of any of its obligation to satisfy the 14-point competitive checklist.

Ameritech is correct that CLECs, such as XO, have worked diligently to obtain a toehold in the Michigan local market. This toehold in the Michigan market should not be attributed to and cannot be demonstrated to be the result of Ameritech's fair treatment of CLECs. Instead, the foothold has been earned by CLECs due to their perseverance and struggles in Michigan in the face of inadequate wholesale services begrudgingly provided by Ameritech. The level competition that exists in Michigan is not because Ameritech has complied with the 271 checklist but because Ameritech does not currently have an incentive to eliminate its competitors and CLECs have worked diligently to overcome the of inadequate wholesale services provided by Ameritech.

IV. AMERITECH'S COMPLIANCE PLAN

Ameritech's unilaterally designed compliance plan filing should also be rejected. This plan appears to be nothing more than another effort by Ameritech to unilaterally lower the standards necessary to gain Section 271 approval. In fact, the compliance plan appears to substitute compliance with master test plan with a vague

promise of potential future compliance with a lesser version of the evaluation criteria set forth in the master test plan. If a compliance plan is to be adopted it should be one that all parties have an opportunity to have meaningful input and only after the master test plan is completed.

V. CONCLUSION

It is beyond any legal dispute that Ameritech has the burden of proof to establish its compliance with the 271 competitive checklist. In order to establish compliance, Ameritech must show that it is providing to CLECs nondiscriminatory access to network elements. In order to satisfy this requirement, Ameritech must first be able to accurately measure the performance it provides to CLECs. The BearingPoint report and the Ernst & Young report show that Ameritech is unable to accurately measure its performance. As a result, Ameritech is unable to meet its burden of proof that it is in compliance with the 271 checklist.

Ameritech wishes to ignore its legal requirements by merely stating that CLECs already serve some number of access lines. Yet, the purpose of the 271 checklist is far more reaching and serves a much more important purpose. Its purpose is to ensure that local competition may exist unfettered by certain monopoly abuses of Bell Operating Companies. Once the 271 checklist is satisfied, the market will be free to determine the amount of access lines served by CLECs. Until then, CLECs will continue to suffer unfair treatment in competing for local customers and CLECs and the public will continue to suffer from monopoly abuses.

For all the reasons stated above, Ameritech should not be found to be in compliance with the 271 checklist.

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