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July 30, 2001

Ms. Dorothy Wideman  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way, Ste. 7  
Lansing, MI 48911

Re: Case No. U-12320  
Response of WorldCom to Certain June 29, 2001 Filings

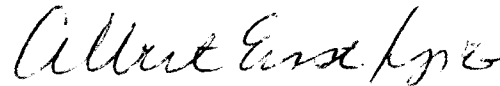
Dear Ms. Wideman:

Enclosed please find original and fifteen copies of Response of WorldCom to Certain June 29, 2001 Filings in the above-referenced matter. Also enclosed is Proof of Service upon the Parties of Record.

If there are any questions or comments, do not hesitate to contact me.

Sincerely,

DYKEMA GOSSETT PLLC



Albert Ernst

AE/jmb  
Enclosures  
cc: Jim Denniston  
Parties of Record

**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     )     Case No. U-12320  
of the federal Telecommunications Act of 1996.     )

**RESPONSE OF WORLDCOM TO CERTAIN JUNE 29, 2001 FILINGS**

MCImetro Access Transmission Services, Inc., Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc., (hereinafter individually or collectively referred to as "WorldCom" or "MCI", unless indicated otherwise by context) responds to certain June 29, 2001, filings in this matter and states as follows:

**INTRODUCTION**

The Commission has allowed parties to respond to the June 29, 2001, filings in this matter. WorldCom therefore in this filing responds to certain of the points set forth in the June 29, 2001, filings to provide a different perspective on some of the points raised.

**SPECIAL ACCESS PRICING**

The CLEC Association and LDMI pointed to the pernicious pricing methodology for special access. They have demonstrated that Ameritech can (and does) undercut potential competitors pricing and place potential competitors in an anticompetitive price squeeze. This price squeeze, whereby Ameritech provisions special access to a competitor at a rate higher than what Ameritech is willing to provide the service to the

end user cries for strong and forceful regulatory action. This is particularly so when Ameritech attempts to enter the long distance market and will be “competing” with other carriers for a full range of services to end users.

Although pricing for special access is generally out of the FCC tariff, the present special access rates are not cost based and are well above the economic cost. The FCC has based its policy of allowing above cost pricing so as to allow special access to subsidize other below cost services. (See, UNE Remand order, FCC 99-238, CC Docket No. 96-98, November 5, 1999, pars. 485-489; and Texas 271 Order, FCC 00-238, CC Docket No. 00-65, June 30, 2000, par. 225). This rationale for special access pricing should not be applicable in Michigan, where as a matter of state law (and fact), Ameritech’s prices for each of its services is not subsidized and is above economic cost. (See, for example, MTA, Sections 304 and 310).

To remedy this errant special access pricing policy, the Michigan Commission should ask the FCC for permission to price special access for circuits ordered in Michigan (whether from the FCC tariff or otherwise) at TSLRIC rates. This request could be by letter, similar to the request for Michigan to have performance measurements and remedies as set forth in WorldCom’s June 29 comments, or could also be included in that same letter requesting authority on special access performance issues. In this way, if the FCC grants to the Michigan Commission such authority to establish TSLRIC rates for special access, Ameritech will not be able to place potential competitors in a price squeeze. This is clearly what the public interest requires and this should be a part of any 271 checklist consideration in this proceeding.

## SMALL BUSINESS UNE-P

The CLEC Association and LDMI also pointed out that UNE-P must be provided for a minimum of 100 lines per customer location in order to allow competition in the small business market. The FCC has presently set of floor for unbundled local switching (ULS) of three lines per customer location in the fifty largest MSAs. This three line FCC floor, should not be seen or used as a ceiling. The Michigan Commission has ample authority under state law to rise above the floor.

It is critical that UNE-P not be limited to a certain number of lines, such as the three line limit per customer location in downtown Detroit. Downtown Detroit is the area where many small business customers are located. If the small business market in downtown Detroit can not be served by UNE-P, then Ameritech will be able to maintain its monopoly control over this huge segment of this market.

Other states allow competitors to obtain UNE-P service to more than three lines per customer location. For example, Illinois by statute allows an unlimited number of UNE-P lines per customer location. (220 ILCS 5/13-801). Also, Pennsylvania allows UNE-P to be provisioned where the telephone billing is less than \$80,000 per customer location.<sup>1</sup> Michigan should once again consider itself to be leader in promoting local competition and should order that UNE-P be provided to an unlimited number of lines per customer location.

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<sup>1</sup> The Global Order in Pennsylvania first authorized the \$80,000 threshold. The 2nd order interpreted the requirement and said that the \$80,000 is on a per location basis rather than per customer. The Global Order is at [http://puc.paonline.com/telephone/global/global\\_telephone\\_order.asp](http://puc.paonline.com/telephone/global/global_telephone_order.asp) at page 90 in the Section on UNE PLATFORMS AND EELS. The 2nd Order is at [http://puc.paonline.com/agenda\\_items/2001/pm052401/OSA-0184.doc](http://puc.paonline.com/agenda_items/2001/pm052401/OSA-0184.doc) at pages 73-79.

Illinois and Pennsylvania have effectively realized that the way to bring competition to the small business segment is no different than what is required to introduce competition to the residential market. Each requires the use of UNE-P in an unrestricted manner. Presently, neither the small business nor residential customers warrant any form of CLEC network build out to serve them. They simply do not generate enough revenue. As a result, UNE-P is currently the only way our company can serve these customer classes. It is reasonable to assume that, as with the competitive long distance market, once the economic equation permits build out to serve these customers, a rational company will do so. This is how MCI went from serving a small number of routes using ATT's network to building its own coast-to-coast network over time. The day when the economics will permit build-out to small business and residential customers on a large scale will surely not come for many, many years. If Michigan does not go beyond the FCC floor, this would leave a whole segment of the market without an effective choice of carrier.

Another serious limitation in the ability of carriers to compete in the small business market was pointed out by the CLEC Association and LDMI where they discussed the long term contracts which many small businesses in Michigan have with Ameritech. The Commission should follow the direction presently being set in a docket before the Illinois Commerce Commission, where a Hearing Examiner in a July 25, 2001 proposed order suggested that the Illinois Commission find that the termination penalties in the ValueLink, CompleteLink and StraightRate line of tariffs are so extraordinarily high that they are anticompetitive, unjust and unreasonable under state law and that Ameritech should be required to revise these tariffs to provide for termination penalties

that equal the difference between the amount of actual charges during the period the customer was receiving service and the amount Ameritech would have charged if the customer had been on rates appropriate to the actual service term. (Proposed Order in *Telecommunications Resellers Association v. Illinois Bell*, Illinois Commerce Commission Docket No. 00-0024, Attachment “A”).

Serious changes are needed to allow competition to develop in the small business marketplace. These regulatory changes include removal on the limitations on the number of lines which can be served per UNE-P customer, and removal of any anticompetitive, unjust, and unreasonable termination penalties in the Ameritech line of ValueLink, CompleteLink and StraightRate contracts.

### **UNBUNDLING PROJECT PRONTO**

Sprint’s comments showed the necessity of ordering the unbundling of Project Pronto. Subsequent to this filing, the Commission on July 25, 2001, issued its disappointing order in Case No. U-12540 where it declined “at this time” to order the unbundling of Project Pronto.

It is disappointing that the Commission does not consider the insolvency and bankruptcy of most DSL competitors to Ameritech (combined with Ameritech’s own drastic increases in end user rates) to be a call to arms for urgent action to create a level playing field for the advancement of DSL services. It is obvious that the present DSL “market” is broken with Ameritech demonstrating its monopolistic strength by choking competitors, and after the competitors have withered away to treat its customers to a significant rate hike. By its order in Case No. U-12540, it appears that the Commission is

content to allow Ameritech to drastically increase rates to end users and to leave its customers without competitive DSL alternatives.

The Commission's comments that its decision to not require unbundling "at this time" without further elaboration is particularly troubling. The Commission has provided absolutely no guidance on how many more bankruptcies it is looking for. It has provided absolutely no guidance on how many more Ameritech rate increases it is looking for. Just sitting back and waiting for some undefined change in facts or circumstances in the face of such dire market conditions is not a logical or effective regulatory approach. The Commission should promptly correct its shortcomings in Case No. U-12540 by, in this docket, ordering the unbundling of Project Pronto.

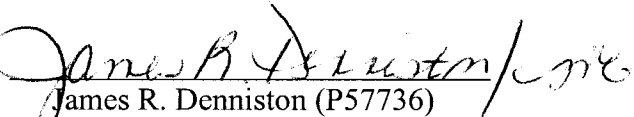
#### **CONCLUSION**

Based on the showing above, and per the prior June 29 filings, the Commission should order investigations on the following issues: 1) Special Access; 2) Right-of-Ways; 3) Line splitting; 4) AIN features; 5) Quality of DAL data; 6) DSL provisioning; 7) TSLRIC rates for DAL, OS/DA, and line splitting; and, 8.) small business issues including removal of the limitation on the number of lines to be served per customer via

UNE-P, and removal of anticompetitive, unjust and unreasonable termination penalties in the Ameritech ValueLink, CompleteLink and StraightRate contracts.

Respectfully submitted,

WorldCom

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Dated: July 30, 2001

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

**Telecommunications Resellers Association :**  
**-vs- :**  
**Illinois Bell Telephone Company :**  
**(Ameritech Illinois) :**  
**Complaint against enforcement of Unjust :**  
**And Anti-Competitive Termination Penalties :**  
**in tariffs and contracts for ValueLink :**  
**service and for modification of ValueLink :**  
**tariffs and contracts. :**

**00-0024**

**PROPOSED ORDER**

**By the Commission:**

**I. PROCEDURAL HISTORY**

On June 11, 2000, the Association of Communication Enterprises (“ASCENT” or “Complainant”), f/k/a Telecommunications Resellers Association, filed a complaint pursuant to Sections 9-250 and 10-108 of the Public Utilities Act (“the Act”), 220 ILCS 5/9-250 and 5/10-108, alleging that Ameritech Illinois (“Ameritech” or “Respondent”) compels its customers to accept unjust, unreasonable and anti-competitive early termination charges when contracting for certain services referred to in this proceeding as the “ValueLink tariffs<sup>1</sup>.” ASCENT charges that the ValueLink tariffs and associated practices contravene the prohibitions against anti-competitive activity set forth in Section 13-514 of the Act (220 ILCS §5/13-514). ASCENT also contends that the ValueLink tariffs impose barriers to competition in violation of Section 253 of the federal Telecommunications Act of 1996 (47 U.S.C. §253 et seq.). Further, ASCENT alleges that the subject early termination charges are so exorbitant that the ValueLink tariffs and contracts<sup>2</sup> are unconscionable under Illinois law and the Restatement (Second) of Contracts, Section 208 (“Restatement 208”).

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<sup>1</sup> The specific tariffs subject to this complaint are ValueLink, ValueLink Extra, ValueLink Extra Select, ValueLink Illinois-Option F, ValueLink Illinois-Option F Preferred, Enhanced Ameritech Value Link Plus, CompleteLink, and StraightRate. ASCENT refers to these services collectively as the “ValueLink tariffs.”

<sup>2</sup> Although the ValueLink services are tariffed, Ameritech requires customers to sign “a service agreement acknowledging that the customer has ordered the plan.” Ameritech Ex. 1.0 at 17. In this Order, such agreements are referred to as the “ValueLink contracts.”

ASCENT requests that the Commission require Ameritech to: rewrite its existing and future ValueLink tariffs and contracts to eliminate all termination charges that include minimum usage or revenue commitments for services found not to be competitive under Section 13-502 of the Act (220 ILCS §5/13-502); require Ameritech to reduce the termination penalties to a reasonable level for all ValueLink tariffs containing volume or revenue commitments for services found to be competitive under the Act; prohibit Ameritech from imposing a termination penalty when it cannot produce a valid contract; prohibit Ameritech from charging a termination penalty when it wins back a customer who received service under a ValueLink tariff assigned to a Competitive Local Exchange Carrier ("CLEC"); and grant such other relief as the Commission finds just and reasonable.

Pursuant to notice given in accordance with the rules and regulations of the Commission, hearings were held in this matter before a duly authorized Hearing Examiner of the Commission at its offices in Chicago, Illinois on February 16 and July 11, 2000. Complainant was represented by counsel and presented the testimony of William A. Capraro, Jr. Ameritech was represented by counsel and presented the testimony of Thomas M. Wilson. Staff was represented by counsel and presented the testimony of A. Olusanjo Omoniyi and Robert F. Koch of its Telecommunications Division. Petitions to Intervene were filed by the Illinois Attorney General's Office and by U.S. Buying Group, Inc. Both petitions were granted without objection; however, neither intervenor was active in the proceeding. At the conclusion of the hearing on July 11, 2000, the record was marked "Heard and Taken."

Both parties and Staff filed Initial and Reply Briefs and the arguments made therein are fully considered in this Order.

## **II. COMPLAINANT'S POSITION**

Mr. Capraro is the Chief Executive Officer of CIMCO, a competitive local exchange carrier ("CLEC") and member of ASCENT. He testifies that ASCENT is a national industry association formed to foster and promote telecommunications resale and to protect and further the interests of entities providing such services. ASCENT represents more than 800 entities, has more than 30 Illinois-based members, and many more certificated to provide competitive local exchange services in Illinois.

He states that until recently, Ameritech provided automatic volume discounts that allowed its business customers to obtain lower usage rates if they selected more Ameritech services, but did not require customers to commit to usage levels or prescribed lengths of service. With the advent of competition, however, Ameritech eliminated the discounts and encouraged customers to obtain service under its ValueLink tariffs on a "take-or-pay" basis. Under these tariffs, a customer chooses a minimum level of usage or revenue and is charged the minimum amount, regardless of whether it meets the minimum commitment. Mr. Capraro asserts that the tariffs are anti-competitive because their large early termination penalties (the customer's entire minimum commitment) effectively lock in a significant portion of the market prior to the

emergence of competition, thus enabling Ameritech to maintain its monopoly. More specifically, he identifies four anti-competitive attributes of the ValueLink tariffs.

First, Mr. Capraro maintains that the charges imposed for early termination are extraordinarily high because they require payment of an amount several times larger than the customer's potential savings under the tariffs. This occurs, according to Mr. Capraro, because the customer's minimum commitment includes both competitive and noncompetitive services. For illustration, he cites the ValueLink Extra tariff, under which a customer who makes an annual commitment of \$25,000 for three years receives a 6% discount on qualifying competitive services. A customer fulfilling half of its annual commitment with noncompetitive services would enjoy a discount of \$750 per year or \$2,250 over the life of the contract. However, if that customer requested early termination, it would be required to pay the remaining annual commitment of \$25,000 through the end of the contract period. Mr. Capraro avers that the disparity between the benefit provided by the contract and the charge for early termination is not just and reasonable.

Mr. Capraro maintains that the unreasonableness of the ValueLink early termination charges is further demonstrated by a comparison with the penalties Ameritech imposes when customers "are in a position to demand reasonable terms and conditions." For example, when an Ameritech customer is approached by another carrier to switch from Ameritech, or when a customer is already being served by another provider, Ameritech offers "win-back" tariffs, which provide discounts for taking Ameritech services for a specified period. The termination charges under the Winback Term Plan and the Business Special Rate III tariffs are only \$200.

Similarly, for services that Mr. Capraro characterizes as "truly competitive," such as Ameritech's ISDN Prime Service and Dedicated Communication Service, the early termination charges are the difference between what the customer has actually paid and what it would have paid if it had agreed to a shorter term. The customer is not liable for any future time period covered by the contracts for those services.

Second, Mr. Capraro asserts that by eliminating volume discounts for non-competitive services and "luring" customers to replace those discounts with ValueLink tariffs, Ameritech abuses its monopoly power. He acknowledges that Ameritech has recently designated virtually all of its services competitive. However, he emphasizes that the Commission is reviewing some of those designations in Docket 98-0860 to determine whether they should have remained noncompetitive at the time Ameritech signed customers to the ValueLink tariffs. If the Commission determines that the reclassified services should have at all times been designated noncompetitive, Ameritech will have locked in customers to long term contracts prior to the time those customers would have had competitive alternatives.

Third, Mr. Capraro testifies that the ValueLink tariffs are applied anti-competitively because Ameritech imposes a termination charge even in the absence of a contract. He states that, in some instances, neither Ameritech nor the customer could

produce a document demonstrating that a customer subscribed to a particular service. In other instances, he charges that signatures were either forged or made by persons unauthorized to bind customers. Moreover, Mr. Capraro states, Ameritech will advise CLECs that a ValueLink customer is “contractually bound” to Ameritech although no written agreement exists. In his view, this discourages competitors from pursuing such customers.

Fourth, Mr. Capraro avers that while Ameritech will permit a CLEC to assume a customer’s ValueLink contract on a resale basis, it nonetheless imposes termination charges on the CLEC if that customer later leaves the CLEC for another carrier. This occurs even when the customer returns to Ameritech. Furthermore, he emphasizes that Ameritech controls the provision of service when a CLEC assumes a contract. Therefore, when a customer opts out of a contract because of poor service, Ameritech profits both by regaining the customer and by imposition of the termination charge.

In sum, Mr. Capraro insists that Ameritech harms customers by locking them into long-term commitments under the ValueLink tariffs. “Contract terms that may have appeared favorable...prior to effective competition, may now be entirely uncompetitive in light of the continually declining price structure and innovative service offerings resulting from the emerging competitive market.” Additionally, he charges that the ValueLink tariffs have a “significant anticompetitive impact on CLECs” because customers in the small to medium size commercial market cannot afford to absorb the termination charges associated with switching carriers.

ASCENT also claims that Ameritech’s termination charges are unconscionable under the standard set forth in Ahern v. Knecht, 202 Ill. App. 3d 709; 563 N.E. 2d 787 (1990); 150 Ill. Dec. 660 (2nd Dist. 1990), which states: 1.) “A contract may be treated as unconscionable when it is improvident, oppressive or totally one-sided;” and 2.) “Factors relevant to finding a contract unconscionable include gross disparity in the values exchanged or gross inequality in the bargaining positions of the parties together with terms unreasonably favorable to the stronger party.” Complainant further cited the Restatement 208, which states that a court may refuse to enforce a contract, or enforce it without the unconscionable term, or limit the unconscionable term so as to avoid an unconscionable result. Complainant additionally argues that the Restatement (Second) of Contracts §356 (“Restatement 356”) prohibits a party from setting unreasonably large penalties for breach of an agreement. Complainant cites Saunders v. Michigan Avenue National Bank, 278 Ill. App. 3d 307 (1996), which held that a contract clause requiring unreasonably large liquidated damages is unenforceable as a violation of public policy. Complainant contends that the discrepancy between benefit and cost in a ValueLink contract is sufficiently great to meet this judicial standard for an unconscionable contract.

As a remedy, ASCENT seeks to reduce what it believes to be unfair termination charges to a just and reasonable level or to eliminate them entirely from the ValueLink tariffs. Complainant also requests that such charges be imposed by Ameritech, if at all, in a way that does not impair competition, but enables formerly bound customers to

elect competitive alternatives. Mr. Capraro suggests that a just and reasonable termination charge for competitive services would be the difference between the discount rate received by the customer for signing a ValueLink contract and the price the customer would have paid if it had not signed such a contract. For non-competitive services, no termination charge would be allowed.

ASCENT does not seek to eliminate termination charges imposed by CLECs. Mr. Capraro claims that a CLEC customer has, by definition, had an opportunity to exercise competitive choice and, accordingly, can be appropriately locked in with termination penalties. In contrast, he argues, ValueLink customers locked up by Ameritech have never experienced true competition, because they were induced to accept long-term agreements after the elimination of volume usage discounts. He opines that Ameritech's termination charges would be justified only if its market share was equal to that of the CLECs or if the CLECs had a significantly larger share. He was unsure, however, what percentage of market share would justify high termination charges for Ameritech.

Mr. Capraro acknowledges ASCENT members, including his own firm, use termination charges to lock up customers. However, he avers that Ameritech has a service advantage that makes it easy to win customers back. He concurs, though, that ASCENT members use termination charges to prevent customers from switching to other CLECs.

ASCENT argues that the relief it seeks is consistent with the prior Commission Order in Dockets 94-0096, 94-0196 and 94-0301 (Consolidated) (April 7, 1995). In those cases, the Commission rejected a proposal that Ameritech customers with long-term contracts be granted a "fresh look" that would in effect invalidate those contracts. ASCENT indicates that it is not asking that the contracts at issue be invalidated, but rather requests that the Commission provide relief against the most inequitable aspects of the contracts. ASCENT elaborates that Ameritech has included services in the minimum revenue commitments needed to obtain some ValueLink discounts that ASCENT believes will be found to be noncompetitive by the Commission in Docket No. 98-0860. ASCENT indicates that since the ValueLink discounts replaced the automatic volume discounts which did not require term commitments, disallowing the termination charges would leave Ameritech no worse off than when it granted the automatic discounts. Furthermore, ASCENT states that if Ameritech imposed the more reasonable ISDN Prime Service and Dedicated Communication Service charges recommended by ASCENT, customers would have to forfeit their savings upon early termination of their contract. ASCENT asserts that this position directly addresses Ameritech's argument that customers who receive the benefit of discounts should be bound for the full term of the contract.

ASCENT further argues that its requested relief is consistent with the Commission's Order in Dockets 95-0135 and 95-0179 (Consolidated) (October 16, 1995). ASCENT notes that the Commission ruled that locking in customers contractually obstructs the Commission's policy of creating a customer choice

environment through presubscription, and is a barrier to competition. ASCENT argues that by including noncompetitive services in the revenue commitments in some of its ValueLink tariffs, Ameritech has acted contrary to the Commission's policy set forth in Dockets 95-0135 and 95-0179. ASCENT states that if the Commission finds in Docket 98-0680 that some of Ameritech's business services were noncompetitive at the time that Ameritech signed customers to ValueLink contracts, those customers would have been locked in to long-term contracts prior to the availability of competitive alternatives.

ASCENT further notes that the Commission allowed a "fresh look" provision for local interconnection in Docket 92-0398. ASCENT indicates that the Commission adopted a provision that allowed any LEC customer with a long-term access arrangement in excess of three years to terminate the arrangement without paying a charge.

ASCENT also contends that Ameritech ignores the record in this matter in asserting that ASCENT failed to prove that the termination charges do not bear a reasonable relationship to the damages resulting from early termination. ASCENT notes that Ameritech has filed revised tariffs reducing the termination charges by 50% on its ValueLink plans. ASCENT states that in addition to the revenues received from the reduced termination charges, Ameritech would also receive revenues from resale or unbundled elements purchased by the new provider of the customer who terminated the agreement early. ASCENT states that this level of net income far exceeds any income that Ameritech could have received if the customer had retained Ameritech's service during the full term of the contract and, therefore, is excessive under both contract law and public utility law. ASCENT also argues that Ameritech should not be allowed to avoid review of its tariffs by modifying them in the middle of a complaint proceeding.

ASCENT objects to Ameritech's position that the Commission defer a decision on the legality of Ameritech's termination penalties until after a generic rulemaking proceeding applicable to all telecommunications carriers addresses termination penalties. ASCENT asserts that the evidence in this proceeding matter establishes that Ameritech's termination charges are unenforceable under contract law and unjust and unreasonable under public utility law. ASCENT concludes that the Commission's ruling should be based on that evidence alone.

### **III. AMERITECH'S POSITION**

Mr. Wilson is Executive Director, Business Core Services Product Marketing, for SBC Communications. He testified that, to his knowledge, the Commission has never rejected termination charges based upon payment of the minimum commitment for the balance of a contract term in either Interexchange Carrier ("IXC"), CLEC or Incumbent Local Exchange Carrier ("ILEC") tariffs. He testified that, contrary to locking up customers, Ameritech's business customers purchase only approximately 13.4% of their service under the calling plans at issue in this matter. Furthermore, he notes that Ameritech permits all of the calling plans to be assigned to a CLEC. Ameritech cited

Stride v. 120 West Madison Building Corp., 132 Ill. App. 3d 601, 477 N.E. 2d 1318 (1st Dist. 1985) in support of its assertion that locking in customers is improper. Ameritech argues that ASCENT admitted that its members also calculate termination liability based upon full contract price to lock in customers. Ameritech concludes that ASCENT is essentially asking the Commission to permit it to manipulate the market by allowing it to charge excessive termination rates, while prohibiting Ameritech from charging reasonable termination rates.

Mr. Wilson stated that Ameritech did not introduce its calling plans prior to the advent of significant competition. He noted that these plans produce less revenue than Ameritech's standard monthly rates. Therefore, he indicated that Ameritech had a disincentive to introduce optional calling plans prior to the advent of significant competition. He cited ValueLink-Illinois, the first optional calling plan for Band C usage, which was declared competitive for large business customers on January 23, 1995 and for all other customers on April 7, 1996. He testified that at the time of the competitive declaration, Ameritech had already lost a significant market share for Band C usage.

Mr. Wilson testified that the calling plans, far from being anti-competitive, were developed in direct response to the types of plans that Ameritech's competitors were offering. He indicated that while volume discounts gave customers low prices, the discounts failed to promote brand identification or brand loyalty, which are critical elements in a competitive market. He stated that the calling plans promote brand loyalty by offering recognizable discounts. Mr. Wilson concluded that termination charges were imposed only after significant competition developed and appropriate competitive declarations were made.

In response to ASCENT's contention that Ameritech locked in customers prematurely by reclassifying noncompetitive services as competitive, Mr. Wilson noted that the reclassification applies only to business access services, Bands A and B local usage services, and Custom and Advanced Custom Calling Services included in the ValueLink Extra, ValueLink Extra Select, Ameritech CompleteLink and Ameritech StraightRate plans. He stated that only the latter two plans are being offered to new customers and that it is unlikely that the Commission would find these services noncompetitive, given the rivalry among CLECs to provide such services. He added that if the Commission were to determine that some of the services in the CompleteLink and StraightRate plans were noncompetitive, Ameritech would need to reevaluate its tariffs. Mr. Wilson further stated that even if the Commission determined that some of the services in the optional calling plans were noncompetitive, those services might still be competitive as to specific customers if those customers had competitive choices for the services at the time of purchase.

Addressing ASCENT's assertion that the termination charges are unconscionable, Mr. Wilson argued that the purpose of such charges is to make the non-terminating party whole. He hypothesized that a grain buyer who breaches a contract containing a termination charge will still be liable for the charge, even if he received no benefit under the contract. Mr. Wilson indicated that since the purpose of

the termination charge is to compensate the seller for its losses from the breach of the contract, the benefits received under the contract are irrelevant.

In concluding that Ameritech's termination liability provisions are not unconscionable, Mr. Wilson indicated that ASCENT's complaint focuses only on one aspect of Ameritech's optional calling plans, the scope of the discount. He stated that in order to determine whether there is a gross disparity in values exchanged, all of the benefits exchanged under the contract must be compared. He emphasized that customers receive multiple benefits under Ameritech's optional calling plans, including quality telecommunications services, guaranteed discounted prices and certainty of supply. He also noted that customers are permitted to combine multiple accounts and locations to take advantage of higher discounts and receive combined bills. He opined that gross inequality of bargaining position does not exist because customers are free to choose between Ameritech's business services and those offered by its competitors. He indicated that while the optional calling plans are offered under tariff, Ameritech requires that the customer sign a service agreement acknowledging that the customer has ordered the plan. He noted that the service agreement spells out the termination liability if the customer prematurely terminates the plan. He indicated that the optional calling plans contain a satisfaction guarantee allowing customers to cancel the plan without termination liability during the first 90 days of service under the plans.

Ameritech asserts that ASCENT's case is based upon the argument that the termination charges do not bear a reasonable relationship to the discounts earned under the ValueLink plans, compared to what customers would have paid under plans of shorter duration. Ameritech indicates that while ASCENT equates reasonable termination liability with the value of the discounts earned, proper termination charges should reasonably approximate actual or anticipated damages, taking into account the difficulties of proof.

Ameritech next asserts that since Restatement 356 is more specific, it supercedes Restatement 208. Ameritech notes that Restatement 356 states that an agreement may provide for liquidated damages, but only at a reasonable amount in light of anticipated or actual loss caused by the breach and difficulties of proof of loss. Ameritech acknowledges that Restatement 356 also states that a term setting unreasonably large liquidated damages is unenforceable as a penalty on the grounds of public policy. Ameritech also cites 810 ILCS §5/2-718, which states that an agreement may liquidate damages for breach by either party, but only at an amount reasonable in light of anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Nonetheless, Ameritech further argues that limiting its termination charges to the amount of discounts received actually would increase the charges imposed, since the longer into the term a customer keeps service, the lower the charges would be. Furthermore, Ameritech asserts that customer discounts bear no relationship to damages suffered from the breach, which are measured by lost revenues less any avoidable costs, plus incremental expenses incurred. Ameritech states that ASCENT

prefers termination liability equal to discounts earned, which assumes that charges so calculated will be lower than damages calculated according to contract law, a formula Ameritech has used previously. Ameritech asserts that it is not precluded from using the current formula to assess termination charges under the ValueLink tariffs.

Mr. Wilson indicated that Ameritech seeks to impose a termination charge on customers who ordered a calling plan, even if it cannot produce a copy of the service agreement, so long as the customer acknowledges ordering the service or Ameritech can otherwise establish that the customer ordered the service. He stated that service is provided pursuant to tariff and a signed agreement is not essential if the customer accepts and pays for the service and internal records confirm that the customer ordered it. He noted that customers are assigned a unique Universal Service Order Code ("USOC") for each variation of each plan. He stated that if records show a USOC for a plan and the customer was billed and did not object, this indicates that the customer ordered the service. He indicated that Ameritech would agree to not impose termination liability if it cannot produce a signed agreement and the customer affirmatively denies it authorized service.

Mr. Wilson testified that when a customer assigns a calling plan to a CLEC for resale, the CLEC becomes an Ameritech wholesale customer and has its own agreement with the customer who made the assignment. He stated that if Ameritech wins the customer back, the customer cancels its agreement with the CLEC and the CLEC cancels its agreement with Ameritech, whereupon Ameritech imposes termination liability. He indicated, however, that Ameritech is willing to forgo collection of the charge if the CLEC provides notice of the win-back to Ameritech's wholesale business unit. Mr. Wilson further asserted that Ameritech does not degrade services as a tool to win customers back.

Ameritech additionally argued that under Section 10-108 of the Act, ASCENT has the burden of proof in this matter. Ameritech states that since ASCENT presented no evidence that the termination charges were excessive under correct legal standards and admitted that they were consistent with industry practice, ASCENT's claim of anti-competitiveness has not been proved and should be denied.

Ameritech also asserts that the rest of the complaint should be denied. Ameritech indicates that the fairness of the termination charges does not depend on whether services are classified competitive or non-competitive. Ameritech states that if customers receive discounts and benefits in exchange for term commitments, it is only fair that they pay a reasonable charge for failure to adhere to such commitments. Furthermore, Ameritech indicates that ASCENT expects that services will be declared non-competitive in Docket 98-0860, but presented no evidence that they actually are. Ameritech states that this claim should be either denied outright or dismissed as premature.

Ameritech further notes that after the close of the record in this proceeding, it decided to reduce the termination charges on all of its ValueLink plans by 50%. The

reduction became effective through revised tariff on August 16, 2000. Ameritech claims that the issue of whether termination charges equal to the customer's minimum financial commitment for the remainder of the term are anti-competitive or excessive is moot since the charges are no longer in effect. Ameritech indicates that its reduction of termination charges by 50% addresses Staff's concern that Ameritech's termination liability provisions act as take-or-pay clauses and impose termination charges that exceed Ameritech's actual losses. Ameritech states that if the Commission believes further investigation of termination charges is warranted, it should initiate a rulemaking to set standards for termination charges applicable to all telecommunications carriers.

#### **IV. ASCENT'S RESPONSE TO AMERITECH**

Mr. Capraro testified that the standard articulated by Mr. Wilson for unconscionability required a comparison of the termination charges to the losses suffered by Ameritech. Mr. Capraro asserted that Ameritech failed to produce evidence of the losses it suffered to justify the termination charges. He added that Mr. Wilson also failed to explain how Ameritech's losses under the tariffs in question equaled the remaining minimum revenue commitment, while losses from an ISDN Prime Service or Dedicated Communications Service customer choosing another carrier equaled the penalty proposed by ASCENT- the amount of savings experienced by the customer by entering into a long term contract.

Mr. Capraro testifies that Mr. Wilson addressed the "gross disparity of value" aspect of unconscionability by asserting that customers receive not only discounts, but also quality telecommunications services, guaranteed discounted prices and certainty of supply when they sign long-term contracts with Ameritech. He argues, however, that the added benefits are minimal, because customers who do not sign ValueLink contracts and take service from CLECs receive the same benefits.

Mr. Capraro asserts that any conclusions reached in this docket with respect to Ameritech's termination charges should not apply equally to ASCENT members' parallel charges. He explained that the resources ASCENT members expend to sign customers to contracts are substantial and are recoverable only if customers are retained for long periods. He indicated that ASCENT members must employ appropriate penalties to protect against Ameritech's win-back efforts with its various incentive plans. He noted that unlike Ameritech, CLECs did not take away automatic volume discounts and replace them with binding contracts when competition was entering the market.

Mr. Capraro disagreed with Ameritech's position that the Commission should not decide the fate of non-competitive services in this docket until it rules on such services in Docket 98-0860. He testified that contracts containing non-competitive services should be declared void. He asserted that Ameritech should not benefit from its anticompetitive behavior by receiving termination penalties under contracts for non-competitive services.

Mr. Capraro testified that in the situation where a validly executed contract cannot be found, Ameritech should be allowed to enforce the termination penalty only if the customer agrees that it signed a contract, agrees to the period of the contract claimed by Ameritech, and acknowledges that it was informed of the terms of the termination penalty.

## **V. STAFF'S POSITION**

Mr. Omoniyi testified that customers who terminate contracts with Ameritech prior to the end of the contract period would bear termination charges unrelated to the loss suffered by Ameritech as a result of the termination. He indicated that these high termination charges will operate as a disincentive to customers to switch service to competing carriers, regardless of the quality of service, and will leave Ameritech in a better position to retain customers. He further indicated that high termination charges impede competition since it is unlikely that customers could be persuaded to switch service. He stated that the termination charges are also likely to result in a windfall to Ameritech because they are imposed even if contract services are not performed. He indicated that the only way to avoid these charges is to switch to an Ameritech plan of equal or higher cost.

Mr. Omoniyi asserted that resellers who assume Value Link contracts also assume the termination charges. He maintained that this could be a barrier to competition as resellers may not want to assume the risk, and the charges will also dilute competitive business opportunities for the resellers. He testified that the termination charges should be reduced to a level reasonably related to the loss Ameritech experiences when a customer terminates a contract. Mr. Omoniyi stated that the termination charges should be reasonably linked to the discounts given up by Ameritech.

Staff additionally argued that Ameritech's 50% reduction in charges is still inadequate because any termination liability figured as a percentage of the total revenue commitment is potentially unreasonable and anticompetitive. Furthermore, Ameritech provided no evidence to explain how it arrived at the 50% figure.

Mr. Koch testified that the termination charges complained of are unreasonable, and require the customer to pay an excessive charge. He stated that Ameritech should be allowed to implement a reasonable penalty for early termination that is based on the amount of revenue that the customer has committed to the calling plan. He indicated that Ameritech should be allowed, at a minimum, to charge the customer the total amount of discount that the customer has received prior to termination of the plan. He stated that a penalty of some sort in addition to the value of the discount would also be reasonable. He indicated that Ameritech should also be able to recover costs associated with administering the discount plan and collecting repayment of the discount. Mr. Koch asserted that Docket 98-0860 should not be an issue in determining termination charges, since it is irrelevant whether the services were classified as competitive or non-competitive.

## **VI. AMERITECH'S RESPONSE TO STAFF**

Mr. Wilson testified that Ameritech's termination charges already bear a reasonable relationship to actual damages suffered by breach of contract, which is contrary to Mr. Omoniyi's automatic assumption that they do not. He stated that determining damages for premature termination of a telecommunications agreement is inherently complex and not subject to precise calculation. He stated that factors that should be considered include lost revenue, any offsetting revenues that are received, incremental expenses associated with the agreement that remain unrecovered such as sales commissions, advertising charges and contract administration expenses, the additional expenses incurred as a result of the breach and the avoided costs.

Mr. Wilson opined that a determination of whether Ameritech's termination charges are excessive can not be made without a complete analysis of the factors listed above. He stated that Mr. Koch did not perform such an analysis. He alleged that Mr. Koch also failed to address the fact that Ameritech's approach to calculating termination liability was consistent with industry practice. Mr. Wilson indicated that that Ameritech patterned its termination liability provisions after those used by its competitors in similar contracts with the same types of customers. He stated that no other provider in Illinois uses the methodology proposed by Mr. Koch.

## **VII. COMMISSION ANALYSIS AND CONCLUSION**

As noted above, Complainant requests that the Commission eliminate termination penalties from existing ValueLink and tariff contracts, reduce such penalties in future tariffs and contracts, bar Ameritech from enforcing such penalties when there is no written contract with the ValueLink customer, and prohibit imposition of such penalties on CLECs when Ameritech wins back a Value Link customer.

### **A. Ameritech's proposals**

Ameritech indicates a willingness to accede, in part, to two of Complainant's demands. First, Ameritech would refrain from enforcing termination charges when it cannot produce a contract and the customer affirmatively declares it did not authorize service. The Commission finds that Ameritech's action affords Complainant the relief it seeks and adequately disposes of this issue. We dismiss Complainant's assertion that in some instances signatures on agreements were unauthorized or were forgeries. Complainant neither submitted documents containing the purported forgeries or unauthorized signatures, nor did it point out any other documents on which such anomalies occurred.

Second, Ameritech would not impose termination charges on a CLEC after notification by the CLEC that a customer had been won back. The Commission would view this as consistent with Complainant's requested relief, except that a customer could take its business back to Ameritech without informing its current carrier. Under such a circumstance, the only party who would have knowledge of the "win-back" would

be Ameritech. We conclude that meaningful relief for Complainant can only be achieved, therefore, by requiring Ameritech to provide notice to the CLEC that it has won back a customer.

The Commission rejects Complainant's suggestion that Ameritech degrades the services it provides to CLECs for resale in order to encourage customers to switch back to Ameritech. Complainant did not produce any evidence to support this claim and failed to cite a single instance in which a win-back occurred for this reason. The mere fact that Ameritech controls the provision of service and wins a customer back is not by itself evidence that the customer switched because the quality of service was deficient.

#### **B. Relationship of this proceeding to Docket 98-0860**

Complainant also alleged that Ameritech engaged in anti-competitive conduct by charging usage commitments and termination charges for non-competitive services that Ameritech then reclassified as competitive. This enabled Ameritech to lock in customers before those customers had an opportunity to consider competitive alternatives. The issue of whether Ameritech's reclassification of services from non-competitive to competitive was permissible was submitted to the Commission in Docket 98-0860. That proceeding, however, was abated by Section 13-502.5(d) of the Act. Consequently, the Commission has no basis upon which to grant ASCENT's requested relief here.

#### **C. Remaining disputed issues**

Having disposed of the preceding issues, the Commission's remaining task is to determine whether there is sufficient basis for awarding the other relief Complainant seeks. ASCENT asserts three legal bases for reducing Ameritech's termination penalties that the Ameritech tariffs authorizing those penalties violate Section 253(a) of the federal Telecommunications Act, that the termination penalties are anti-competitive under Section 13-514 of the Act, and that they are unjust and unreasonable within the meaning of Section 9-101 of the Act. We will address these in turn.

##### **1. Section 253(a)**

The Commission reads §253(a) as plainly contemplating that no state or local *statute, regulation or other legal requirement* may prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications service. Consequently, we regard ASCENT's purpose in citing §253(a) as unclear. ASCENT does not establish a connection between the pertinent termination charges and state or local statutes, regulations or other legal requirements. As a result, there is no basis in this record to find that the termination charges constitute violations of §253(a).

**2. Section 13-514**

Section 13-514 of the Act states, in relevant part:

Prohibited Action of Telecommunications Carriers. A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; however the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:

\* \* \*

(2) unreasonably impairing the speed, quality or efficiency of services used by another telecommunications carrier;

\* \* \*

(6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers.

ASCENT's alleges that the termination charges contained in the ValueLink tariffs are so high that they violate this Section by impeding the development of competition. Complainant made the point effectively that customers who have to pay these termination rates are discouraged from shopping for an alternative carrier, and are for that reason locked in to the tariff for the duration of the chosen term, which stifles competition.

Ameritech responded that locking in customers is improper and is, therefore, a practice in which it would not engage, and that its termination rates are reasonable. The Commission does not consider termination charges of \$25,000 and \$50,000 contained in Ameritech's ValueLink Extra tariff, which are 10 and 20 times higher, respectively, than the \$2,500 discount, to be reasonable. In the Commission's view, such a charge is extraordinarily high and is, therefore, the type of practice that Section 13-514 was designed to prevent.

Furthermore, although Ameritech argues otherwise, the Commission considers 13.4% of the services purchased by Ameritech customers under these tariffs to be a significant amount, particularly considering that these customers are discouraged from seeking competitive alternatives for that same 13.4% of services during the term of the contract. The Commission concludes that the termination charges contained in the tariffs are so high that they constitute a barrier to competition in violation of §13-514.

Ameritech's position that the ValueLink tariffs were developed in response to competition does not persuade us that the charges are justified. The central problem remains, that the charges are so high that customers are locked in and competition is impeded, regardless of the reason for the tariffs' creation. Additionally, Ameritech's assertion that it had already lost a significant market share by the time Value Link-Illinois was declared competitive for large business customers on January 23, 1995 is unsupported by any market share statistics.

### 3. Section 9-101

Section 9-101 states:

All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.

The Commission agrees with Complainant's assertion that termination charges that are 10 and 20 times more than the customer could have saved under the tariff are unjust and unreasonable under Section 9-101. The unreasonableness is even more pronounced when the termination penalties are contrasted with the \$200 termination penalties contained in the Win Back Term Plan and Business Rate Special III tariffs offered by Ameritech.

Complainant further asserted that the termination charges meet the judicial standard for unconscionable contracts as articulated in Ahern and Saunders, and according to Restatement Sections 208 and 356. The Commission will address unconscionability as part of its analysis of whether the termination charges are unjust and unreasonable under Section 9-101.

Restatement 208 states:

#### Unconscionable Contract or Term

If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result.

Restatement 356 states:

Liquidated Damages and Penalties

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount that is reasonable in light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss. A term fixing unreasonable large liquidated damages is unenforceable on grounds of public policy as a penalty.

Ameritech cited Restatement 356 in its own behalf, as well as 810 ILCS §5/2-718, claiming that these provisions provide apply more specifically to the present case than Restatement 208 on the issue of the termination charges. 810 ILCS §5/2-718 states, in relevant part:

Liquidation or Liquidation of Damages; Deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

In addition to Ahern and Saunders, other cases have defined an unconscionable contract or bargain as a one-sided contract or one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept on the other (Piehl v. The Norwegian Old Peoples' Home Society of Chicago, 127 Ill. App. 3d 593; 469 N.E. 2d 705; 83 Ill. Dec. 98 [1984]); (William J. Larned v. First Chicago Corporation and FCC National Bank, 264 Ill. App. 3d 697, 636 N.E. 2d 1004; 201 Ill. Dec. 572 [1994]). The term unconscionable encompasses the absence of meaningful choice by one of the parties as well as contract terms which are unreasonably favorable to the other (The Hartford Fire Insurance Company v. Architectural Management, 194 Ill. App. 3d 110; 550 N.E. 2d 1110; 141 Ill. Dec. 64 [1990]).

Ameritech asserts that there is no gross disparity of values exchanged, if consideration is given to all of the benefits exchanged, such as quality telecommunications services, guaranteed discount prices and certainty of supply. Again, the Commission is not persuaded. Quality telecommunications services and certainty of supply are available from all telecommunications carriers. Guaranteed discount prices are offered at Ameritech's discretion and, as ASCENT has demonstrated, can be summarily revoked without notice. Moreover, the benefit that the customer derives from the contract is reduced by the fact that the customer commits to purchasing both competitive and non-competitive services. Services in the latter category are not subject to the contract discount. Discount prices under such a

circumstance are a tenuous benefit and hardly have the weight necessary to counter a claim of gross disparity in values exchanged.

We also reject Ameritech's position that, since customers are free to choose between Ameritech and its competitors for business services, and customers are aware of the termination charges at the time they enter into the contract, there is no gross inequality of bargaining position. The inequality of bargaining position is the result of the non-negotiable terms of the tariffs, which include the termination charges that are disproportionate to the benefit the customer receives under the contract.

In the Commission's view, this record shows that Ameritech's customers have suffered more than a mere disadvantage by subscribing to these tariffs. The Complainant's evidence demonstrates unequivocally that the "take-or-pay" aspect of the tariffs place Ameritech's customers in a position of little or no bargaining power and represents a significant disparity in values. ASCENT has demonstrated that customers who subscribed to the tariffs did so without a meaningful choice in the matter and that the termination charges render the tariffs overwhelmingly favorable to Ameritech.

We conclude that the termination charges in the tariffs are so high and one-sided that they bring the tariffs within the definitions of unconscionability spelled out by the above cases and the Restatement. Furthermore, the unconscionable nature of these tariffs is additional evidence that they are unjust and unreasonable under Section 9-101. Moreover, as explained above, we have found the termination charges to be anti-competitive pursuant to Section 13-514. We conclude that the anti-competitive nature of the tariffs is also evidence that they are unjust and unreasonable under Section 9-101.

#### **D. Remedies**

Staff proposes the remedy that Ameritech be allowed to charge the customer the total amount of discount received prior to termination of the plan, plus a penalty, plus the costs associated with administering the plan and collecting repayment of the discount. ASCENT proposes that the charges should be set to equal the difference between the amount of actual charges during the period the customer was receiving service under a ValueLink tariff and the amount Ameritech would have charged if the customer had been on rates appropriate to the actual service term. The customer would be required to refund the difference between the amount it paid and the amount it would have paid absent a long-term contract. Under ASCENT's proposal, Ameritech receives the same revenue as if the customer had never signed a long-term contract and later switched service.

Regarding Staff's proposal, the costs of administering a discounted plan are presumably already included in the cost of service. Moreover, Ameritech actually saves administrative costs when a customer switches service. As for the cost of retrieving the benefit of the discount from the customer, the Commission does not believe that the settlement of a ValueLink account is different from the settlement of any other account.

Billing costs are already taken into account when setting rates, and there is no additional account settlement fee (or offset) associated with other services. Furthermore, we consider the imposition of additional penalties as recommended by Mr. Koch to be as unwarranted as the termination charges. The Commission considers ASCENT's proposal to be the more equitable remedy for losses suffered due to early termination by a customer.

The Commission further notes that, although ASCENT's witness testified that ASCENT members also use high termination penalties in their contracts to discourage customers from switching service, we are not disposed to apply sanctions to them as a result. ASCENT has not been given notice of any charges against it and Ameritech did not advance a counterclaim or include a prayer for relief in this Docket with regard to ASCENT members' termination penalties. Ameritech's remedy lies with a separate complaint or rulemaking request. Additionally, Staff can request a rulemaking or an investigation into the conduct of ASCENT's members.

The Commission concludes that Ameritech's ValueLink tariffs subject to this proceeding contain termination charges so extraordinarily high that they are anti-competitive under Section 13-514 and unjust and unreasonable under Section 9-101.

#### **VIII. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Association of Communications Enterprises, f/k/a Telecommunications Resellers Association, is a national association of telecommunication resellers engaged in fostering and promoting telecommunications resale and protecting and furthering the interests of entities providing such services;
- (2) Ameritech is an Illinois corporation that owns or controls for public use in Illinois, property or equipment for the provision of telecommunications services in Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Act;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) Ameritech eliminated volume discounts for its customers and offered them replacement tariffs titled ValueLink, ValueLink Extra, ValueLink Extra Select, ValueLink Illinois – Option F, ValueLink Illinois – Option F

Preferred, Enhanced Ameritech ValueLink Plus, CompleteLink and Straight Rate;

- (6) the cited tariffs contain early termination penalties that are so extraordinarily high that they are anti-competitive under Section 13-514 of the Act and unjust and unreasonable under Section 9-101 of the Act;
- (7) Ameritech should revise the ValueLink tariffs addressed in this Docket to provide for termination penalties that equal the difference between the amount of actual charges during the period the customer was receiving service under a ValueLink tariff and the amount Ameritech would have charged if the customer had been on rates appropriate to the actual service term, thereby reducing the charges to a competitive level within the meaning of Section 13-514 of the Act and to a just and reasonable level within the meaning of Section 9-101 of the Act.

IT IS THEREFORE ORDERED that Ameritech, within 30 days of the date of this Order, shall revise the ValueLink tariffs addressed in this Docket in the manner specified in Finding (7) of this Order.

IT IS FURTHER ORDERED that, subject to the to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	July 25, 2001
RECEIPT DEADLINES:	
BRIEF ON EXCEPTIONS DUE:	August 8, 2001
REPLIES TO EXCEPTIONS DUE:	August 15, 2001

John T. Riley  
Administrative Law Judge

STATE OF MICHIGAN

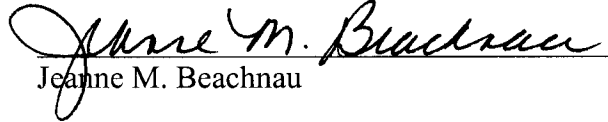
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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. 12320  
 the federal Telecommunications Act of 1996. )  
 \_\_\_\_\_ )


PROOF OF SERVICE

STATE OF MICHIGAN )  
 ) ss.  
 COUNTY OF INGHAM )

Jeanne M. Beachnau, being first duly sworn, deposes and says that on July 30, 2001, she caused to be served upon the persons listed in the attached Service List, copies of page 2 of Response of WorldCom to Certain June 29, 2001 Filings by United States first class mail and electronic mail.

  
 Jeanne M. Beachnau

Subscribed and sworn to before me  
 on July 30, 2001

  
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 Ingham County, Michigan  
 My Commission Expires: 12/17/03

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