

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)
the Federal Telecommunications Act of 1996.) Case No. U-12320
)
)
_____)

**AMERITECH MICHIGAN'S REPLY COMMENTS
ON ITS CHECKLIST INFORMATIONAL FILING**

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Appendix A: Affidavits

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**AMERITECH MICHIGAN'S REPLY COMMENTS
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INTRODUCTION

On May 15, Ameritech Michigan submitted its Checklist Informational Filing, which included a 95-page draft brief (in substantially the form Ameritech Michigan intends to file at the FCC), supported by 19 draft affidavits and by numerous exhibits. Ameritech Michigan detailed the full array of its product and service offerings, described the extensive commitments it had made during the collaborative process, and demonstrated that it had fulfilled the requirements of Track "A" and of each of the 14 items in the section 271 checklist, subject to satisfactory completion of the independent test of operations support systems ("OSS") and analysis of performance data.

The Comments filed on June 29 do not raise any serious challenge to the substance of Ameritech Michigan's filing. This is not surprising because the filing was not one of "first impression." Rather, it reflects the numerous agreements and decisions reached during the past eighteen months as a result of this Commission's and Staff's comprehensive approach in this proceeding. In addition, the substance of Ameritech Michigan's filing tracks the legal and analytical precedent established in prior Section 271 Orders issued by the FCC over the past five

years, including the successful Section 271 applications of SBC for the states of Texas, Kansas and Oklahoma.

This is also reflected by the actions of the CLECs themselves. Outside this proceeding, AT&T and WorldCom have agreed with Ameritech Michigan's assessment. Less than a month after Ameritech Michigan's checklist filing, AT&T's Chairman C. Michael Armstrong announced its plans to offer competitive local service in Michigan "on a broad scale by the end of the year" (consistent with Ameritech Michigan's planned fourth quarter filing at the FCC), subject to testing of Ameritech Michigan's OSS (again, consistent with Ameritech Michigan's acknowledgment that the OSS test is not yet complete). Heritage Reply Aff. ¶ 41 & Attachment B. AT&T plans to compete by using the unbundled network element platform described in Ameritech Michigan's filing. Id. Further, AT&T specifically agreed with Ameritech Michigan's demonstration that its wholesale prices comply with cost-based pricing rules. As Mr. Armstrong explained, "[w]e've said all along that whenever wholesale prices reflect the cost of providing the service, AT&T would be there to compete. I'm happy to say that on this score, the Michigan Public Service Commission has met the challenge." Id. Similarly, during last year's collaborative workshops WorldCom repeatedly represented that it would enter the Michigan local market once it agreed that the market was open to competition.¹ Consistent with the assessment in Ameritech Michigan's filing, WorldCom's recent advertisements in Michigan tell consumers that "MCI local service has arrived. Presenting not only a choice, but a better one." Id. ¶ 21 n.6 & Attachment A.

¹ As MCI notes on its website touting its local service offerings, "MCI will enter the local market in those areas where the environment is open to competition and where MCI can offer a quality product at a reasonable price. Unfortunately, in some state, the local monopolies have not opened their markets to competition. MCI will offer Local Service in those states open to competition." http://www.mci.com_family/products_services/local/faq.html.

Within this proceeding, AT&T and its fellow competing local exchange carriers (“CLECs”) disagree with only small portions of the *prima facie* evidentiary showing in Ameritech Michigan’s filing. True, they oppose Ameritech Michigan’s request for a favorable Commission finding on checklist compliance, but they mount little challenge to the evidence that Ameritech Michigan presented or to the commitments Ameritech Michigan has made. Rather, they try to criticize the *timing* of Ameritech Michigan’s filing, or to distract the Commission with extraneous complaints that either (1) have no place in the current phase of the proceeding (such as issues related to performance, which are not yet before the Commission), (2) have already been decided by Commission or court order, or (3) have no place in *any* phase of the checklist proceeding, because they seek affirmative relief that goes vastly beyond a determination of checklist compliance (such as AT&T’s request that the Commission take the unprecedented and extraordinary step of breaking Ameritech Michigan into two companies).

We respond to these improper arguments below, and under the individual checklist items, but the Commission should not lose sight of the fact that the CLEC arguments *are* improper. The issue in this phase of the proceeding is what Ameritech Michigan provides, and whether those offerings are sufficient to meet the checklist. We have already shown, and confirm below, that the answer is yes.

DISCUSSION

I. THE CLECS’ CLAIMS REGARDING THE PROCESS AND SCOPE OF THIS PROCEEDING ARE IN DIRECT CONFLICT WITH FCC AND COMMISSION PRECEDENT

A. Ameritech Michigan’s Checklist Informational Filing Is Timely And Consistent With The Framework Established By The Commission

In its February 9, 2000 Order (“February 9 Order”) initiating this proceeding, the Commission established a detailed framework to fulfill its responsibility to consult with the FCC

regarding Ameritech Michigan's compliance with the competitive checklist in Section 271 of the Telecommunications Act of 1996. (the Act) The Commission's framework includes significant participation by interested parties through Staff-supervised collaboratives, expedited dispute resolution mechanisms, and the opportunity to comment and submit information relevant to the Commission's consultation "at any time during the pendency of this matter." Feb. 9 Order, at 5. Recognizing the "severe time constraints" of the section 271 process, *id.*, the Commission directed Ameritech Michigan to file and serve on parties to this proceeding a "notice of intent" to file an application for Section 271 authority with the FCC "at least 2 months prior to filing its next 271 application." *Id.* at 2. The notice of intent was intended to set forth "the status of Ameritech Michigan's conformance with the Section 271 checklist, including the commitments necessary to reach full compliance." *Id.* at 3.

In accordance with the framework established by the February 9 Order, Ameritech Michigan filed its Notice of Intent on May 9, 2001. The Notice advised the Commission and the parties that Ameritech Michigan intended to file its Section 271 application with the FCC no earlier than the fourth quarter of this year. The Notice also described the process by which Ameritech Michigan intended to demonstrate that it is in full compliance with the Section 271 checklist and Track "A" requirements.

Notwithstanding this clear procedural roadmap, some CLECs contend that Ameritech Michigan's Checklist Informational filing is "premature" (AT&T Comments at 5) or "procedurally improper" (WorldCom Comments at 4) because KPMG's third-party evaluation of Ameritech Michigan's OSS has not yet been completed and because Ameritech Michigan has not yet submitted three months of performance results. In essence, these parties would require Ameritech Michigan to delay filing *any* information until it is prepared to file *all* information on

checklist compliance.² The CLECs’ “all or nothing” approach is utterly inconsistent with the Commission’s February 9 Order, which directed Ameritech Michigan to file information when it “believes it has satisfied a particular competitive checklist item” and encouraged all parties to “file any information that they believe necessary for the Commission’s decision *at any time* during the pendency of this matter.” February 9 Order, at 5 (emphasis added). Likewise, the February 9 Order expressly contemplated that a Notice of Intent might be filed before full compliance was demonstrated, so long as it includes “the commitments necessary to reach full compliance” *id.* at 3, as Ameritech Michigan’s filing did. After all, the intent of the February 9 Order was to avoid “[l]ast minute filings” that might “limit the ability of the Commission to give full, or any, consideration to the information in those filings.” *Id.* at 6.

Ameritech Michigan’s filing, meanwhile, allows the parties and the Commission to give full consideration to all the issues. Because Ameritech Michigan filed its checklist information well in advance of the minimum two months notice required by the February 9 Order, the Commission was even able to extend the comment period.

Does that mean that “Ameritech has now filed its *entire* checklist filing at one time” (CLEC Ass’n Comments at 9) or that the Commission will not be able to consider the OSS test

² The CLEC Association takes an even more extreme approach, suggesting that the review of checklist compliance must await unknown and unspecified future FCC or court decisions or Commission action on “existing or not-yet-filed complaints.” CLEC Ass’n Comments, at 9. Even then, the Association would require Ameritech Michigan to file a “series of individual checklist documents over the course of time” (*id.*) – in other words, to dribble out individual checklist filings, each with a minimum thirty day comment cycle. That process would, of course, require more than one year to complete (14 checklist items x 30 days) and in the Association’s view could only *begin* following completion of OSS testing, submission of performance results, and unspecified FCC, MPSC and court proceedings. That type of unnecessary delay would deny Michigan citizens the benefit of Ameritech Michigan’s entry into the long distance market for years, at best, and of course that is exactly what the CLEC Association wants.

and performance data in reaching its ultimate recommendations? Of course not. As set forth in Ameritech Michigan's Notice of Intent, its checklist informational filing is subject to satisfactory completion of ongoing OSS testing and submission of three months of performance results. As required by the Commission's May 15 Opinion and Order in this docket (at 5), the parties, together with Staff, have reached agreement on a process (which is being filed as a Joint Motion) under which the final OSS test results and performance measure reporting will be reviewed. The Commission's ultimate recommendations to the FCC will take these into account. In fact, by addressing issues other than the OSS test and performance now, the parties and Commission will be better able to focus their attention on those issues when they are ready for review.

B. The CLECs' Contentions On Performance Are Premature

Putting aside the CLECs' erroneous attack on procedure, they barely even try to dispute Ameritech Michigan's *prima facie* evidentiary showing. For the most part, their comments do not contest what Ameritech Michigan currently provides; rather, they complain about Ameritech Michigan's performance in providing it, and specifically the performance of Ameritech Michigan's operations support systems ("OSS"). But such comments do not belong in this phase of the proceeding. The issue now is what Ameritech Michigan provides, and whether that is sufficient to comply with the checklist. The next issue – whether Ameritech Michigan performs in accordance with the terms and conditions of the offer – is for the Commission to address upon the conclusion of KPMG's independent OSS test and the submission of actual performance data.

The current round of CLEC comments provides a perfect illustration why the Commission should not consider questions of performance until the appointed time. Most of the CLEC complaints are simply anecdotal accounts of a few unspecified orders, or vague complaints about a particular process, that lack specificity and preclude investigation and response. Most importantly, the CLEC comments lack *context*, and the FCC has made clear that

context is controlling. The standard for OSS is nondiscrimination, not perfection. Thus, “[t]he determination of whether a BOC’s performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before us.” New York 271 Order, ¶ 60.³

As the FCC has explained, a proper examination of performance looks at individual transactions in the context of the performance measure as a whole, other performance measures, and performance over time. First, “[t]here may be multiple performance measures associated with a particular checklist item, and an apparent disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. Other measures may tell a different story, and provide us with a more complete picture of the quality of service being provided.” Id. ¶ 60. Next, it may be necessary to consider performance data for a few types of transactions within the context of data at “a more disaggregated level,” or to consider the data for a given month against the backdrop of several months in order to “examine how many months a variation in performance has existed and what the trend has been.” Id. ¶ 59. Finally, differences in performance may exist, but at such a small level that they “have little or no competitive significance in the marketplace.” Id. Thus, the FCC has repeatedly rebuffed CLEC comments, like those advanced here, that sought to pronounce an entire group of OSS (which perform a wide range of functions for a large number of wholesale and retail customers, thousands or even millions of times every month) deficient on the basis of vague complaints about a single order or small group of orders. Id. ¶ 50 (“Mere unsupported evidence in opposition will not suffice.”). As the FCC most recently held, “isolated and marginal”

³ In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, Interlata Service in the State of New York, 15 F.C.C. Rcd. 75 (Dec. 27, 1999) (“New York 271 Order”).

disparities in some measures “are not competitively significant and do not indicate systemic discrimination.” Connecticut 271 Order, at ¶ 13.⁴

This Commission similarly recognized the need for context when it directed Ameritech Michigan to submit three full months of performance data. Plainly, one purpose was to allow the Commission to consider the question of performance in its totality, and on the basis of a large pool of data, rather than letting a CLEC cherry-pick a few isolated transactions. The Commission should uphold that principle and assess performance in the manner set forth in its February 9 Order – within the context of the KPMG test and three months of full performance data – rather than in the piecemeal fashion employed by the CLECs now. Likewise, the Commission should reject the commenters’ attempts to use isolated and marginal bits of data to distract it from the issue at hand.

C. The Commission Should Reject The CLECs’ Attempt To Relitigate Matters That Have Already Been Decided

While the CLEC comments on performance come too soon, many of their other comments on checklist compliance come too late. The CLECs have apparently construed the Checklist Information Filing as an invitation for them to relitigate matters that were already decided by previous dispute resolution rulings in this docket, Commission orders in other dockets, FCC orders or judicial decisions. To take just a few examples:

- Several commenters contend that Ameritech Michigan has not complied with checklist requirement 2 (access to UNEs) because it requires them to enter the Mi2A contract amendment before ordering certain UNE combinations. But the Commission already approved the Mi2A in its March 19, 2001 Order on Rehearing in this docket. Thus, the CLEC claim reduces to the absurd position that Ameritech Michigan violates the checklist by using an amendment that *complies* with the checklist. See Section III.B.2 *infra*.

⁴ In re Application of Verizon New York Inc., for Authorization to Provide In-Region InterLATA Services in Connecticut, CC Docket No. 01-100 (FCC 01-208, Released July 20, 2001) (“Connecticut 271 Order”).

- Other commenters blame Ameritech Michigan for right-of-way charges levied by *municipalities*. The propriety of such charges – and of Ameritech Michigan’s exemption from them – has already been decided by the U.S. Court of Appeals for the Sixth Circuit. See Section III.C *infra*.
- AT&T and WorldCom contend that Ameritech Michigan has not complied with its “obligation” to provide splitters to CLECs that wish to engage in line splitting. As the Commission knows, there is no such obligation – the FCC has repeatedly said there is none, and this Commission followed the FCC’s lead in its March 7, 2001 Order in Case No. U-12540. See Section III.D *infra*.
- MichTel criticizes Ameritech Michigan for asking the Commission to approve updated reciprocal compensation rates – even though the Commission agreed and approved the new rates in Case No. U-12696. See Section III.M *infra*.

The purpose of dispute resolution in regulatory and judicial proceedings is just that: to resolve disputes, not to serve as a dress rehearsal for a second round of arguments in the checklist phase. In fact, one purpose for the expedited resolution mechanism in this docket was to resolve matters quickly so they would *not* burden or distract the Commission during its evaluation of the checklist. The Commission should reject the CLECs’ attempt to turn this proceeding into a second bite at the apple.⁵

D. The Commission Should Reject The CLEC Requests For Affirmative Relief As Beyond The Scope Of This Proceeding

As described in the preceding sections, many of the CLEC comments have been made at the wrong time. Most of the remaining comments are made in the wrong place. The purpose of this proceeding is for the Commission to develop a recommendation to the FCC as to Ameritech Michigan’s compliance with the section 271 checklist. Neither the FCC nor this Commission may “limit or extend” the statutory requirements. However, several CLECs improperly ask the Commission to do exactly that – to create some new obligation for Ameritech Michigan or to

⁵ In its February 9 Order, the Commission clearly cautioned that parties that "it will be interested only in comments reflecting new or different data rather than a repetition of previous positions or arguments." *Id.*, at 5.

award the CLECs some new affirmative form of relief. WorldCom asks the Commission to develop a whole new set of performance measures for FCC-tariffed “special access” services (Section IV.A). AT&T suggests that the Commission should break Ameritech Michigan into two companies – an attempt to sell Michigan the “structural separation” bill of goods that Pennsylvania recently rejected (Section IV.C). This proceeding is not a contested case or rulemaking; it is an Informational Filing to help the Commission fulfill its *consultative* role under section 271. The CLECs were invited to comment on that filing – not to open a grab bag of new regulatory proceedings or to unload their latest wish list *du jour*.

E. The Commission Should Properly Consider SBC Precedent

In three states – Texas, Kansas, and Oklahoma – SBC has successfully demonstrated checklist compliance at the state and federal levels and entered the interLATA market. In Texas, Southwestern Bell became the first Bell Operating Company or “BOC” to receive the unanimous endorsement of the FCC, the state commission, and the Department of Justice. Given that track record, and the affiliation between Ameritech Michigan and the SBC companies, it is not surprising that many of the market-opening initiatives taken by Ameritech Michigan and this Commission since the SBC/Ameritech merger were modeled on similar commitments by SBC.

It is also not surprising that the opposing commenters here tell the Commission to simply ignore the SBC precedents. See, e.g., McLeodUSA Comments at 3 (“The fact that SBC has been granted interLATA entry in Texas, Oklahoma and Kansas should have no bearing on whether SBC should be granted interLATA entry in Michigan”). We do not contend that Ameritech Michigan’s OSS are *identical* to those of the SBC companies in every respect, nor do we contend that the Commission should not engage in an independent evaluation of checklist compliance. But that does not make SBC’s checklist compliance irrelevant. Many of the contractual offerings by Ameritech Michigan are identical to SBC offerings; many of the arguments raised

by the commenters here are identical to those rejected by the FCC during the Texas, Kansas and Oklahoma proceedings; and many of Ameritech Michigan's OSS enhancements were based on similar efforts by SBC affiliates. That is, after all, why they are contained in the SBC/Ameritech "Plan of Record for *Uniform* and Enhanced OSS." It is disingenuous for the CLECs – who proposed or agreed to many enhancements for the very reason that they *were* modeled on SBC experience – to suggest that the SBC precedents should now be ignored.

While the commenters are loathe to credit Ameritech Michigan for copying SBC successes, they are quick to blame Ameritech Michigan for any perceived SBC misdeed, whether or not it has any relevance here. The fact that such complaints have no bearing here is demonstrated by the commenters' own failure to describe the particulars and say how they apply in Michigan. Take, for example, Sprint's charge of "false affidavits relied upon by the Kansas and Oklahoma Commissions in giving the green light to SWBT's application." Sprint Comments at 4. The facts (as opposed to the innuendo) of this issue are as follows: The challenged affidavits correctly stated that SWBT's loop qualification systems return information on a single loop at a time, but incorrectly stated that the systems picked a "non-loaded copper loop" if possible. The error was the result of a misunderstanding about how the program logic worked. SWBT itself promptly brought the error to the FCC's attention, and then developed and implemented a software change so that its systems would do exactly what the affidavits had said. Ameritech Michigan will implement the same change this August, Silver Reply Aff. ¶ 35, and we invite KPMG's upcoming test of that change. Further, all the SBC companies, including Ameritech Michigan, have implemented another layer of affidavit review and attestation to

preclude a recurrence. Far from supporting Sprint's attack, the Kansas/ Oklahoma proceedings demonstrate that SBC honors its commitments – and its testimony about those commitments.⁶

II. AMERITECH MICHIGAN IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A)

Ameritech Michigan's May 15 filing demonstrated that it satisfied the "Track A" criteria under 47 U.S.C. § 271(c)(1)(A) owing to the presence and success of several CLECs that provide local service, either exclusively or predominately over their own facilities, to business and residential customers. No intervenor rebuts this showing. In fact, with one exception, no intervenor even *contends* that Ameritech Michigan has failed to satisfy the "Track A" criteria.

This is not surprising. In August 1997, nearly four years ago, the FCC concluded that Ameritech Michigan satisfied the "Track A" criteria under 47 U.S.C. § 271(c)(1)(A). See Michigan 271 Order, ¶¶ 62-104. At that time, there were three "Track A" CLECs in Michigan (Brooks Fiber, MFS and TCG), rather than the nine that exist today, and competition in Michigan was not as developed or deep as it is today. If Ameritech Michigan satisfied "Track A" in August 1997, it certainly does so today. Even the CLECs recognize this, as demonstrated by their near-unanimous failure to assert the contrary.

It is true that one commenter, the CLEC Association, argues (at 10-12) that Ameritech Michigan fails to satisfy § 271(c)(1)(A) because competition is not "thriving" in Michigan. But the CLEC Association does not contend that any of the numerous "Track A" CLECs identified

⁶ AT&T's description (at 24) of a "forfeiture" imposed by the FCC for "'willful' failure to provide accurate performance data reporting" is also off base. The "performance data" in question was not for Michigan or any other Ameritech state, and the "failure" was the result of a good-faith disagreement as to the interpretation of a single business rule that affected only a small fraction of performance data for which SBC received an \$88,000 fine. *Fioretti Reply Aff.* ¶ 12. The performance measure involved is not reported at all by Ameritech Michigan; in fact, it relates to the performance of an electronic interface that does not even exist in the Ameritech states. *Id.* ¶ 13. As the Commission knows, KPMG is auditing Ameritech Michigan's performance measures. *Id.* ¶ 14.

by Ameritech Michigan are not, in fact, “Track A” CLECs. Nor does the CLEC Association even cite the FCC’s standard – a standard with which they are undoubtedly familiar – for determining whether a CLEC qualifies as a Track A carrier. If the CLEC Association had done so, it would have noted that the standard is not whether competition is “thriving” but whether the CLEC has “more than a *de minimis* number” of customers. Kansas & Oklahoma 271 Order,

¶ 42. As demonstrated in Ameritech Michigan’s initial comments and the initial affidavit of Deborah Heritage, numerous CLECs meet or exceed that standard. Accordingly, there is no basis for the CLEC Association’s frivolous assertion that the Track A criteria are not met here.

The other commenters simply quibble with data presented by Ameritech Michigan concerning competitive conditions in Michigan, including the number of lines currently served by CLECs. See, e.g., AT&T Comments at 13-17; CLEC Ass’n Comments at 11; WorldCom Comments at 4; Sprint Comments at 13. The principal beef is that the Commission should simply disregard the March 2001 data presented in Ameritech Michigan’s initial filing, and use instead the end-of-1999 data used in an earlier report on local competition. See Heritage Reply Aff. ¶¶ 8-12. But the purpose of the present proceeding is to assess Track A compliance now, not as of 1999. The CLECs are asking the Commission to blind itself to the real-world benefit of the extensive efforts of the last year and a half. See id.

The CLECs’ other criticisms are equally wrong, as demonstrated in the Reply Affidavit of Deborah Heritage. But for purposes of this reply memorandum, it suffices to say that the CLEC criticisms are irrelevant for purposes of determining whether Ameritech Michigan satisfies Track A, since no commenter (save the CLEC Association) actually states that competitive entry in Michigan falls short of the Track A standards established by the FCC. In sum, Ameritech Michigan satisfied § 271(c)(1)(A) in 1997, and it continues to do so today.

III. AMERITECH MICHIGAN'S MPSC-APPROVED AGREEMENTS SATISFY ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST

A. Checklist Item 1: Interconnection

1. Interconnection Trunking

There is no dispute as to the central point in Ameritech Michigan's filing: that Ameritech Michigan makes available all required forms of interconnection. The CLEC comments as to Ameritech Michigan's performance in meeting its commitment (typically, complaints about a single order or small group of orders) are premature, and they also ignore the fact that interconnection requires the cooperation and coordination of *both* parties. The reply affidavit of Mr. Deere (¶¶ 3-20) responds to these comments and shows that in each case Ameritech Michigan more than fulfilled its part of the bargain.

2. Collocation

As with trunking, for the most part the CLECs do not take great issue with Ameritech Michigan's physical and virtual collocation offerings. The few comments they do make fall far short of their mark.

AT&T claims that the collocation rates in its interconnection agreement are not consistent with the FCC's TELRIC methodology. AT&T Br. at 30; AT&T Noorani Aff. ¶¶ 7-11. AT&T's claims are baseless. First, AT&T greatly overstates the alleged problem. Although AT&T tries to create the impression that there are many collocation rates in dispute between Ameritech Michigan and AT&T, this is simply not the case. See Alexander Reply Aff. ¶ 3. Moreover, AT&T has steadfastly refused to adopt the tariff rates required by the MPSC's order in Case No.

U-11831 on an interim basis pending negotiation as to the revisions needed to reflect the results of the AT&T/Ameritech Michigan arbitration. Alexander Reply Aff. ¶ 3.⁷

There is no merit to the allegations (at 3) of XO Communications (“XO”), either. Ameritech Michigan affords limited access to XO to its virtual collocation arrangements, consistent with the Act and FCC’s regulations and the interconnection agreement between Ameritech Michigan and XO. Alexander Reply Aff. ¶¶ 7-9. What XO claims is a delay is really a commitment by Ameritech Michigan to locate and provide to a CLEC an escort (who must remain with the CLEC throughout the time the XO representative is in the virtual collocation area) two hours after a request is first made. Alexander Reply Aff. ¶ 10. This procedure reflects the inherent fundamental differences between physical and virtual collocation. *Id.* ¶¶ 8-9.

Lastly, McLeodUSA complains about collocation of remote switches, based on its conclusory assertion that “a remote switch cannot exist in a cost model based on forward-looking cost principles” and that “SBC’s applicable cost models do not include remote switches.” McLeod Comments at 18. These claims have no merit. Ameritech Michigan’s policy regarding access to loops complies fully with the Act and FCC regulations. Alexander Reply Aff. ¶¶ 21-22. In any event, remote switches are reflected in the cost models approved by the Commission in various retail and UNE forward-looking cost studies. Florence Reply Aff. ¶¶ 14-16.

⁷ Similarly, AT&T’s claim (Noorani Aff. ¶ 11) that Ameritech Michigan improperly treats certain rate elements as a non-standard collocation request (“NSCR”) is also unsupported. In fact, AT&T’s own witness conceded that certain items are “by their very nature ‘non-standard.’” *Id.* All of the items for which Ameritech Michigan utilizes the NSCR process are appropriately priced on a case-by-case basis. Alexander Reply Aff. ¶¶ 4-5.

3. Pricing for Interconnection

No commenter disputes Ameritech Michigan's demonstration that the Commission-ordered prices for interconnection comply with the 1996 Act and satisfy the checklist.

B. Checklist Item 2: Access to Network Elements

1. Access to UNEs Generally

There is no real challenge to Ameritech Michigan's offerings of access to stand-alone unbundled network elements. The CLEC comments on UNE combinations are addressed in the next section; the CLEC complaints about performance should be rejected as premature.

2. UNE Combinations

Several commenters contend that Ameritech Michigan is "violating" Commission orders or otherwise fails to comply with the checklist by requiring carriers to enter into the Mi2A interconnection agreement amendment in order to obtain certain UNE combinations. That is absurd. As the Commission knows, its March 19, 2001 order on rehearing in this docket (at 5) *adopted* the Mi2A "as consistent with the present combinations requirements of Section 271." Compliance with the Commission's order, and with the requirements of section 271, cannot establish a violation of Commission orders or the checklist. The CLECs are essentially seeking re-rehearing of the March 19 order.

Of course, no CLEC wants to admit that is the case, so they try to distract the Commission from its March 19 order approving the Mi2A. There are two different but equally erroneous CLEC tricks. The first is the contention (see, e.g., WorldCom Comments at 6) that the Commission's January 4, 2001 Order – the one that was *modified* on March 19 – still requires Ameritech Michigan to "provide . . . UNE combinations that it 'ordinarily combines' for itself." According to this theory, Ameritech Michigan is "ignoring" (id. at 8) its purported obligation to provision UNE combinations according to WorldCom's definition and thus is "[i]n direct

violation” of the January 4 Order (*id.* at 6). This contention is erroneous. Indeed, it is the CLECs, not Ameritech, that are “ignoring” the governing Commission decision – the March 19, 2001 Order on Rehearing.

In its January 4 Order, the Commission “determine[d] that defining existing UNE-P and EEL combinations to include those configurations that Ameritech Michigan ‘ordinarily combines’ is more persuasive than Ameritech Michigan’s definition,” and thus directed Ameritech Michigan to “implement its proposed M2A and provide new and existing combinations in accordance with the provisions of this order.” Jan. 4, 2001 Order at 9, 10. But in its Petition for Rehearing, Ameritech Michigan argued that, under Iowa Utils. Bd. v. FCC, 219 F.3d 744, 758-59 (8th Cir. 2000), cert. granted, 121 S. Ct. 877 (2001), and Verizon North, Inc. v. Strand, 140 F. Supp. 2d 803 (W.D. Mich. 2000), appeal docketed, No. 01-1013 (6th Cir.), it “cannot be legally required to provide new UNE combinations,” including those that “would ‘ordinarily’ be combined.” Pet. at 6-7. Accordingly, Ameritech Michigan asked the Commission to “revise the [January 4] Order to allow Ameritech Michigan to implement the M2A as proposed,” subject to a modification to the Price Appendix and checklist confirmation that would ensure that the rates in the M2A are in line with the Commission’s decision in Case U-11831. Id. at 7.

In its March 19 Order on Rehearing (at 5), the Commission agreed with Ameritech Michigan, holding that it “*adopts, for the present, Ameritech Michigan’s proposal as consistent with the present combinations requirements of Section 271 of the FTA.*” (Emphasis added.) In so doing, the Commission emphasized that it did not need to determine “the precise demarcation point between new and existing combinations” (id. at 4), and specifically noted that the anticipated Supreme Court decision in Iowa Utils. Bd. and Sixth Circuit decision in Verizon

North may provide “further guidance” to “clarify the obligations of ILECs in this regard” (*id.* at 5). The Commission thus adopted Ameritech Michigan’s revised UNE combinations proposal, with the caveat that it would revisit its determination, if necessary, in light of subsequent court decisions or FCC orders. *Id.* This outcome makes good sense, for at this time Ameritech Michigan’s position has prevailed as a matter of law in the key judicial decisions (noted above), but those decisions remain pending on appeal.

Plainly, the Commission did not grant rehearing and write an order that means nothing, but that is precisely what the CLECs are contending when they say that the original January 4 order still applies exactly as written. Contrary to WorldCom’s contention (at 6-8), the only sensible reading of the Commission’s March 19 Order is that it modified the Commission’s January 4 Order by expressly adopting Ameritech Michigan’s proposal to provide UNE combinations under the Mi2A. That proposal in no way requires Ameritech Michigan to provide “ordinarily combined UNE combinations” as defined by WorldCom.

Next, AT&T (at 30-31) and WorldCom (at 6-8) try to turn back the clock even farther with their claim that their existing interconnection agreements already require Ameritech Michigan to create new UNE combinations upon request. This argument fails for several reasons.

First, a Section 271 proceeding is not the place to resolve individual disputes over contract interpretation for a few interconnection agreements. The FCC has made clear that such disagreements cannot properly be addressed in Section 271 proceedings. There are more appropriate places for AT&T and Worldcom to raise this contract-interpretation issue, and no one can deny that they have taken every conceivable opportunity and forum to raise it.

Second, AT&T and WorldCom have been unsuccessfully raising this same argument for some time now and it has not improved with repetition. Indeed, WorldCom frankly admits that it raised the very same issue in the earlier phase of this case (*see* WorldCom Feb. 21, 2001 Response to Petition for Rehearing at 19-22). The Commission obviously gave that claim no weight then and should give it no weight now.

Third, AT&T and WorldCom overlook the fact that the law has changed significantly since the time their interconnection agreements were approved, as the Eighth Circuit and the Western District of Michigan have now made clear that the 1996 Act does not authorize the combinations requirement they seek. The question here is whether Ameritech Michigan complies with the law (and the checklist) as it stands today, not as AT&T and WorldCom think it stood years ago.

UNE-P Conversions. McLeodUSA alleges (at 7-8) that Ameritech Michigan “refuses to provision UNE-P” and that McLeodUSA must first obtain resold lines before converting a customer to UNE-P. That is not true. Ameritech Michigan’s Commission-ordered tariff clearly allows for conversion of existing combinations of network elements to UNE-P whether the current service is provided via retail, resale, or another provider’s UNE-P. Alexander Reply Aff. ¶ 19.

Enhanced Extended Links (“EELs”). Equally baffling is the CLEC Association’s claim (at 20) that “those types of EELs which are defined as ‘existing’ combinations need to be clearly defined in the tariff” and that Ameritech Michigan imposes “unreasonable conditions” on new combinations. Ameritech Michigan’s tariff clearly provides for the conversion of qualifying existing Special Access circuits to existing loop-transport UNE combinations or “EELs.” Alexander Reply Aff. ¶ 15. A CLEC need not sign the Mi2A to be able to convert existing

Special Access arrangements that meet FCC criteria, and such conversions are available under the tariff. Alexander Reply Aff. ¶ 16. In addition, certain new EEL combinations are offered under and defined by the Mi2A, enabling a CLEC with collocation to extend its reach to further provide local exchange services in central offices where it is not currently collocated. Id. True, the Mi2A requires that the EEL requested must meet the “significant amount of local service” criteria as required in the FCC’s Supplemental Order Clarification, but criteria ordered by the FCC can hardly be called “unreasonable conditions.” Alexander Reply Aff. ¶ 16. The CLEC Association’s real goal is to get the Commission to “reject” the FCC’s rules for EELs, and to replace the FCC-approved tariffs (and the mirrored intrastate tariffs) for special access with TELRIC prices. Alexander Reply Aff. ¶¶ 16-17. There is no legal basis for such action and given the availability of the EEL there is no need for it either. Id.

Voice Mail. The CLEC Association’s exegesis on the history of voice mail (CLEC Ass’n Comments at 24-28) is irrelevant. Its underlying claim – that Ameritech Michigan does not make available stutter dial tone – is refuted by its own witness’s admission that Ameritech Michigan informed him that stutter dial tone is available to CLECs under tariff. Alexander Reply Aff. ¶ 41 (citing CLEC Ass’n Finefrock Aff. at 50). Further, any CLEC or third-party voice mail platform can interface with Ameritech Michigan’s central office switches in the exact same manner as Ameritech’s retail (or resale) voice mail platforms, and obtain identical functionality including “stutter dial tone.” Alexander Reply Aff. ¶ 42. Indeed, many CLECs (and third-party providers) offer their own voice mail services and platforms using these functionalities. Id. At any rate, voice mail is not a telecommunications service, it is not a UNE,

and it is not regulated. Id. Thus, Ameritech Michigan has no legal obligation to provide voice mail service to any customer or CLEC.⁸

Coin Lines. Similarly, the Commission should reject the Michigan Pay Telephone Association's vague complaint (at 6) that "it is unclear if Ameritech makes all the features necessary to provide a coin line and an independent payphone provider line as UNE combinations." The MPTA did not request such features in the lengthy collaborative process or the ensuing dispute resolution, nor has it requested such features under tariff or by arbitration. Alexander Reply Aff. ¶ 26.

3. Intellectual Property

There is no dispute that Ameritech Michigan has committed to use its best efforts to obtain co-extensive Third Party Intellectual Property rights that are equal in quality to those Ameritech Michigan obtains for itself. Ameritech Br. at 21-22.

4. Pricing

Given that the Commission so recently completed its biennial cost docket, and given that its approved prices were heavily influenced by the CLECs in that proceeding, it is not surprising that the CLECs do not challenge Ameritech Michigan's rates for unbundled access. To the contrary, AT&T's own Chairman specifically proclaimed that those rates "reflect the cost of

⁸ WorldCom also complains that Ameritech Michigan has "undocumented rules for provisioning customers," which appears to be a veiled reference to the blocking of 900/976 calls for UNE-P customers that occurred when UNE-P was implemented. That problem was addressed by an interim solution on May 3, 2001, and corrected by a permanent solution in the June 23, 2001 OSS enhancements. Cottrell Reply Aff. ¶ 44. This issue was also addressed in Ameritech Michigan's May 30, 2001 response to WorldCom's "Notice" in this docket.

providing the service” and “that on this score, the Michigan Public Service Commission has met the challenge.” Heritage Aff. ¶41 & Attachment B.⁹

The Michigan Pay Telephone Association (“MPTA”) wants Ameritech Michigan to extend TSLRIC-based pricing to its payphone access services. MPTA Comments at 9-11. That contention is flawed for many reasons, two of which are worth noting here. *First*, contrary to the MPTA’s suggestion (at 10), the FCC has *never* required TSLRIC pricing for services provided to payphone providers. To the contrary, the purpose of the FCC’s New Services Test was not to establish a rigid TSLRIC formula, but to inject “additional pricing flexibility” into the pricing regime and allow LECs to “develop their own costing methodologies.” In re Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers, 6 F.C.C. Rcd. 4524, ¶¶ 1, 42 (rel. July 11, 1991). In the Reconsideration Order,¹⁰ which specifically applies the New Services Test to payphone services, the FCC did not even mention forward-looking costs or TSLRIC pricing. Certainly, had the FCC meant to limit LECs to the use of forward-looking costs in the way the MPTA suggests, it would have said so.

Second, the MPTA, through its misleading discussion of the proceedings in Case No. U-11756, slyly attempts to avoid the reality that the Commission roundly rejected the MPTA’s proposed formulation of the New Services Test in that case. Once again, in claiming that “it was

⁹ McLeodUSA accuses Ameritech Michigan of refusing to allow it to obtain UNEs at the approved rates, but provides no details to show that it ever asked. Ameritech Michigan has worked actively to amend its interconnection agreements to incorporate the new rates, and with respect to McLeodUSA the matter is currently being resolved by negotiations. Alexander Reply Aff. ¶ 20.

¹⁰In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration, 11 F.C.C. Rcd. 21233 (rel. Nov. 8, 1996).

clear that Ameritech did not even make an attempt to comply with the New Services Test” (MPTA Comments at 11), the MPTA is merely advancing *its* view of the situation, which did not prevail at the Commission. What the Commission really held was:

The Commission concludes that the MPTA has failed to carry its burden to show that Ameritech Michigan’s and GTE’s payphone service rates are not in compliance with the new services test. The FCC has not specified any particular methodology for determining costs or reasonable overheads for purposes of compliance with the test. The Commission is not persuaded that the MPTA’s approach is required by the new services test or that its results are preferable to the rates now in place. *In particular, the Commission rejects the MPTA’s position that the retail services sold to the IPPs should be compared to the wholesale unbundled network elements sold to providers of basic local exchange service, which were priced in Cases Nos. U-11280 and U-11281. In fact, the services that Ameritech Michigan and GTE sell to the IPPs are not wholesale services, and the IPPs are business customers.*

March 8, 1999 Order, Case No. U-11756, at 8 (emphasis added). The MPTA has appealed the Commission’s ruling, but for present purposes MPTA has presented no issue as to Ameritech Michigan’s checklist compliance. There is simply no mandate that payphone pricing be based on TSLRIC, and the MPTA’s attempt to relitigate the issue here is improper.

5. Non-Discriminatory Access to OSS

Indisputably, Ameritech Michigan and its affiliates have made extensive efforts to enhance operations support systems (“OSS”) and to address CLEC concerns in this area. And Ameritech Michigan’s Checklist Information Filing provided extensive evidence setting forth those efforts at length and in detail. Notably, although most of the CLECs comment extensively on OSS, they barely even try to dispute Ameritech Michigan’s *prima facie* evidentiary showing, which demonstrated that Ameritech Michigan offers sufficient interfaces to provide CLECs nondiscriminatory access to all required OSS functions. Most of the CLEC comments do not contest the interfaces or OSS functions that Ameritech Michigan currently provides; rather, they complain about Ameritech Michigan’s performance (usually its speed) in providing it. But such

comments do not belong in this phase of the proceeding. The FCC and this Commission recognize that an assessment of OSS involves two separate issues. The first, which is now before the Commission, is whether Ameritech Michigan offers “sufficient electronic . . . and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.” Kansas & Oklahoma 271 Order, ¶ 105.¹¹ The second question – whether the OSS are operationally ready, as a practical matter, based on results of “actual commercial usage” and “the results of carrier-to-carrier testing, independent third-party testing, and internal testing,” *id.* – is for the Commission to address upon the conclusion of KPMG’s independent OSS test and the submission of commercial performance data.¹²

Some CLEC comments dwell on past OSS offerings, rather than the current OSS interfaces and functions. AT&T, for example, complains about the OSS prior to the March 2001 enhancements, contending (at 4) that until those enhancements were implemented, the OSS had “remained virtually unchanged from the levels that the FCC had found deficient in 1997.” That allegation is both irrelevant (because the purpose of this proceeding is to address OSS as they exist today, not as they existed years ago) and incorrect. Ameritech Michigan implemented

¹¹ In re Joint Application by SBC Communications Inc., et al. for Provision of In-Region, Interlata Services in Kansas and Oklahoma, CC Docket No. 00-217, 2001 WL 55637 (Jan. 22, 2001) (“Kansas & Oklahoma 271 Order”).

¹² The collaborative participants, the Commission, Staff, and KPMG have all devoted substantial efforts to developing the OSS Master Test Plan, and the Plan is now in place. Apparently, AT&T has soured on the negotiated and Commission-approved result, and with the idea of an independent test. AT&T’s witness Ms. Samonek indicates it will circumvent the independent OSS test and conduct a homemade test of its own, in which AT&T will surreptitiously submit fictitious orders to Ameritech Michigan for processing. While we would contend that the obvious bias of AT&T’s non-independent test would render it of no value to the Commission, Cottrell Reply Aff. ¶¶ 7, 10, 12, and that AT&T’s attempt to circumvent the collaborative is improper, the issue of immediate concern is safety. The Commission should order AT&T to provide sufficient information to demonstrate that its bogus orders will not adversely affect service to real customers or the approved OSS test by KPMG. See Cottrell Reply Aff. ¶¶ 11- 12.

enhancements before March 2001, including (1) a series of new pre-order functions like DSL loop qualification (implemented April 2000), (2) additional ordering methods (such as direct ordering via the TCP/IP Internet protocol), (3) improvements to streamline the ordering process (such as a feature that allows CLECs to order a loop with long-term number portability in a single order, implemented June 1999), and (4) electronic ordering of new products, such as the UNE Platform (implemented October 1999). Cottrell Reply Aff. ¶ 14.¹³ Contrary to AT&T's view that Ameritech Michigan lagged behind industry standards, many of these pre-2001 enhancements were implemented *before* the related industry standard took effect. *Id.* ¶ 17.

In the same vein, AT&T contests the process by which the March 2001 enhancements were implemented (as opposed to their substance). In AT&T's view, implementation was "haphazard" because of "the lack of any identified change management process." AT&T Comments at 19. That, too, is incorrect. There *was* an identified change management process, and a timetable for the March 2001 release, in place – the one Ameritech Michigan spent months negotiating with the CLECs. Although that process had not been formally approved at the time, the CLECs had agreed to the process and the timetable, and Ameritech Michigan followed them. The December 27, 2000 Joint Report in this docket specifies exactly how the process would apply to the March 2001 enhancements. Cottrell Reply Aff. ¶ 23-25. Consistent with the change management process, Ameritech Michigan:

- provided a Release Notification six months before implementation, followed by a 7-day comment period;

¹³ Equally erroneous is AT&T's underlying view that "from late 1997 through early 2000, Ameritech pursued the merger path rather than a § 271 compliance path." AT&T Comments at 4. AT&T's premise is that the two paths are mutually exclusive; but as the Commission knows, many of the collaborative proceedings that led to Ameritech Michigan's OSS enhancements originated in the proceedings that led to merger approval and in the conditions that accompanied such approval. Substantively, too, many of the enhancements were imported from the Southwestern Bell region served by Ameritech's merger partner SBC.

- issued Initial Requirements over five months before implementation, followed by a month-long comment period and a two-day walk-through;
- issued Final Requirements, reflecting agreed changes from the previous comments and walk-throughs, four months before implementation, followed by two more walk-throughs.

Cottrell Reply Aff. ¶ 27. Further, to the extent AT&T had a problem with these procedures, it had the opportunity to request a “go- no go” vote (a procedure endorsed by the FCC in its Texas and Kansas & Oklahoma 271 Orders) to delay or block implementation. See Cottrell Reply Aff. ¶ 28; Ameritech Br. at 49-50 (describing go/ no go vote procedure). Despite AT&T’s present protestations, neither AT&T nor any of the CLECs sought to invoke this dispute resolution mechanism. Cottrell Reply Aff. ¶ 28. AT&T’s claim of problems implementing and testing ARAF and CORBA are also wrong, and in no way affect the fact that the March 2001 release was successfully deployed. Cottrell Reply Aff. ¶¶ 29-32. It is far too late for AT&T to complain now.

With these overarching issues in mind, we turn to the specific OSS functions: pre-ordering, ordering, provisioning, repair and maintenance, and billing.

a. Pre-Ordering

Ameritech Michigan offers two alternative interfaces for pre-ordering. Both offer a wide array of functions (including all that are available to Ameritech Michigan’s retail representatives), and both have been subject to extensive use, fielding over one million inquiries in February alone. Cottrell Aff. ¶ 77. Yet the only complaints any CLEC can come up with are retreads of already-solved complaints (Cottrell Reply Aff. ¶ 47), along with WorldCom’s assertion that it has “experienced slow response time” for a single function (verifying feature availability) on one interface (Verigate). WorldCom Comments at 33. While this issue will undoubtedly be addressed in the OSS test and performance data, the Commission should note the

following for now: (1) Ameritech Michigan has established an IS Call Center to assist CLECs with such concerns; (2) WorldCom has made only one call to that center regarding Verigate response time; (3) Ameritech Michigan advised WorldCom to reboot and log back on; and (4) WorldCom did, said the problem was resolved, and did not report any further difficulty until filing its comments here. Cottrell Reply Aff. ¶ 48.

b. Ordering

Order Rejections. Ameritech Michigan checks CLEC orders for proper format and coding; improper orders are returned to the CLEC with a rejection notice for correction. There is no contention that these rejection notices are inaccurate. The Commission should reject McLeodUSA's unsubstantiated complaint (at 10) that some unspecified orders were rejected when they should not have been. The FCC has made clear that a BOC is not "accountable for rejects that occur for reasons within a competing carrier's control" (Kansas & Oklahoma 271 Order, ¶ 143) and the rate and cause of rejects should be – and will be – assessed on the results of the OSS test and performance data, not on the anecdotal finger-pointing of a single carrier.

Almost all of the order errors that result in rejection are checked by edits in Ameritech Michigan's electronic interface. But it is impossible to anticipate and program for every possible error, and in some limited circumstances, an order will pass through the interface (thus generating an order confirmation) but be rejected further downstream. Cottrell Reply Aff. ¶ 42. WorldCom describes this as a "flaw in Ameritech's OSS" (WorldCom Comments at 28) but rejection of an order – whether before or after confirmation – can be avoided altogether if the CLEC submits a proper order in the first place. Cottrell Reply Aff. ¶ 42. Nevertheless, Ameritech Michigan informed WorldCom that it is willing to work with WorldCom to prevent such errors, id. ¶ 43, and WorldCom itself notes (at 28) that the issue should be mooted by a

permanent enhancement scheduled for March of next year. The Commission should defer consideration of this issue until it reviews the results of the OSS test and performance data.

Firm Order Confirmations (“FOCs”). Once a properly formatted CLEC request passes the edits in the electronic ordering interface, Ameritech Michigan issues a Firm Order Confirmation (“FOC”) to confirm receipt. XO criticizes FOCs as “soft” because they list an estimated due date that is subject to later revision once Ameritech Michigan checks for available facilities. XO Comments at 4; see also McLeodUSA Comments at 12. (Contrary to XO’s assertion that half of FOCs are “soft,” the due dates are revised less than 1 percent of the time. Brown Reply Aff. ¶ 5.) XO fundamentally misconceives the nature and purpose of a FOC.

In XO’s view (at 4), a FOC is a “Firm Order *Commitment*” that provides a guaranteed due date. But in reality, a FOC is a Firm Order *Confirmation*, not a commitment, that gives the requesting carrier fast notice that its order has been received. Brown Reply Aff. ¶ 4. In order to provide such speed, the receiving carrier need only provide a good faith estimate of the expected due date. Id. To address CLEC concerns for those few orders that require a revised due date because of unavailable facilities, Ameritech Michigan and the participating CLECs reached agreement on an elaborate system of follow-up notices (incorporated in Ameritech Michigan’s facilities modification policy, described at section III.D.1.c. infra). Thus, in the recent Ameritech Michigan/ AT&T arbitration this Commission rejected the same misconception that XO raises here and refused to convert Firm Order Confirmations into commitments. Oct. 24, 2000 Panel Decision, Case No. U-12465, at 12, issue 31, adopted by Nov. 20, 2000 Opinion and Order, at 23-24.

Flow-through. Flow-through refers to the translation of orders from the format in which CLECs submit them to the format in which Ameritech Michigan processes them. No one

disputes that Ameritech Michigan has already improved flow-through on certain orders and has instituted a cooperative process – with CLEC agreement – for identifying future flow-through needs. Ameritech Br. at 38-39. Some CLECs nonetheless contend that current flow-through rates are insufficient, and they target certain orders they want to flow through. See, e.g., AT&T Comments at 22, CLEC Ass’n Comments at 23. Both allegations are unripe.¹⁴ The FCC has recognized that flow-through rates “are not so much an end in themselves” and that a BOC’s “overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems is more relevant and probative for analyzing [its] ability to provide access to its ordering functions than a simple flow-through analysis.” New York 271 Order, ¶¶ 162, 163. Thus, the Commission should not consider complaints about flow-through until it reviews overall OSS performance. Likewise, the parties have already agreed on a collaborative process to determine – as a group – the orders to receive priority in future flow-through improvements. Ameritech Br. at 38-39. The Commission should reject the attempts of those CLECs that want to circumvent the group and use this proceeding to declare “first dibs” on the orders they prefer.

Completion Notices. Upon provisioning an order, Ameritech Michigan sends the requesting carrier a completion notice (also referred to in the comments as a “service order completion” or “SOC”). These notices are governed by rigorous performance standards which require Ameritech Michigan to issue 97 percent of completion notices within 1 hour of the time

¹⁴ WorldCom also complains (at 21-22) that Ameritech Michigan’s performance measure for flow-through is improper because it measures the percentage of orders that actually flow through against the number that are designed to flow through, as opposed to the universe of all orders. The problem with that argument is that Ameritech Michigan provides two measures of flow-through, and one of them is calculated the way WorldCom wants. Fioretti Reply Aff. ¶ 64.

the order is registered as complete in Ameritech Michigan's OSS, and the same percentage within 1 day of the completion of physical work.

WorldCom (at 11-21) and Z-Tel (at 7) claim that completion notices for some orders are "missing." WorldCom's own comments show that Ameritech Michigan has conducted extensive investigation and attempted several approaches to resolving this issue. We disagree, however, with WorldCom's view that the time involved was caused by Ameritech companies "see-sawing" their efforts between Michigan and Illinois. Rather, the reason the investigation took time is that Ameritech Michigan devoted extensive time and effort to determine whether (and eliminate any possibility that) there was a systemic problem in the OSS software, and in particular to investigate WorldCom's theory that orders "are falling out in the translation process" as occurred in New York. Brown Reply Aff. ¶ 18. Throughout the process, Ameritech Michigan gave WorldCom frequent updates in conference calls and correspondence. *Id.* As it turned out, the problem did not occur in the translation process, as WorldCom had surmised, but instead occurred because certain errors were mistakenly not sent to the Local Service Center ("LSC") for review and correction. *Id.* Upon identifying the cause, Ameritech Michigan corrected it and the errors are reported to the LSC for resolution. *Id.*¹⁵ The effectiveness of this solution will be verified via the independent OSS test and analysis of performance data.

Disconnecting Service. The commenters discuss two situations in which the end user's service may be disconnected. The first is where a CLEC asks Ameritech Michigan to disconnect service to the CLEC's end user, for example when the end user fails to pay its bills. WorldCom

¹⁵ Z-Tel's concern with missing "line loss" notices (which inform a carrier that its customer has switched to a competitor) has also been addressed. Z-Tel contends (at 4) that Ameritech Michigan "failed to provide" such notices for a period, but its own brief acknowledges that the matter was resolved within six weeks. During that period, Ameritech Michigan gave Z-Tel a special report summarizing line losses. Cottrell Reply Aff. ¶ 40.

claims (at 8-9) that Ameritech Michigan “refuses to restore customers WorldCom has disconnected for non-payment” and that “Ameritech actually pulls the jumpers off of the frame in the central [office].” Here, WorldCom fails to tell the full story. Ameritech Michigan will perform a “full disconnect” in the manner WorldCom describes *if* the CLEC asks it to do so; after all, the CLEC may have decided to terminate its service permanently. Alexander Reply Aff. ¶ 23. But Ameritech Michigan also offers CLECs a less permanent option: a “carrier disconnect” that disconnects the end user’s service but permits the CLEC to reinstate service quickly, for example if the end user pays its bill. *Id.* Both options were specifically conveyed to WorldCom in correspondence. *Id.* Giving CLECs a choice, and then carrying out the CLEC’s choice, is hardly anticompetitive.

The second situation is Z-Tel’s accusation (at 7) that Ameritech Michigan disconnects service to CLEC end users for failure to pay *Ameritech Michigan* bills. This should be a rare occurrence, but can occur if the end user happens to change carriers after Ameritech Michigan’s retail operations have already initiated the process of disconnecting the end user’s service. Brown Reply Aff. ¶ 17. In that situation, Z-Tel should contact the Local Operations Center to restore the end user’s service. *Id.*

“Worker in the Way” Forms. Ameritech Michigan’s provision of “worker in the way” forms (WorldCom Comments, at 9-11) is not at all the sinister plot WorldCom makes it out to be. In fact, it is designed to benefit competing carriers and end users as much as it does Ameritech Michigan. The forms were developed to address a situation in which a CLEC end user abandons a location, and a new end user moves in and requests service from Ameritech Michigan. Brown Reply Aff. ¶ 13. Ameritech Michigan then provides two days’ advance notice by fax to the CLEC, so it can inform Ameritech Michigan whether it still needs service at that

location; otherwise, the existing service is disconnected for use by the new end user. Id. The alternative would be to let the CLEC continue paying for service it doesn't use, force Ameritech Michigan to make new facilities available when they aren't necessary, and force the new end user to wait for those new facilities when he or she doesn't have to. That benefits no one.

The "worker in the way" process is thus a salutary one, and the only problems WorldCom identifies in carrying out that process have been corrected. First, Ameritech Michigan inadvertently failed to send the forms to the correct address, but as WorldCom itself notes (at 10), Ameritech Michigan has since corrected that error. Second, WorldCom claims (id.) that the worker in the way process was applied in a few situations where it should not have been, *e.g.* where the end user "simply wanted to change a feature." Ameritech Michigan suspended the process and conducted a thorough review that confirmed the forms are issued only where they should be. Brown Reply Aff. ¶ 14.

Win-backs. Competition is a two-way street. Some customers leave Ameritech Michigan for a competitor; in other cases, Ameritech Michigan "wins back" a competing carrier's customer. Z-Tel (at 10) makes the curious complaint that Ameritech Michigan takes *too long* (30-45 days) to process win-backs that take customers away from Z-Tel. The time involved in processing win-backs is not the fault of Ameritech Michigan. Huston Reply Aff. ¶¶ 5-9. To the contrary, some of the delay results from the "losing" carrier, which delays in providing necessary information. Some of the delay results from Ameritech Michigan's *compliance* with FCC anti-slamming rules, and the time involved in obtaining a signed letter of agency from the end user before obtaining the customer information needed to determine what

services the customer was receiving. Id. ¶7.¹⁶ Ameritech Michigan now uses third-party verification in lieu of a signed letter, which permits faster processing (often within 10 business days). Id. ¶¶ 8-9. Clearly, this is neither a checklist violation nor a public interest concern.

c. Provisioning

As demonstrated in its initial Filing, Ameritech Michigan has already made several improvements in its provisioning processes. And as the reply affidavits of Messrs. Brown (¶¶ 30-31, 47) and Foster (¶¶ 7, 11, 14, 15) show, Ameritech Michigan remains open to further improvements, and is already in the process of implementing more. The CLECs contend that current performance is deficient, but most of their complaints do not involve the provisioning of any checklist item; rather, they relate to the provisioning of tariffed special access services (see Alexander Reply Aff. ¶ 17; Foster Reply Aff. ¶¶ 3, 9, 10, 11, 16), which the FCC has held is *not* relevant to checklist compliance. See Section IV.B.1 infra. The remainder are either rebutted by performance data (see Fioretti Reply Aff. ¶¶ 50-54, 70-72) or have been addressed by corrective measures taken by Ameritech Michigan (Brown Reply Aff. ¶¶ 30-31, 47; Fioretti Reply Aff. ¶¶ 67-68; Foster Reply Aff. ¶ 7, 11, 14, 15). The Commission can test those solutions in its upcoming review of the OSS test results and commercial performance data.

d. Repair and Maintenance

Most of the CLEC comments here center on performance, and the Commission's consideration of such issues should await completion of the OSS test and analysis of performance data. One comment deserves special attention here: The CLEC Association (at 14-15) accuses Ameritech Michigan's technicians of "manipulating" trouble report data, for

¹⁶ Z-Tel also ignores the fact that several steps in the win-back process (such as releasing the loop on which service is provided) depend on the CLEC, which is not subject to performance requirements and which has a natural incentive to drag its feet. Huston Reply Aff. ¶ 5.

example by closing out trouble reports and incorrectly ascribing them to customer or CLEC problems rather than to Ameritech Michigan facilities. The CLEC Association did not identify any particular end users or trouble reports, which precludes Ameritech Michigan from responding in detail. But we wish to make clear that Ameritech Michigan takes these allegations, and its own performance reporting responsibilities, very seriously. Accurate reporting does not just benefit the CLECs, the Commission, or the fact-finding process: It is essential for Ameritech Michigan to evaluate and manage its own business. Further, closing out a trouble report in error wastes company time and resources – after all, if the problem has not been corrected, the end user will issue another trouble report and the technician will have to make another visit. Brown Reply Aff. ¶ 35. Thus, Ameritech Michigan’s code of conduct tells employees in no uncertain terms that accurate reporting is both expected and essential, and that they risk losing their job if they fail to comply. Id. ¶ 34.

e. Billing

Billing Format. In its initial filing, Ameritech Michigan showed that it delivers daily usage files and monthly carrier bills, both of which are governed by rigorous standards for timeliness and quality that have been approved by this Commission and the FCC. Unable to challenge timing or content, WorldCom gripes about the format of its monthly bills for a single checklist item. WorldCom complains (at 34) that bills for unbundled local switching are in a non-standard format that “cannot be audited.” WorldCom’s allegations are untrue: The principal current format “AEBS” is based on a Bellcore guideline that has been used in the Ameritech region for over five years, and it provides the same information for auditing that “CABS” (the format WorldCom prefers) provides. Kagan Reply Aff. ¶ 4, 7. In addition, since January of this year Ameritech Michigan offers a second format, “EDI,” that also provides the

same information. Id. ¶ 8. None of the other commenting carriers complains about the existing formats.

At any rate, WorldCom's complaint is about to be moot. Implementation of CABS billing for unbundled local switching will begin in August and continue through October of this year, giving WorldCom the format it desires. Id. ¶ 9.¹⁷ When WorldCom asked the Illinois Commerce Commission ("ICC") to accelerate the schedule, the ICC rejected its request as "foolhardy." Jan. 24, 2001 Order, ICC Case No. 00-0592, at 105. WorldCom made a similar request to this Commission in Case No. U-12320, but the Commission's March 19, 2001 Order on Rehearing found that it did not warrant a determination. WorldCom chose not to pursue the matter further, letting implementation proceed on the original schedule to the point where it is now almost complete. WorldCom's choice is understandable, given the result in Illinois and given this Commission's order on rehearing, but it also precludes WorldCom's present complaints about AEBS.

Billing for "Lost" Customers. Z-Tel complains (at 4-6) that it receives bills for customer lines after it has received notice that the customer has been "lost" to another carrier. Such billing is, however, to be expected based on timing. Ameritech Michigan *should* continue to bill Z-Tel even after the customer has chosen a different provider, if the charges were incurred while the customer was still with Z-Tel. Brown Reply Aff. ¶ 19. Z-Tel suggests that the customers are being double-billed, but Ameritech Michigan has a special Error Corrections team devoted to avoiding that situation, by clearing order errors so the orders can be billed promptly. Id. If Z-

¹⁷ AT&T contends (at 22) that the October implementation of CABS will result in a "new billing system" and that the Commission should not decide whether there is checklist compliance until implementation is complete. AT&T is wrong. CABS has been in place in Ameritech Michigan for over 16 years, and the October changes will simply transfer one product from one established system to another. Kagan Reply Aff. ¶ 9.

Tel provides specific examples, Ameritech Michigan will, of course, investigate to ensure the billing is proper.

f. Training, Carrier Assistance, and Help Desk Support

In its initial filing, Ameritech Michigan described the numerous support functions (account management, training, help desks, and a CLEC User Forum) it makes available to help CLECs properly use Ameritech Michigan's OSS and to resolve issues on an ongoing basis. Many of these functions have been implemented or enhanced in accordance with agreements reached during the collaborative process. None of the commenters disagrees that Ameritech Michigan has done exactly what it said in its filing, nor does anyone contend that Ameritech Michigan has not done what it agreed to do in the collaboratives. Further, several CLEC comments acknowledge that Ameritech Michigan has provided additional support (such as conference calls) on specific issues. Nevertheless, as described above, the CLECs contend that Ameritech Michigan's performance is still deficient. The question of performance is not yet before the Commission, but for present purposes the Commission should note that many of the CLECs that complain about performance do *not* allege that they brought any of these issues to the support functions that were designed to handle them. Brown Reply Aff. ¶¶ 30 – 32, 47 - 48; Foster Reply Aff. ¶¶ 5, 14.

g. Change Management Plan

There is no dispute as to the existing change management process, nor could there be given that CLECs have agreed to the 13-state process for regional changes, and given that the

Commission resolved the sole disputed provision related to Michigan-only changes by order entered June 5, 2001 in this docket.¹⁸

C. Checklist Item 3: Poles, Ducts, Conduits, and Rights-of-Way

The issue under checklist item 3 is whether *Ameritech Michigan* provides nondiscriminatory access to the poles, ducts, conduits and rights-of-way that *it* owns or controls. *Ameritech Michigan*'s initial filing demonstrates that it complies with that obligation, and there are no allegations that *Ameritech Michigan* does not comply. Rather, the Michigan Cable Television Association ("MCTA"), WorldCom and McLeodUSA argue that *municipalities* are failing to provide nondiscriminatory access to *their* rights-of-way. See, e.g., MCTA Comments at 2-11; McLeodUSA Comments at 25-29; WorldCom Comments at 74-80. This argument is irrelevant to checklist item 3 and, in any event, the CLECs' position has already been rejected on the merits.

The target of the CLECs' wrath is the fact that *Ameritech Michigan* is exempt from allegedly excessive municipal franchise fees. That exemption does not violate any law, much less the checklist; in fact, the exemption is *compelled* by law because of *Ameritech Michigan*'s vested franchise. Under that law,

Ameritech [pursuant to its incorporation in 1904] was granted a statewide franchise to operate its telecommunications system. Under the act which *Ameritech* is organized, Act 129, the City of Dearborn may manage its public rights-of-way, but as it relates to *Ameritech*, *only* to protect the health, welfare, and safety of the public. But it may not seek to impose franchise fees.

TCG Detroit v. City of Dearborn, 16 F. Supp. 2d 785, 794 (E.D. Mich. 1998), aff'd, 206 F.3d 618 (6th Cir. 2000) (citations omitted). This vested statewide franchise survived the 1908 and

¹⁸ The only disputed issue involved a single provision, namely the requirement of a quorum for certain votes to resolve disputes on Michigan-specific OSS changes. The Commission resolved that dispute by an order entered June 5, 2001 in this docket.

1963 modifications to the Michigan Constitution and remains in full effect today. TCG Detroit, 16 F. Supp. 2d at 796-97. In short, Ameritech Michigan (like other providers that were incorporated under Act 129 prior to the 1908 amendments to the Michigan Constitution) is not subject to franchise requirements or franchise fees that any municipality may seek to impose.

McLeodUSA (at 28) uses creative quotations from the Sixth Circuit's opinion *affirming TCG Detroit*, and argues that the court suggested the existence of some discrimination in Ameritech Michigan's favor. McLeodUSA is wrong. The Sixth Circuit plainly said – in the sentence that directly precedes the quote presented by McLeodUSA – as follows: “The fact that Ameritech prevailed before the district court in its contention that state law prohibits the City from subjecting it to the franchise fee charged others *does not mean that the City is thereby discriminating in Ameritech's favor.*” 206 F.3d at 625 (emphasis added).

MCTA, meanwhile, does not even mention the controlling decision in TCG Detroit, and instead criticizes the exemption as if it were simply some argument advanced by Ameritech Michigan. The argument is over, and the issue has been decided.

In the end, then, MCTA and McLeod are really asserting that Ameritech Michigan should affirmatively abandon its vested legal right granted it by the Michigan Legislature and take on the same franchise fees and requirements to which, they allege, CLECs are subject. Giving up long-vested legal rights is not a prerequisite to relief under Section 271, and *increasing* the scope of allegedly excessive fees does not serve Michigan consumers.¹⁹

¹⁹ WorldCom apparently advocates only that the Commission initiate an investigation into the best way to address the situation, without going so far as to suggest that Ameritech Michigan abandon its almost 100-year-old franchise. While Ameritech Michigan appreciates WorldCom's restraint, the “investigation” it seeks has no place in this proceeding, especially given the pendency of Commission-sponsored collaboratives on right-of-way issues.

The CLEC comments ignore this Commission's vigilant efforts to ensure that municipalities comply with Article 2A of the Michigan Telecommunications Act regarding this issue. The Commission has upheld several complaints brought by CLECs and issued fines and penalties to municipalities. Further, the Commission has convened an ongoing collaborative proceeding in an effort to bring the local governments and providers together to minimize disputes over right of way issues. The CLECs would have the Commission regard its own actions as failures. Clearly, this is not the case.

D. Checklist Item 4: Unbundled Local Loops

1. Nondiscriminatory Access to Stand-Alone Loops

a. Unbundled Loops

Putting aside the few CLEC complaints about performance, which will be addressed in depth at a later stage of this proceeding, there is no real dispute that Ameritech Michigan's numerous loop offerings satisfy the checklist.

b. The NID and Subloop Unbundling

Subject to satisfactory completion of the OSS test and review of performance data, there is no real dispute that Ameritech Michigan provides the ability to obtain and use the network interface device ("NID"), or that CLECs can order unbundled sub-loops from Ameritech Michigan on rates, terms and conditions that satisfy the checklist.

c. Facilities Modification

As noted above, after confirming receipt of an order Ameritech Michigan performs a detailed analysis to determine whether facilities to provision the order are available. Ameritech Michigan has developed a Facilities Modification Policy to reduce the number and length of any delays in provisioning where new facilities or modification of existing facilities are required, and

to keep the requesting carrier apprised of the status of its order after confirmation. Ameritech Br. at 58. AT&T contends (at 26) that Ameritech Michigan has not met the benchmark for the initial notice of potential facilities modification, “Form A.” This question of performance is, of course, premature at the present stage of the proceeding, and we mention it only because it aptly shows why performance issues must be examined in context, rather than as isolated complaints. True, Ameritech Michigan has not met the Form A benchmark (which requires 95 percent to be issued within 24 hours), but Form A applies to only a tiny minority less than (2 percent) of loop orders overall. Brown Reply Aff. ¶ 6. Further, since Form A was instituted earlier this year, Ameritech Michigan’s performance has steadily improved to the point where over 93% of these forms (just shy of the 95% benchmark) are timely. *Id.* ¶¶ 7 - 8.

McLeod also suggests (at 17-18) that Ameritech Michigan’s charges for certain facilities modifications violate the Commission’s Order in Case No. U-11735. Although certain aspects of that order are presently under review by the Sixth Circuit, Ameritech Michigan is in compliance with the order. In fact, many aspects of the Facilities Modification Policy (such as the performance of many modifications free of charge) were designed specifically to comply with the Commission’s decision, and the Policy itself expressly states that charges are to be assessed only where the applicable state permits them.

d. Coordinated and Frame Due Time Conversions (“Hot Cuts”)

Like the Facilities Modification Policy, Ameritech Michigan’s procedures for coordinated and “Frame Due Time” conversions reflect a detailed agreement with CLECs, reached after extensive negotiations in the collaborative process. AT&T points out that the revised procedures are relatively new, and that the Commission “should continue to monitor Ameritech’s performance in provisioning unbundled loops and it should continue to accept

information provided by KPMG and CLEC commercial experience.” AT&T Comments at 27. We agree – but those tasks are for a later phase of this proceeding. The question here is whether the procedures to which the CLECs agreed, and which Ameritech Michigan has implemented, are sufficient to satisfy the checklist (subject to verification that Ameritech Michigan is performing in line with its commitment). No one disputes that they are.²⁰

2. Nondiscriminatory Access to xDSL-Capable Loops Used for Advanced Services

a. Pre-Ordering Loop Make-Up Information

Ameritech Michigan provides information on the “qualification” of loops (i.e. their suitability for advanced services) to requesting carriers and to its data affiliate, ASI North.²¹ CLECs and ASI North alike submit mechanized qualification requests over the same electronic interface. Cottrell Reply Aff. ¶ 49. Ameritech Michigan responds on a standard form that applies to CLEC and affiliate requests. The response includes information on the loop’s length and the presence of devices that might inhibit data traffic. Ameritech Br. at 60-61. The same information is provided to CLECs and to ASI North, and it comes from the same databases regardless of who requested the information. Cottrell Reply Aff. ¶ 49. In most cases, this operation is entirely mechanized. In some case, mechanized loop information is not available via the loop qualification systems, so Ameritech Michigan employees manually enter the request

²⁰ The wording of AT&T’s comments and the associated affidavit of Mr. Van De Water may leave the impression that Ameritech Michigan has delayed or been untimely in its implementation of these procedures. However, Ameritech Michigan has met all the timetables established by agreement in the parties’ December 27, 2000 Joint Report to the Commission and in their March 27, 2001 Supplement to that report. Brown Reply Aff. ¶ 36 - 44.

²¹ Advanced Solutions, Inc. (ASI-North) is also known as Ameritech Advanced Data Services or AADS.

directly into the electronic databases, provide a mechanized response to the CLEC (including ASI North) via the interface, and then update the loop qualification systems to handle future requests on that loop automatically. Ameritech Br. at 60.

AT&T (at 30) and McLeodUSA (at 9) nonetheless contend that the loop make-up process is discriminatory. They do *not* show that the actual information on the loop is any different; in fact they provide no real analysis at all. Apparently, their complaint is a rehash of an AT&T/Covad argument that was rejected in Illinois, which centers on a field of the response form that includes space for additional items, identified either as “Notes” or “Other.”

Ameritech Michigan developed a procedure for using the “Notes/ Other” field to advise the requesting carrier of a processing issue. Internal company procedures correctly state that this practice is to be applied to all carriers, see Silver Reply Aff. ¶¶ 38-39. Nevertheless, because the Other/Notes procedure was developed in response to an ASI North problem, an earlier version of the written procedure incorrectly referred to ASI North by name.

That erroneous and obsolete reference is the sole foundation of the carriers’ claim of discrimination. And as has been found by the Administrative Law Judges in an Illinois OSS proceeding, who had the opportunity to view evidence and testimony about the document firsthand, it does not suffice. In Illinois, AT&T and Covad made the same claim of discrimination that AT&T and McLeodUSA advance here, in an effort to strip the document of its confidential status. The ALJs rejected their claim, reasoning: “The document taken together with the testimony does not reflect discrimination.” Silver Reply Aff. ¶ 39.²² The same reasoning defeats the claims of discrimination here.

²² AT&T and Covad sought interlocutory review of the ALJs’ decision, and the ICC denied their petition from the bench. The matter is now before the ICC on final exceptions briefing.

McLeodUSA’s claim (at 9) that Ameritech Michigan provides “filtered” loop information that is “not completely accurate” is equally vague, and equally lacking in merit. There is no evidence that Ameritech Michigan “filters” or omits information about any loop, see Cottrell Reply Aff. ¶ 50; what McLeodUSA calls “filtering” is apparently the latest complaint about the fact that Ameritech Michigan’s systems return loop information on only a single loop at a time – regardless of the carrier making the request. The FCC specifically rejected that complaint in the Kansas & Oklahoma 271 Order (¶ 128), finding that information on a single loop at a time is sufficient to comply with existing law:

IP suggests that by failing to return information on all possible loops at an address, SWBT impermissibly “filters” the loop make-up information. SWBT acknowledges that it returns information on only one loop, but contends that the UNE Remand Order does not require more. We find that it is not self-evident from the UNE Remand Order that a BOC must provide loop make-up information on all loops that serve a particular address and thus we do not find SWBT to be in violation of that order. Furthermore, it would be inappropriate to resolve this issue within the context of a section 271 proceeding. (Footnotes omitted.)

b. Stand-alone xDSL-Capable Loops

Given the CLEC focus on pre-ordering loop qualification (described above), and in the collaboratives, it is ironic that the principal complaint about ordering and provisioning stand-alone xDSL-capable loops appears to stem from a CLEC’s failure to take advantage of the loop qualification function that Ameritech Michigan offers. XO claims (at 7) that some of its xDSL requests are returned with the explanation that loop qualification information is not available. But there is no indication that XO tried to qualify the loop before ordering it. Silver Reply Aff. ¶ 29. If it had, XO would either have immediately received loop qualification information (which would have allowed it to decide whether to request conditioning) or, if the information was not in the qualification database, XO would have been given the opportunity to request a

manual loop qualification by Ameritech Michigan. Id. ¶¶ 29-31.²³ In any event, Ameritech Michigan also gives CLECs the ability to order a loop “as is” without need for qualification or conditioning (and without rejection on the basis that make-up information is unavailable) if they so desire. Id. ¶¶ 33-34.

c. Line Sharing

Fiber-Fed Loops. AT&T and WorldCom claim that Ameritech Michigan has failed to demonstrate that it provides CLECs with line sharing over fiber-fed loops. Their argument lacks merit. While Ameritech Michigan will provide “fiber sharing” where it is found to be technically feasible, neither the FCC nor this Commission has imposed any specific fiber sharing obligations on Ameritech Michigan.

The FCC’s Line Sharing Reconsideration Order holds that the line-sharing obligation applies to loops that include fiber. That Order, however, does not impose any specific “fiber-sharing” obligations. Rather, the FCC stated:

We also recognize that there are other ways in which line sharing may be implemented where there is fiber in the loop and we *do not mandate any particular means* in this Order. Solutions largely turn on the *inherent capabilities of equipment that incumbent LECs have deployed, and are planning to deploy*, in remote terminals. . . . For these reasons, we are initiating a *Third Further Notice of Proposed Rulemaking* today in the Advanced Services docket and a *Sixth Further Notice of Proposed Rulemaking* in the Local Competition docket that requests comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.

²³ Contrary to XO’s suggestion, the fact that xDSL orders for nearby addresses were not returned does not indicate discrimination. All it indicates is that requesting carrier properly sought a mechanized or manual qualification before ordering the loop. Silver Reply Aff. ¶ 32.

Line Sharing Reconsideration Order, ¶ 12 (emphasis added).²⁴ As the FCC made clear, it purposefully withheld creating *any* new unbundling obligations with respect to fiber facilities pending additional rulemakings that, among other things, would address “the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.” Id. ¶ 12. Until these issues are resolved, the FCC has declined to impose any specific “fiber sharing” obligations on ILECs. Id. Likewise, this Commission has not imposed any specific fiber-sharing obligations on Ameritech Michigan and has held that any fiber sharing obligations would turn on whether it is “technically feasible to do so.” March 7, 2001 Order, Case No. U-12540, at 3.

As noted above, Ameritech Michigan will provide line sharing over fiber facilities where it is found to be *technically feasible*. However, at this point, no specific fiber sharing obligations have been imposed on Ameritech Michigan and the CLECs have not identified any instances where fiber sharing is technically feasible and Ameritech Michigan has declined to provide it. Deere Reply Aff. ¶ 21- 25. Accordingly, Ameritech Michigan complies with this checklist item.

Coordination with Data LEC. WorldCom contests (at 24) Ameritech Michigan’s policy to give the Data LEC first right of refusal when an end user decides it no longer wants Ameritech Michigan as its voice provider in a line sharing scenario. But the FCC’s Line Sharing Order expressly states that “in the event that the customer terminates its incumbent LEC provided service, for whatever reason, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service.”²⁵ The data LEC in

²⁴ Third Report and Order On Reconsideration in CC Docket No. 98-147 and Fourth Report and Order on Reconsideration in CC Docket No. 96-98 (Jan. 19, 2001) (“Line Sharing Reconsideration Order”).

²⁵ In re Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications

this scenario has already paid to have the loop conditioned to meet its needs, and thus is entitled to have the first opportunity to become the sole provider over that loop. Silver Reply Aff. ¶ 12.

d. Line Splitting

In accordance with the FCC's rules and orders, including the Line Sharing Reconsideration Order, Ameritech Michigan supports line splitting where a CLEC obtains separate UNEs (including unbundled loops, unbundled switching, and cross-connects), and combines them with its own splitter (or the splitter of the CLEC's data partner) in a collocation arrangement. Silver Reply Aff. ¶ 5. Specifically, a CLEC may obtain each of these unbundled network elements from Ameritech Michigan, or in combination with their own facilities, and then use them to provide both voice and data service over the loop. Id. Alternatively, a CLEC may provide voice service while a data partner provides data services. Id. Ameritech Michigan permits UNE-P CLECs to "split" in this manner.

Splitters. AT&T (at 28) and WorldCom (at 23) argue that Ameritech Michigan has failed to meet some unspecified "obligations" to provide line splitting over the UNE Platform. To the extent that AT&T and WorldCom mean that line splitting includes a requirement that Ameritech Michigan *purchase and install* an ILEC-owned splitter and *combine* the splitter with the unbundled loop and unbundled switch, it bears repeating that the FCC and this Commission have plainly held that line splitting is required *only where a CLEC obtains an entire unbundled loop and provides its own splitter*. Ameritech Michigan is required to – and does – accommodate line splitting as the FCC and Commission have defined it. However, Ameritech Michigan has no obligation to provide the splitter. Line Sharing Order, ¶¶ 76, 146.

Act of 1996, Third Report and Order in CC Docket 98-147, Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) ("Line Sharing Order").

This Commission has held that Ameritech Michigan has no obligation to provide splitters to UNE-P CLECs but, rather, is required to permit line splitting over the UNE-P *only* “when the CLECs provide the splitter, as the FCC has now ruled.” March 7, 2001 Order, Case No. U-12540, at 7. The Commission further stated that it “does not agree with the CLECs that Ameritech Michigan should be required to provide splitters when it is not the voice service provider. This conclusion is consistent with the FCC’s view. . . . The CLECs have the ability to provide splitters in those circumstances and must do so.” *Id.* at 10. Thus, Ameritech Michigan has no obligation to provide splitters to any CLECs, particularly CLECs utilizing the UNE-P. Rather, UNE-P CLECs who wish to line split must provide their own splitter.

Converting UNE-P Customers to Line Splitting. AT&T and WorldCom also incorrectly argue that Ameritech Michigan has an obligation to convert a customer from line-shared voice service provided by Ameritech Michigan to UNE-P service from AT&T, while maintaining the HFPL service to a data provider on the same line. Ameritech Michigan has no such obligation. In the Texas 271 Order (¶ 330), the FCC held:

Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop. In the Line Sharing Order, the Commission unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes.

The FCC further stated that “the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, *and continues to provide*, voice services on the particular loop to which the requesting carrier seeks access.” *Id.* ¶ 324 (emphasis added).

AT&T’s and WorldCom’s suggestion that Ameritech Michigan has an obligation to convert a customer from line-shared voice service it provides to UNE-P service from AT&T,

while maintaining the HFPL service to a data provider on the same line, also conflicts with the FCC's ruling that “in the event that the customer terminates its incumbent LEC provided voice service, for whatever reason, the competitive data LEC *is required to purchase the full stand-alone loop network element* if it wishes to continue providing xDSL service.” Line Sharing Order & 72 (emphasis added). Clearly, in the situation where Ameritech Michigan is providing voice service and a CLEC is using the HFPL of the same loop to provide data service, if the customer disconnects its Ameritech Michigan voice service for any reason (including conversion to AT&T), the data provider is required to obtain the entire stand-alone unbundled loop in order to continue to provide xDSL service to the end-user. Indeed, in this situation, it would be up to AT&T to obtain a separate loop for voice service or to coordinate with the data provider to provide voice service over the data provider’s stand-alone loop. Ameritech Michigan would be under no obligation to continue data service to the customer if AT&T did not purchase the stand alone loop. Simply put, if AT&T wishes to provide xDSL service to an end user who is not a voice customer of Ameritech Michigan, it must do so over a stand-alone loop, as stated explicitly in the Line Sharing Order (¶ 72).

“Splitting” Over UNE-P. For similar reasons, the Commission should reject AT&T’s and WorldCom’s contention that Ameritech Michigan has refused to provision UNE-P orders so as to allow line splitting, based solely on the fact that additional work and “downtime” needs to be incurred to convert a UNE-P to line splitting. Line splitting requires that the unbundled loop and the unbundled switch port must both be cross-connected to a splitter owned by one of the CLECs. Silver Reply Aff. ¶ 6. Thus, before line splitting can take place, the CLEC owned splitter must first be added to the UNEs being obtained from Ameritech Michigan, and there is no way to avoid some work and downtime. Silver Reply Aff. ¶ 9. The FCC’s Line Sharing

Reconsideration Order thus recognized (¶ 20) that “an incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a competing carrier’s physically or virtually collocated splitter that is part of a line splitting arrangement.”²⁶

e. Ameritech Michigan’s Wholesale Broadband Service Offering

Playing on a theme that plagues many of the opposing comments, Sprint improperly seeks to re-litigate the issue of Project Pronto unbundling. Sprint Comments, at 8-11. Ameritech Michigan will not be drawn into such a wasteful exercise, and neither should the Commission. This is so because, despite Sprint’s latest iteration of its tired “walks like a duck, quacks like a duck” argument, Sprint has presented nothing by way of fact or analysis that the Commission did not already have before it when it fully and thoughtfully considered and rejected Sprint’s position – twice – in Case No. U-12540. There, the Commission ruled that it would “not require the unbundling of Project Pronto” because “Ameritech Michigan’s broadband and combined voice and data service offerings will provide immediate opportunities for the provision of DSL services by Ameritech Michigan’s separate affiliate and *CLECs alike*.” March 7, 2001 Order, Case No. U-12540, at 5 (emphasis added). Given the exhaustive record from Case No. U-12540 regarding the issue (including Ameritech Michigan’s lengthy and detailed testimony regarding the flexibility and robustness of Ameritech Michigan’s Wholesale Broadband Service Offering, and the CLECs’ full explication of their purported concerns over the product offering), and given that the Commission has now denied the motion for rehearing by Sprint and its fellow CLECs in

²⁶ AT&T also contends (Finney Aff.) that the FCC has “rejected” Ameritech Michigan’s three-order process for converting UNE-P to line splitting. To the contrary, the FCC approved SWBT’s applications under section 271 even though they use a similar process. Texas 271 Order, ¶¶ 219-221. To be sure, it encouraged SWBT to work with CLECs to streamline the process. Silver Reply Aff. ¶ 37. But that is far from a requirement of checklist compliance.

its order of July 25, 2001 in Case No. U-12540, there is no basis to entertain yet again this same issue here.

E. Checklist Item 5: Unbundled Local Transport

Subject to the satisfactory completion of the OSS test and review of performance data, there is no serious dispute that Ameritech Michigan complies with this checklist item.²⁷

F. Checklist Item 6: Unbundled Local Switching

Z-Tel complains (at 9) that Ameritech Michigan does not provide it with an equivalent of the Privacy Manager service. That has nothing to do with checklist item (vi). Ameritech Michigan's obligation to provide unbundled local switching does not extend to such Advanced Intelligent Network ("AIN") based offerings. Unbundled local switching includes all vertical features resident in the switch. By contrast, the Privacy Manager service "features and functions" and "elements", as referred to by Z-Tel, are not resident in the central office switch. Rather, such functionality resides within the AIN environment. Alexander Reply Aff. ¶ 29. AIN functionality has never been classified as central office features or vertical services to be provided as part of unbundled local switching. Rather, they are considered under signaling. Thus, we discuss Ameritech Michigan's AIN-based offerings further under checklist item (x), and there show that Z-Tel's claims lack merit even under the checklist item to which they belong.

²⁷ There is no dispute that Ameritech Michigan currently meets this checklist item with regard to shared transport. Any dispute concerning the provision of shared transport under a prior generation interconnection agreement or tariff such as with AT&T, is simply not relevant to checklist compliance today.

G. Checklist Item 7: Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services

1. 911 and E911

Michigan Consumer Federation (“MCF”) is the only party to challenge Ameritech Michigan’s filing with respect to 911 and E911 services, but it fails to present any evidence in support of its claims (at 19) that Ameritech Michigan has not met the requirements of checklist item vii for 911 and E911 services. By contrast, the data filed by Ameritech Michigan in accordance with the MPSC’s September 30, 1997 Order in Case No. U-11229 (Harrison Reply Aff. Attachments A-C), demonstrate that Ameritech Michigan has met its checklist obligations with respect to the provision and maintenance of E911 services and the 911 database.

Following an initial review of 100% of its E911 database, Ameritech Michigan determined that only 2.77% of the over 7 million records had discrepancies and these records were immediately corrected. Harrison Reply Aff. ¶ 5. Subsequent to this verification, Ameritech Michigan implemented a monthly verification process of 100% of the changes submitted to the database. Id. ¶ 6. Of over 17 million record updates processed over a three year period, only 265 (or 0.0015%) were erroneous. Id. Of those, all but 22 were Ameritech Michigan records. Id.

Furthermore, over the last three years, Ameritech Michigan has taken 20,302 trouble reports from PSAPs. Harrison Reply Aff. ¶ 8. Of those, 2,243 were not resolved within one business day. Id. Of those delayed, 108 (or 5%) were due to Ameritech, 1,273 were due to Public Safety Answering Points (“PSAPs”) municipalities, and 862 were due to other telephone companies. Id. In total over the three years, Ameritech Michigan paid \$390,000 in fines to the State of Michigan for the delayed resolution. Id. These fines were more significant at the beginning of the three-year period and in some months, there were no fines at all. Id.

Finally, Ameritech Michigan has introduced tools for use by other carriers to ensure that their data is accurate and complete in Ameritech Michigan's E911 database. Harrison Reply Aff. ¶ 10. Ameritech Michigan introduced these tools in response to the FCC's Michigan 271 Order, in which issues related to those in Case No. U-11229 were raised. Id. ¶ 10.

These undisputed facts soundly rebut MCF's unsupported allegations. Ameritech is properly maintaining its E9-1-1 database and resolving any real or perceived errors on a timely basis. For these reasons, MCF's claims should be rejected.

2. Directory Assistance/Operator Services

The comments here also do not challenge Ameritech Michigan's offering, only the price. Contrary to WorldCom's claims, (at 31) Ameritech Michigan's pricing of OS/DA is reasonable and consistent with the Michigan Commission's Orders in U-12622 and U-11831. Rogers Reply Aff. ¶¶ 14 – 16; Florence Reply Aff. ¶¶ 3 – 6. And while WorldCom makes the odd complaint (at 31) that it has yet to receive a bill from Ameritech Michigan for OS/DA services, WorldCom has in fact received bills for the months of March through June. Rogers Reply Aff. ¶ 18.

Z-Tel's opposition (at 8-9) to Ameritech Michigan's per-call branding charge ignores the fundamental difference between calls transported over dedicated trunks and calls transported over shared trunks. Rogers Reply Aff. ¶¶ 3 - 9. For switch-based CLECs who choose Ameritech Michigan as their wholesale OS/DA provider, there is no per-call charge for branding because OS/DA calls are transported from the CLEC's switch to Ameritech Michigan's operator platform via dedicated trunks. Id. ¶ 6. By contrast, OS/DA calls for resale or UNE-based CLECs are transported over shared trunks, and a per-call query is required to identify the underlying local exchange carrier and to trigger the carrier-specific brand. Id. ¶¶ 7 - 8. This per-call query results in a per-call charge, which is detailed in Accessible Letter CLECAM00-074

issued on April 1, 2000 in direct response to CLEC requests to develop branding for OS/DA calls transported over shared trunks. Id. ¶ 7.

3. Directory Assistance Listings and Direct Access to DA Database

WorldCom's claims (at 58) that directory assistance listings ("DAL") should be priced as unbundled network elements are similarly without merit because they were rejected in the UNE Remand Order.²⁸ There, the FCC recognized that DAL is a competitive wholesale service and declined to expand the definition of OS/DA to include DAL. UNE Remand Order, ¶ 444. The FCC has further recognized that where a checklist item is not an unbundled network element, it would be counterproductive to require an ILEC to provide that element at forward-looking prices. Id. ¶ 473. In addition, the FCC has approved, as consistent with the checklist, interconnection agreements for Texas, Kansas and Oklahoma that used market-based prices, rather than UNE pricing, for DAL. Rogers Reply Aff. ¶ 25. WorldCom is trying to confuse pricing for OS/DA service with pricing for DA listings, a tactic the FCC rejected in the UNE Remand Order.

WorldCom's claims (at 61) about the quality of DA listings should also be rejected. While WorldCom claims that there has been an "unprecedented" number of reloads, it ignores the fact that these reloads were made free of charge at WorldCom's request. Rogers Reply Aff. ¶ 26. Notably, four of the reloads requested by WorldCom occurred in the second half of 2000, the last of which was more than seven months ago. Id. The "fluctuations" in the number of listings that concern MCI actually reflect Ameritech's pro-active efforts to have more LECs give permission to release their listings into Ameritech Michigan's database. Id. ¶ 27. Finally,

²⁸ In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (November 5, 1999).

WorldCom's claims (at 62) regarding "unmatched deletes" are meritless; Ameritech Michigan has investigated this issue and in each instance, it was found that the deleted listing did match a listing WorldCom had received previously. Rogers Reply Aff. ¶ 29.

H. Checklist Item 8: White Pages Directory Listings

There is no dispute as to the central point here: Ameritech Michigan offers CLECs the same type of white pages directory listings, maintained in the same database and published in the same directories, that it offers to its own retail customers. (The directory listings themselves are maintained and published by an affiliate.) AT&T contends that the process for *ordering* directory listings is "manual" and thus "blatantly discriminatory," because the process for retail listings is "entirely electronic and cuts out Ameritech's advertising affiliate AAS." AT&T Comments at 21. Both sides of AT&T's comparison are incorrect. On the wholesale side, the vast majority of orders are processed electronically, not manually. Cottrell Reply Aff. ¶¶ 57 - 58. For less than 1 percent, the advertising affiliate contacts AT&T to resolve a question and ensure the order is processed correctly. *Id.* And retail listings – just like wholesale listings – must be submitted to the publishing affiliate, where the same manual process for error resolution applies: Just as with wholesale orders, it is sometimes necessary to contact the end user to be sure its listing is entered correctly. *Id.* ¶¶ 53, 57.

In the same vein, XO claims (at 15) that the ACES software it uses to submit listings experiences "run time errors" at least three times weekly. This claim is entirely unsubstantiated – XO sent AAS only two notices regarding ACES errors for the first six months of 2001, and investigation revealed that one was attributable to XO. Kniffen-Rusu Reply Aff. ¶ 9. Each error was resolved expeditiously. *See id.* More fundamentally, ACES is *not* the primary method for CLECs to submit end user listing information. There are several other options, and the principal one is Ameritech Michigan's industry-standard EDI interface, which was modified – at the

CLECs' request – to accept and process directory listing orders on behalf of the publisher.²⁹ The ACES software is merely a transitional alternative the CLEC can use until it is prepared to implement EDI. See Kniffen-Rusu Reply Aff. ¶ 8.

XO also claims (at 15) that is not allowed to view the most current customer record contained in Ameritech Michigan's listing database. Through the TCListLink website, XO has the exact same method used by Ameritech Michigan and other CLECs to verify their listings, and can view information current as of three business days after AAS receives a correct listing order. Kniffen-Rusu Reply Aff. ¶ 6. To the extent XO or any CLEC thinks any information on TCListLink is not current or accurate, it can (and has been instructed to) notify Ameritech Michigan's publishing affiliate via a Listing Trouble Report. See id. Despite its current protestations, XO has not submitted a single Listing Trouble Report during the first six months of 2001. See id.

Finally, McLeodUSA claims that Ameritech Michigan fails to comply with checklist item (8) because McLeodUSA is required to negotiate white page directory agreements with AAS, the publisher of the white pages. McLeod Comments at 22-23. This complaint is patently absurd. McLeodUSA does not dispute that Ameritech Michigan, through its affiliate AAS, complies with the Act's substantive requirements. Nor could it: There are thousands of McLeodUSA customer listings in the white pages directory. See Kniffen-Rusu Reply Aff. ¶ 12. All McLeodUSA is complaining about is having to reach an agreement with AAS instead of with Ameritech Michigan – a complaint that has no credibility given that McLeodUSA itself uses a publishing

²⁹ AT&T asserts, without support, that Ameritech Michigan did not implement this enhancement in accordance with the agreement reached in the collaborative. AT&T Samonek Aff. ¶ 98. That is not true. Ameritech Michigan's implementation fully complied with the collaborative agreement, and that compliance will be tested by KPMG. Cottrell Reply Aff. ¶ 52.

affiliate. See id. ¶ 13. In short, Ameritech Michigan fully complies with checklist item (8) of the Act.

I. Checklist Item 9: Nondiscriminatory Access to Telephone Numbers

There is no dispute that Ameritech Michigan satisfies this checklist item.

J. Checklist Item 10: Nondiscriminatory Access to Databases and Associated Signaling Necessary for Call Routing and Completion

Ameritech Michigan is in full compliance with this checklist item.

AIN-based services. WorldCom and Z-Tel claim that Ameritech Michigan should provide certain AIN-based services in conjunction with unbundled local switching or UNE-P. Both are incorrect, for the same reason. The FCC has held that incumbent LECs may create AIN-based offerings that are unique or innovative in order to differentiate its services, and that they need not turn such proprietary services over to competitors. UNE Remand Order, ¶ 409. Both CLECs seek the same access to proprietary AIN services that the FCC denied them. Z-Tel (at 9) wants access to Privacy Manager, but WorldCom itself correctly points out that the FCC specifically cited Privacy Manager as an example of a proprietary offering that need not be unbundled. WorldCom Comments at 29 (“the FCC considered the product to be a trade secret”). Where WorldCom falters is that it fails to apply the same FCC principle to other AIN-based services that qualify for the same protection as Privacy Manager. The UNE Remand Order (¶ 409) makes clear that Privacy Manager was only one example of a proprietary AIN-based offering that an ILEC need not provide to a CLEC. At any rate, Ameritech Michigan provides CLECs access to the underlying functionality, including Ameritech Michigan’s Service Creation Environment, so they can create their own AIN-based offerings. Alexander Reply Aff. ¶¶ 30-31.

CNAM Downloads. WorldCom’s argument that Ameritech Michigan should already have complied with the Commission’s apparent directive (March 7, 2001 Order, Case No. U-

12540, at 21) that Ameritech Michigan allow downloads of its CNAM database, as opposed to per-call queries, is unavailing. WorldCom Comments at 64. What is missing from WorldCom's argument is any recognition that, until July 25, 2001, the Commission's CNAM decision was subject to Ameritech Michigan's Petition for Rehearing (the "Petition"), filed April 6, 2001.³⁰

In that Petition, Ameritech Michigan set forth the legal bases for a complete rejection of the download concept, based principally on the FCC's clear mandate that per-call queries are sufficient and downloads are not required. But, more importantly for instant purposes, neither the Commission's brief discussion of the topic in the Order nor WorldCom's cryptic comments submitted in Case No. U-12540 permitted Ameritech Michigan to know exactly *how* to comply with the Commission's decision. Indeed, WorldCom's proposed CNAM solution lacked any meaningful, understandable detail regarding the manner in which the download would be accomplished, technical feasibility, cost or pricing, and the Commission's Order does not shed light on these ambiguities. Thus, Ameritech Michigan believed that, at a minimum, Commission would seek additional evidence or otherwise clarify its ruling. As it turns out, however, the Commission denied Ameritech Michigan's Petition on July 25 – just five days before the deadline for these reply comments.

Against this backdrop, it is simple common sense that Ameritech Michigan would not have - indeed could not have - implemented CNAM downloads by this time. Ameritech Michigan is at this time going forward with implementation activities (including provisioning and pricing) to ensure that it will be able to implement the decision in a timely fashion.

³⁰ Ameritech Michigan sought rehearing of just two issues in its Petition: CNAM downloads and certain limited cost issues pertaining to dark fiber. Ameritech Michigan has fully implemented the dark fiber aspects of the March 7, 2001 Order in Case No. U-12540.

Ameritech Michigan is also evaluating its options for additional legal review of the decision, including a stay of the decision pending any appeal.

A- Links. Contrary to the comments made by the CLEC Association of Michigan, Ameritech Michigan has diligently worked to provide nondiscriminatory access to all of its signaling networks. The CLEC Association complains (at 38) about the time it took TelNet to establish A-links to the SS7 database, but the principal cause of the delay was TelNet itself, which continually changed its requests in midstream and failed to correct its own errors in ordering. See Deere Reply Aff. ¶¶ 27-30. Ameritech Michigan can hardly be blamed for its efforts to accede to the requests made by a CLEC, no matter how unusual or difficult.

K. Checklist Item 11: Number Portability

Ameritech Michigan has implemented long-term number portability (“LNP”) in every single one of its switches and for every single one of its customers, in advance of the schedule set by the FCC. Ameritech Br. at 83-84. Nevertheless, some CLECs contend it does not satisfy this checklist item. Their arguments lack merit.

XO contends (at 8-10) that Ameritech Michigan has failed to remove switch translations, causing “no answers” when a party served by one central office calls a ported number that happens to be in the same central office. That objection was obviated when Ameritech Michigan implemented 10-digit triggers, which allow calls to be routed to the CLEC’s switch without releasing the translations. Brown Reply Aff. ¶ 49. When the CLEC

sends the “activate” message, the number is ported to the CLEC switch and *all* future calls are routed to the CLEC. Id.³¹

L. Checklist Item 12: Local Dialing Parity

Ameritech Michigan complies with this checklist item, as articulated in FCC Rule 51.207. The important points here are undisputed: (1) Ameritech Michigan’s interconnection arrangements do not require any CLEC to use access codes or additional digits to complete local calls to Ameritech Michigan customers or *vice versa*, and (2) from the end user’s perspective, the interconnection of Ameritech Michigan’s network with the networks of CLECs is seamless. Deere Aff. ¶43. While the CLEC Association claims (at 38) that “Ameritech withdrew tools used to determine [local dialing parity], making it much more difficult and error prone to determine it,” it has provided no data or even a description of what “tools” it is talking about. Deere Reply Aff. ¶ 44. Thus, these claims should be disregarded.

M. Checklist Item 13: Reciprocal Compensation

There is no dispute that Ameritech Michigan is paying reciprocal compensation in accordance with all Commission and FCC orders pending judicial review. MichTel complains (at 5) that Ameritech Michigan refused to pay it reciprocal compensation on Internet traffic, but MichTel’s own comments acknowledge that the dispute has been settled, and in any event the FCC has repeatedly held that the payment of compensation on Internet traffic is irrelevant to this checklist item. Connecticut 271 Order, ¶ 67; Massachusetts 271 Order, ¶ 215;³² Kansas &

³¹ MichTel’s claim (at 8) that Ameritech Michigan “refused” to port two telephone numbers is wrong. MichTel submitted the request for one number with an incorrect Network Channel Interface code, and has yet to correct its error despite repeated requests to do so. Mondon Reply Aff. ¶5. As for the other number, Ameritech Michigan’s records show no porting request was even received. Id.

³² In re Application of Verizon New England Inc. et al. to Provide In-Region, InterLATA Services in Massachusetts, CC Docket 01-9 (rel. April 16, 2001).

Oklahoma 271 Order, ¶ 251; Texas 271 Order, ¶ 386; New York 271 Order, ¶ 377. Finally, MichTel’s charge that Ameritech Michigan somehow fails this checklist item because it asked the MPSC to approve new rates for reciprocal compensation (MichTel Comments at 6-7) is absurd on its face. As the Commission knows, Ameritech Michigan asked it to approve updated rates, and the Commission (after notice and an opportunity for comment) did. Jan. 23, 2001 Order, Case No. U-12696; Alexander Reply Aff. ¶¶ 35-37.

N. Checklist Item 14: Resale

Ameritech Michigan makes available for resale all telecommunications services that it provides to its retail customers, “in accordance with the requirements of sections 251(c)(4) and 252(d)(3).” Ameritech Br. at 87.

Resold DSL. Contrary to AT&T’s allegations (AT&T at 27-30) Ameritech Michigan does not provide *any* DSL services to retail customers. (Habeeb Reply Aff. ¶ 7). Ameritech Michigan does market and sell DSL Internet Access services provided by its data affiliate AIMS. (Habeeb Reply Aff. ¶ 9.) However, this DSL Internet Access is an information service—not a telecommunications service—and therefore not subject to any resale obligations. To the extent AT&T is seeking to resell the bundled DSL Internet Access service that Ameritech Michigan’s affiliate AIMS provides at retail, that claim must be rejected. Just ten days ago the FCC rejected an identical request in its Connecticut 271 Order, which was the first time the FCC has applied the ASCENT decision in a Section 271 application. There, the FCC flatly rejected a similar

claim that Verizon make available for wholesale resale its bundled retail DSL Internet Access service. Connecticut 271 Order, ¶ 42, note 93.³³

Further, Ameritech Michigan's advanced services affiliate (ASI North) is in compliance with Section 251(c)(4), by offering an interconnection agreement through which CLECs can obtain at a wholesale discount all telecommunications services that ASI North provides at retail (along with interconnection, unbundled access, and collocation). Mr. Finney, on behalf of AT&T, however claims that ASI's generic interconnection agreement is nothing more than "vague promises" (Page 4). He then questions why AT&T would even need to enter into a separate interconnection agreement ("ICA") with ASI, or needs to interface with ASI's electronic interfaces operational support systems (at Page 5). It is necessary to enter into a separate interconnection agreement with ASI, and it is necessary to use ASI's separate OSS, because these advanced services are provided by ASI, they are not provided by Ameritech Michigan. Accordingly, ASI makes available to all CLECs a generic ICA that covers all five Ameritech states. ASI is in negotiations with a number of CLECs. In fact, ASI and IG2 recently executed this generic interconnection agreement and will soon be making a joint filing with the Commission for its approval.

AT&T's error is that ASI North provides DSL transport service almost entirely to Internet Service Providers ("ISPs"), not to "end-user customers" as AT&T claims. In the Second Advanced Services Order (¶ 19), the FCC held "that section 251(c)(4) does not apply where the incumbent LEC offers DSL services as an input component to Internet Service Providers who

³³ The FCC reasoned: "We are not persuaded by ATG's argument that Verizon should make its bundled offerings that include deregulated CPE and internet access available for resale. The resale obligation clearly extends only to telecommunications services offered at retail. *See* 47 C.F.R. § 51.605 (requiring an incumbent LEC to offer, on a wholesale basis, any telecommunications service that it offers to retail customers)."

combine the DSL service with their own Internet service” as ASI North does here.³⁴ As the FCC reasoned, section 251(c)(4) refers to services provided “at retail,” and its resale obligations thus apply only to “sale[s] to an ultimate consumer.” *Id.* ¶ 17. By contrast, DSL services sold to ISPs “are not targeted to end-user subscribers, but instead are targeted to Internet Service Providers that will combine a regulated telecommunications service with an enhancement, Internet service, and offer the resulting service, an unregulated information service, to the ultimate end-user.” *Id.* Accordingly, “such services do not fit within the type of transaction Congress intended to include under the discounted resale obligation in section 251(c)(4).” *Id.* On appeal, the D.C. Circuit affirmed, finding “the Commission’s Order in all respects reasonable.” Association of Communications Enterprises v. FCC, ___ F.3d ___, 2001 WL 709210 (D.C. Cir. June 26, 2001).

Ameritech Michigan’s and ASI North’s adherence to the obligations – and limitations – established by the Congress and the FCC, and upheld by the D.C. Circuit, is most certainly not “a formalistic reliance on . . . corporate structure to avoid . . . Section 251 obligations” the way AT&T (at 28) portrays it. The question here is not the identity of the service *provider* – we can even assume AT&T’s premise that “Ameritech Michigan, ASI [North] and any other affiliates [must] be viewed together for purposes of Section 251(c)” (*id.*) – but the identity of the *recipient*. Here, the recipient of the service is not an end user (as section 251(c)(4) requires), but an ISP; regardless of which company provides that service, it is under no obligation to resell it.³⁵

³⁴ Of course, section 251(c)(4) *does* apply to DSL services offered to end users, as opposed to ISPs. Although ASI North’s end-user sales are rare, it offers the identical services to requesting carriers for resale, via its standard interconnection agreement. Thus, AT&T is dead wrong when it claims (at 28) that end-user services are not offered for resale.

³⁵ Given that Ameritech Michigan and ASI North need not and do not offer resold DSL, the Commission should disregard AT&T’s request for performance measures in this area. See Fioretti Reply Aff. ¶¶ 73 – 77.

AT&T's reliance on the January 2001 decision in *ASCENT*,³⁶ is clearly misplaced. In *ASCENT*, the United States Court of Appeals held that data affiliates of incumbent LECs are subject to all obligations of section 251(c) of the Act.³⁷ This decision did not expand the scope of Section 251(c)(4). Therefore, the fact that a service is provided by an affiliate does not mean it is automatically subject to Section 251(c)(4) as AT&T seems to assume. Thus, under this decision, Section 251(c)(4) applies to services provided by ASI only to the extent it provides "telecommunications services" to customers "at retail." Connecticut 271 Order, ¶ 30. Here it is undisputed that ASI does not provide DSL Transport to mass market customers at retail, and to the extent it provides DSL Transport to ISPs for their use in providing Internet access, that wholesale transaction is not subject to Section 251(c)(4).

Centrex Offerings. The CLEC Association claims that the reseller's discount is not available for any Centrex arrangement that has been grandfathered and that five out of the six Ameritech Centrex offerings have been grandfathered. Both assertions are wrong. First, in Michigan a grandfathered Ameritech Centrex retail contract can be assumed by a CLEC and the CLEC would receive a Commission-approved wholesale discount of 3.42 percent. *Alexander Aff.* ¶ 38. Second, most Ameritech Michigan Centrex customers are purchasing services that are not "grandfathered". *Id.* For such contracts, the CLEC can elect to terminate the assumed retail contract and replace it with one of greater term and volume at the full Michigan wholesale discount of 18.15% without incurring any termination charges. *Id.*

³⁶ *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*ASCENT*).

³⁷ The court stated that, "the Act's structure renders implausible the notion that a wholly owned affiliate providing services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent." *ASCENT*, 235 F.3d at 668.

II. AMERITECH MICHIGAN'S ENTRY INTO THE INTERLATA SERVICES MARKET IN MICHIGAN WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

A. Consumers Are Clearly Benefiting from Bell Company Entry into the In-Region, InterLATA Market

Experience in the states in which interLATA relief has been granted shows that a BOC's entry into the interLATA market benefits consumers, not only because it adds a strong competitor to the long-distance market, but also because it encourages the long-distance carriers to compete in the local market. Ameritech Br. at 89-90. AT&T claims (at 16) that the Texas 2001 Report on the Scope of Competition in Telecommunications Markets shows that the state of competition in Texas after Southwestern Bell's 271 approval did not have a positive effect. The simple and conclusive rejoinder comes from the Texas report itself, which (contrary to AT&T's portrayal) states that "*evidence available for this report clearly demonstrates that competitive providers have a visible market share, with dozens of CLECs entering the more lucrative local wireline voice markets in Texas.*" Heritage Reply Aff. ¶ 42. Furthermore, the commissioners' cover letter states that "[n]umerous new providers have entered the market, and the market share held by competitive providers has increased significantly." *Id.* Likewise, Sprint's unsubstantiated sky-is-falling contention (at 6-7) that "once Ameritech secures the access to the long distance market that they seek, conditions for competition will not get better, and they are likely to get worse" is refuted by the FCC's recent report on local competition. The FCC's accompanying news release confirmed:

States with long distance approval show the greatest competitive activity. CLECs captured 12% of the market in Texas, gaining over a half-a-million (644,980) end-user lines in the six months since the Commission authorized SBC's long distance application in Texas, an increase of over 60% in the customer lines since June of 2000. CLEC market share in New York and Texas (the two states that had 271 approval during the reporting period ending in December 2000) are over 135% and 45% higher than the national average, respectively.

Heritage Reply Aff. ¶ 39. Recent data from Texas, Kansas, and Oklahoma show continued increases, and the Commission can expect similar results in Michigan. *Id.* ¶ 40. See also, the Reply Affidavit of Dr. Debra Aron, ¶¶ 4-5, 9, discussing CLECs' business prospects and market conditions in the telecommunications industry today.

B. Ameritech Michigan Is Subject to Comprehensive Performance Reporting and Monitoring Requirements

1. Performance Measures and Standards

It would be difficult to imagine an issue more thoroughly and repeatedly resolved by collaborative agreement and Commission approval than that of performance measurement and standards. In 2000 and 2001, Ameritech Michigan and the CLEC community have filed three joint motions to approve additions and changes to the performance measurement plan, and the Commission has approved all three. Just this month, the Commission approved the latest revisions, again “acknowledg[ing] and commend[ing] the efforts of the collaborating parties to develop reasonable performance measurements and data reporting requirements through mutual cooperation.” July 11, 2001 Order, Case No. U-11830, at 2. As a result, there are now over 160 performance measurements, with over 3,000 product, service and geographic categories. Fioretti Reply Aff. ¶ 16. And on an ongoing basis, the parties engage in six-month reviews to keep the measures and standards up to date; the current review is underway now.

Unsatisfied, WorldCom now claims there is an “urgent” need for the Commission to adopt a whole slew of new performance measures and standards (with an entirely new scheme of penalties to boot), outside the collaborative process, to address a service that is *not* part of the checklist: FCC-tariffed special access services. WorldCom Comments at 39-57. The Commission should reject WorldCom’s request out of hand. This is neither the time nor the place to establish new performance measures: the place for that is the collaborative and dispute

resolution process in Case No. U-11830, and the time is at the conclusion of the current six-month review.

The purpose of this proceeding is to evaluate Ameritech Michigan's compliance with the checklist, and the FCC has repeatedly, and recently, held that "special access" is *not* part of any checklist item. Texas 271 Order, ¶ 335 ("[W]e do not consider the provision of special access services pursuant to a tariff for purposes of determining checklist compliance.") In so doing, the FCC addressed and rejected WorldCom's contention here, that special access should be considered a checklist item because WorldCom uses it in lieu of checklist items like unbundled loops and transport. Id. ("The fact that the competitive LECs can use interstate special access service in lieu of the EEL, a combination of unbundled loops and transport, and can convert special access service to EELs, does not persuade us that we should alter our approach and consider the provision of special access for purposes of checklist compliance."). See also New York 271 Order, ¶ 340 ("We cannot accept the assertion by a number of these parties that the provision of special access should be considered for purposes of determining checklist compliance in this proceeding. . . . We have never considered the provision of interstate access services in the context of checklist compliance before."). Just ten days ago the FCC held once again that "...the provision of interstate access services is not a checklist compliance item." Connecticut 271 Order, ¶ 50, note 116. In any event, the FCC-approved tariff for special access services already provides a series of performance standards, enforced by credits. Fioretti Reply Aff. ¶¶ 82-90.

2. Remedy Plan

On April 17, 2001, the Commission issued an order in Case No. U-11830, in which it adopted, with some modifications, Ameritech Michigan's plan for self-executing remedies to enforce its performance standards. Ameritech Michigan and certain CLECs filed separate

petitions for rehearing of certain aspects of that order, as is their right under law. Several CLEC comments repeat the arguments made on rehearing, but the Commission has already resolved those petitions by its July 25, 2001 Order in Case No. U-11830.

While the rehearing petitions were pending, Ameritech Michigan proposed a contract Amendment to its interconnection agreements, along with an Appendix. Fioretti Reply Aff. ¶ 21. The first draft Amendment clearly provided that it would become effective 10 days after approval by the Commission. Id. Moreover, the Amendment provides that: “Performance Measure remedies shall be available based on performance data from the next full month following the Amendment’ Effective Date. Id. Further, to avoid any appearance of delay, Ameritech Michigan revised the Amendment’s Effective date to be 10 days after *filing* with the Commission. Id. ¶ 22. In short, Ameritech Michigan clearly intends to comply with the April 17 Order, as modified on rehearing. Id.

Nevertheless, some CLECs contend that Ameritech Michigan is trying to evade the Commission’s Order. Their accusation is based on misreading certain language from the *Appendix*, taken out of context and without the accompanying Amendment, which reserves both parties’ rights to seek rehearing or judicial review of Commission orders. Fioretti Reply Aff. ¶¶ 20, 25. The challenged language simply reserves whatever rights *either* party may have to argue, in an appropriate forum, that a Commission-ordered remedy plan is not appropriate. Id. ¶ 25. Ameritech Michigan and the movants have rights according to law to seek revision of Commission orders, and a reservation of such rights is entirely proper given that neither party can know exactly what the Commission may order in the future, and both parties already knew that the Commission’s existing order was already subject to rehearing requests filed by *both* sides. Id. The intent of section 1.6 was *not* to evade compliance with Commission orders now

or at any future date, as the movants suggest. In fact, the first sentence of section 1.6 stated that state commission orders “shall be . . . incorporated into this Agreement by reference and shall supersede and supplant all performance measurements previously agreed to by the parties.” *Id.*

¶ 23. At any rate, to avoid any further confusion, Ameritech Michigan modified its proposed Appendix, using substantially the same language as agreed to by the parties in similar proceedings in Illinois and Ohio. *Id.* ¶¶ 24-25.

WorldCom similarly contests language in the draft Appendix that stated liquidated damages were to be the sole and exclusive remedy for failure to meet performance measures. This was a standard liquidated-damages provision, but it is now obsolete given the Commission’s approval of the remedy plan. *Fioretti Reply Aff.* ¶ 27. The remedy plan expressly states that it is “not intended to foreclose other noncontractual legal and regulatory claims and remedies that may be available to a CLEC” and Ameritech Michigan stands firmly behind that commitment. *Id.* Accordingly, the revised offer does not contain any language regarding exclusivity, and the Commission should disregard WorldCom’s complaints. *Id.*

C. The CLECs’ Requests For Affirmative Relief Go Beyond The Scope Of This Checklist Proceeding.

1. The Commission Should Reject AT&T’s Attempt To Impose “Structural Separation”

AT&T’s demand (at 32-36) that this Commission order the breakup (or “structural separation”) of Ameritech Michigan simply has nothing whatsoever to do with the 14 point checklist or Ameritech Michigan’s forthcoming request for interLATA authority. Apart from the merits, or lack thereof, this request is clearly outside the scope of this proceeding. Accordingly, this Commission should not waste even a moment addressing AT&T’s patently frivolous demand, but certainly not in this proceeding. Nevertheless, since AT&T raised the issue, Ameritech Michigan will respond.

No other state commission in the country has taken this radical step, and for good reason. As the Chairman of the FCC has explained, Congress specifically chose a scheme of interconnection, *not* separation, to facilitate the development of local competition.³⁸ Second-guessing that judgment, and imposing the structural relief AT&T advocates, would go beyond not only the scope of this proceeding but also the scope of this Commission's authority. It would be contrary to federal law, and it would be exceedingly bad regulatory policy. Moreover, as demonstrated by the analysis presented in the Reply Affidavit of Dr. Debra Aron, the fundamental premise underlying AT&T's demand for structural separation, that the federal Act is an abject failure and that Ameritech Michigan must be held responsible for the supposed "death" of the CLEC industry, is simply not true.

a. Michigan Law Does Not Authorize AT&T's Proposal

AT&T fails to identify any provision of Michigan law that authorizes the structural separation of Ameritech Michigan because no such law exists. Certainly, nothing in the MTA gives the Commission such authority. To the contrary, section 103(1) of the MTA provides that:

Except as otherwise provided in this act, this act shall not be construed to prevent a person from providing telecommunications services in competition with another telecommunication provider.

AT&T's structural separation proposal envisions a network company that would be prohibited from offering retail services in competition with AT&T or anyone else – a result directly contrary to section 103(1). Further, like the 1996 Act (described below), the MTA also clearly and repeatedly contemplates the existence of a provider who, like Ameritech Michigan, provides both retail and wholesale services. See, e.g., Sections 305, 352, 355, 357, 362.

³⁸ See, Powell: FCC Not Scoping Out Issue-Oriented Merger Conditions, Washington Telecom Newswire, Apr. 5, 2001.

The absence of any authority to order structural separation under Michigan law is belied by the simultaneous push by AT&T and its front groups in Michigan to introduce HB 4764 in the Michigan House, a bill which would require structural separation. If, indeed, AT&T believed this Commission had the authority and jurisdiction to require structural separation today, there would be no reason to amend the statute.

b. Forced Structural Separation Is Barred By Federal Law

Even if the Commission had authority under Michigan law to require Ameritech Michigan to split its integrated business into structurally separate entities (which, as previously noted, it does not), both the text and structure of the 1996 Act make clear that the exercise of that authority is barred by federal law.

AT&T's proposal for structural separation is squarely foreclosed by section 253(a) of the 1996 Act. Like the MTA, section 253(a) expressly preempts all state and local barriers to entry, and it does so in broad terms: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of *any entity* to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a) (emphasis added).

In addition to the express language of section 253, structural separation is barred by federal preemption doctrine, which prohibits this Commission from creating "a conflict between federal and state law." New York Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 654 (1995). Even where "the ultimate goal of both federal and state law is the same," a state law "is pre-empted if it interferes with the methods by which the federal statute was designed to reach that goal." Gade v. National Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 103 (1992) (internal quotation marks omitted). The methods Congress designed to reach the goal of local competition are set forth in section 251 of the Act, and they plainly assume that

incumbent LECs such as Ameritech Michigan would act in both a wholesale and a retail capacity. A forced, involuntary structural separation would thus “interfere[] with the methods” Congress relied upon to facilitate local competition.

As FCC Chairman Powell aptly put it, Congress “specifically opted not to take th[e] route” of structural separation, choosing instead the “interconnection” scheme set out in section 251.³⁹ That scheme reflects Congress’s “considered judgment” for how best to introduce competition into the local exchange. AT&T’s untested scheme conflicts with that congressional judgment and is preempted for that reason alone.

c. Structural Separation Would Frustrate Local Competition

Even if AT&T’s plan was appropriate for consideration here (it is not), and even if it were consistent with federal and state law (it is not), it would still be a colossally bad idea. AT&T’s plan would cause uncertainty and disruption in the market, while dramatically increasing Ameritech Michigan’s costs and reducing its efficiencies. Against these certain and substantial harms, AT&T offers nothing more than unsupported rhetoric.

As noted in Ameritech Michigan’s initial filing and further supported here, the 1996 Act is working. Aron Reply Aff. ¶¶ 29-31. Competition continues to grow in Michigan, due in large part to the Commission’s efforts. AT&T’s proposal that the Commission turn its back on these successes now – on the eve of their culmination in a section 271 application – would render meaningless all the prior efforts of the Commission, Ameritech Michigan and the CLEC community. And it would impose a whole series of new (and much higher) costs, not only for this Commission but also for the telecommunications consumers of Michigan. For one thing, structural separation would give rise to a tremendous degree of uncertainty that would require

³⁹ See Powell: FCC Not Scoping Out Issue-Oriented Merger Conditions, Washington Telecom Newswire, Apr. 5, 2001.

many years – not to mention substantial Commission resources – to resolve. For another, it would hamstring Ameritech Michigan’s ability to serve its customers, to their detriment. Because of effects such as these – which the Pennsylvania state commission recognized would be “substantial”⁴⁰ – the FCC has concluded that structural separation “hinder[s] the introduction” of services that “benefit the public.”⁴¹

Against these concrete and substantial harms that would inevitably result from structural separation, AT&T offers a hodge-podge of purported policy justifications to support its proposal. But, for the most part, AT&T does not even attempt to tie its justifications to its proposal and when it tries, its claims are entirely unpersuasive. For example, AT&T claims the federal Act has failed because some CLECs are experiencing a financial hangover after the initial boom of capital investment. But the blame for CLEC failures cannot be pinned on Ameritech Michigan or on the 1996 Act – and even if the 1996 Act has “failed,” as AT&T contends, fixing it is the job of its author, Congress. See Aron & Heritage Reply Affs. Further, AT&T fails to explain why or how structural separation would cure this economic downturn. Common sense shows why it would not: Structural separation would introduce, in the words of FCC Chairman Powell, an “extraordinary period of disruption and uncertainty” in the development of local

⁴⁰ Opinion and Order, Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, Docket No. M-00001353, at 20-21 (Penn. Pub. Util. Comm’n Mar. 22, 2001) (“Pennsylvania Order”).

⁴¹ Report and Order, Amendment of Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry), 104 F.C.C.2d 958, ¶ 89 (1986); see also Report and Order, 1998 Biennial Regulatory Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets, CC Docket Nos. 96-61 & 98-183, ¶40 (rel. Mar. 30, 2001) (“structural separation requirements” diminish “the potential for [Bell companies] to offer innovative services to a broader range of customers”).

competition.⁴² At the same time, it would lock in reliance on Ameritech Michigan's wholesale network, thereby eliminating CLECs' incentive to deploy their own facilities. The FCC has stressed that, "in the long term, the most substantial benefits to consumers will be achieved through facilities-based competition."⁴³

The only policy justification AT&T even attempts to tie to its proposal is the bare assertion that structural separation will guarantee nondiscrimination, and therefore reduce the need for regulatory oversight. But the Pennsylvania state commission has rejected that exact same contention, recognizing that structural separation would result in "no less regulatory oversight than that currently prevailing" under the 1996 Act. Pennsylvania Order at 31.

The one area in which AT&T can correctly claim that structural separation has been implemented is the power industry. But even putting aside the differences between telecommunications and power, AT&T's analogy simply serves to highlight the flaw in its proposal. The legacy of structural separation in the California power industry is an economic crisis that has left the state's consumers in the dark and its utilities on the brink of bankruptcy. The Commission should resist AT&T's invitation to risk visiting that same damage on the market for local telephone service in Michigan.

2. The Commission Should Reject The CLEC Association's Attempt To Abrogate Ameritech Michigan's Long Term Contracts

The CLEC Association requests that this Commission abrogate Ameritech Michigan's existing contracts with retail customers as a precondition for Section 271 approval. CLEC Ass'n

⁴² Michael K. Powell, Chairman, FCC, Hearing of the Telecommunications and Internet Subcommittee of the House Energy and Commerce Committee: Agenda and Plans for Reform of the FCC, Mar. 29, 2001.

⁴³ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 F.C.C. Rcd. 3696, ¶ 7 n.12 (1999) (internal quotation marks omitted).

Comments at 31-32. This CLEC Association request, characterized as a forced “fresh look,” is premised on the unsubstantiated and unsupported claims that Ameritech Michigan has locked up many customers with term and volume contracts. The FCC has held that such proposals are not relevant to checklist compliance. Texas 271 Order, ¶ 392 (“We find unpersuasive the claims of Adelphia, Allegiance, e. spire, and KMC that the Commission should allow customers in long-term contracts to switch to competing telecommunications carriers without termination penalties under a ‘fresh look’ argument. . . . [T]he absence of a “fresh look” requirement is not a basis for rejecting a section 271 application.”). At any rate, this Commission has already recently addressed the issue on the merits and rejected exactly the type of relief sought by the CLEC Association.

In Case No. U-11525, on its own motion, the Commission initiated an investigation regarding Ameritech Michigan’s provision of intraLATA toll services. In its November 5, 1998 Opinion and Order (at 18), the Commission found, with regard to Ameritech Michigan’s volume and term contracts for intraLATA toll, that “there is no need to prohibit Ameritech Michigan from entering into contracts under its ValueLink program. Nor is there any need to prohibit the company from enforcement of the early termination penalty provisions of those contracts.” As the Commission explained (id. at 19), “other providers have similar programs in which customers are given a discount for agreeing to a specific minimum use for a particular minimum period of time.” Thus, “[t]o prohibit Ameritech Michigan from the ability to offer such plans would unduly impair the company’s ability to compete with other providers.” Id. Likewise, the Commission’s July 11, 2001 order in Case No. U-12764 (which involved complaints by various carriers against AT&T), recognized and described at length the widespread use of these types of contracts and again upheld the imposition of term liability. And in its February 23, 1995 order in

Case No. U-10647 (at 79-80), one of the first cases in which the concept of “fresh look” or abrogation of contracts between providers and customers was suggested, the Commission rejected City Signal’s “fresh look” proposal.

There is simply no factual support for the CLEC Association’s claims that Ameritech Michigan’s services are “marketed under questionable circumstances” or that Ameritech Michigan provides “compensation arrangements which are suspect.” CLEC Ass’n Comments at 31-32. Likewise, there is no support for its witness’ conclusory statement that “at least 80% of customers in Michigan are under long term contracts with Ameritech Michigan,” aside from a reference to an equally conclusory “estimate” by LDMI’s sales representatives. In any event, the CLEC Association ignores the fact that CLECs are able to assume many of Ameritech Michigan’s existing contracts with end users at a wholesale discount. See Alexander Reply Aff. ¶ 38. Alternatively, competitive carriers can offer their own contracts and, in many cases, can pay the customer’s legitimate termination liability under an existing contract. Finally, as recognized in Case No. U-11525, the customer has the alternative of switching its local service to a competitive provider while remaining bound under its existing contract for intraLATA toll with Ameritech Michigan.

Thus, even if it were appropriate for consideration in this proceeding, the attempted abrogation of Ameritech Michigan’s contracts as a precondition of 271 relief is not substantiated by the facts and has been previously rejected, consistently, by this Commission. It simply has no place in this proceeding.

3. The Commission Cannot Terminate Ameritech Michigan’s Right To Judicial Review

WorldCom also suggests (at 80-82) that, as a condition of 271 approval, this Commission should force Ameritech Michigan to drop its pending judicial challenges to certain Commission

decisions. Indeed, WorldCom wins the chutzpah award when it goes so far as to seek a coerced end to Ameritech Michigan's opposition to an appeal prosecuted by *WorldCom*. WorldCom cites no legal authority or precedent for this novel request because there is none. There is simply no legitimate basis for requiring an applicant such as Ameritech Michigan to check its legal rights at the door in order to pursue Section 271 relief. Clearly, such a requirement would not be in the public interest. There is no benefit in the continued enforcement of an unlawful order; there is no harm if a lawful order is upheld; and in any event a court's ruling benefits everyone by clarifying the law.

CONCLUSION

For the reasons set forth above, in Ameritech Michigan's Checklist Informational Filing, and in the supporting affidavits and attachments, Ameritech Michigan respectfully requests that the Commission enter an order recommending a finding that Ameritech Michigan has satisfied the requirements of Track "A" and of the competitive checklist, subject to satisfactory completion of the OSS test and review of performance data.

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