

**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

**REPLY AFFIDAVIT OF  
SALVATORE T. FIORETTI  
ON BEHALF OF  
AMERITECH MICHIGAN  
\*\*PUBLIC\*\***

**DATED: JULY 30, 2001**

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## **LIST OF ATTACHMENTS**

**A – Revised Amendment and Appendix Performance Measurements**

I, Salvatore T. Fioretti, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

## **INTRODUCTION**

1. My name is Salvatore T. Fioretti. My business address is 2000 W. Ameritech Center Drive, Location 4G48, Hoffman Estates, IL 60196. I am the same Salvatore T. Fioretti who submitted a Performance Measurements Affidavit in this proceeding on May 15, 2001 ("Checklist Informational Filing Affidavit" or "May 15 Affidavit"). I hereby verify, based upon my personal knowledge, the accuracy of each and every fact contained in the Affidavit I am filing today, July 30, 2001, in Michigan Public Service Commission Case No. U-12320. I further verify, based upon my personal knowledge, the accuracy of each and every fact contained in the Affidavit I filed on May 15, 2001 in Case No. U-12320.

## **PURPOSE AND EXECUTIVE SUMMARY**

2. The purpose of my Reply Affidavit is to respond to certain issues raised by AT&T, McLeodUSA, the Michigan Attorney General, WorldCom, and Z-Tel Communications in their pleadings and supporting affidavits filed on June 29, 2001 in this proceeding.

## **ISSUES**

3. I will address the following issues in this Reply Affidavit:
  - a. **Checklist Filing**
    - (1). Whether Ameritech has complied with the MPSC's February 9, 2000 Order in Case No. U-12320 that it report a minimum of three consecutive months of performance data (see pp. 13-14 of AT&T Moore's affidavit; and Michigan Attorney General's (AG) Brief);
    - (2). Whether Ameritech accurately reports its performance (see pp. 6, 9 of AT&T's DeYoung's affidavit, pp. 17-18 of AT&T's Moore affidavit, and AG Brief); and,

(3). Whether it is important that performance measures be met to ensure irreversible competition and prevent backsliding by Ameritech (see AG Brief).

b. **Remedy Plan**

(1). Whether Ameritech has complied with the MPSC's April 17, 2001 Order in Case No. U-11830 that it offer a performance remedy plan (see pp. 4-10 of AT&T Moore's affidavit, pp. 20-21 of McLeodUSA's Brief, and pp. 82-83 of WorldCom Brief);

(2). Whether the "K-table" is appropriate for use in Ameritech's remedy plan (see p. 11 of Z-Tel's Brief); and;

(3). Whether performance reporting and monitoring requirements are sufficient to ensure that the public interest is being served (see pp 22-25 of Michigan Consumer Federation ("MCF") Brief).

c. **Wholesale Performance**

(1). Whether Ameritech has successfully integrated the performance measurements, which were based on "business rules" developed in Texas, with its own systems and processes (see paragraphs 29-34 of AT&T DeYoung's affidavit and pp. 23-25 of AT&T Brief);

(2). Whether Ameritech correctly calculates Performance Measure 13 "Order Process Percent Flow Through" for UNE Loops when it measures total order flow through for PM 13.1 (see p. 15 of AT&T Moore's affidavit);

(3). Whether the definition Ameritech uses to measure orders flowing through its system in order to report its-flow-through performance is appropriate (see pp. 16-17 of WorldCom Lichtenberg's affidavit); and,

(4). Whether Ameritech's provisioning of resale and UNE service is sufficient (see pp. 11-17 of McLeodUSA's Brief and pp. 2-3 of Long Distance of Michigan, Inc. ("LDMI") Reid's affidavit).

d. **Resold DSL**

Whether Ameritech is required to provide resold DSL services (and associated performance measurements) in Michigan (see pp. 11-13 of AT&T Moore's affidavit and pp. 25-26 of AT&T Brief).

e. **Special Access**

Whether it is necessary for the Michigan Public Service Commission ("MPSC" or "Commission") to establish standards of performance for special access (see pp. 11-16 of WorldCom's Beach's affidavit; pp. 39-57 of WorldCom's Brief).

f. **AT&T Market Entry Trial**

Whether the "market entry trial" being proposed by AT&T is appropriate and whether it could negatively impact the official third party OSS test and distort the performance measure results being reported (see pp. 13-15 of AT&T's Samonek's affidavit).

**RESPONSES TO ISSUES**

4. A summary of my responses to the above listed issues in my Reply Affidavit is as follows:

a. **Checklist Filing**

The Commission has specifically approved of an initial checklist filing followed by a subsequent review of KPMG's third party test and three months of actual performance measurement reporting as required by its February 9, 2000 Order-- and this is exactly what Ameritech is doing.

b. **Remedy Plan**

Ameritech Michigan is in compliance with the Commission's April 17, 2001 Order in MPSC Case No. U-11830 ("Remedy Order"). Both Ameritech and various CLECs filed petitions for rehearing of certain aspects of that order, as is their right under law. The Commission ruled on those petitions by order of July 25, 2001 ("Remedy Rehearing Order") wherein it granted Ameritech Michigan's petition in part, denied the CLEC petition, and modified its Remedy Order accordingly. While the rehearing petitions were pending, Ameritech Michigan proposed a contract Amendment to its interconnection agreements.

Ameritech Michigan clearly intended to comply with the Remedy Order, and to pay remedies in accordance with that Order's terms, so long as the Order remains in effect.

This Remedy Plan, now approved by the Commission, however is just one of many tools to ensure compliance with performance standards. It provides for fast, automatic payments, without all of the procedures and protections that are typically required in an enforcement proceeding. In its orders, the FCC noted that

the CLECs in those proceedings (as is the case here) proceeded under a mistaken basic assumption: that liability under a performance remedy plan “must be sufficient, *standing alone*, to completely counterbalance [the applicant’s] incentive to discriminate.” Rather, as the FCC pointed out, there were other consequences, including federal enforcement actions pursuant to section 271(d)(6).

c. **Wholesale Performance:**

Ameritech has taken several positive steps in addressing the wholesale performance issues in Michigan. These include: (1) the appointment of a full-time network vice president to direct our wholesale operations task force and to provide more focus on correcting process deficiencies in our wholesale operations and reducing our penalty payments; (2) the creation of a dedicated “CLEC customer care group”; (3) the expansion of the hours of coverage in assignment centers; (4) the establishment of an interdepartmental UNE Provisioning Improvement Team; and (5) the preparation and delivery of training packages to central Office and field personnel to address deficiencies that are identified by the wholesale operations task force. Ameritech anticipates that these initiatives will soon result in improved wholesale performance.

Notwithstanding the fact that it is premature to evaluate Ameritech overall performance results, many CLECs raise isolated and narrow performance complaints. I respond to these allegation below and show that the CLEC either have their facts wrong, or that Ameritech has efforts underway to improve those areas that need to improve. However, the bottom-line at this stage of the proceedings is that the CLECs narrow assessment of Ameritech’s performance is premature and based on incomplete information. Consistent with the procedures adopted by the Commission, an overall assessment of Ameritech’s performance should only be made after Ameritech has submitted three consecutive months of performance results.

d. **Resold DSL**

AT&T alleges that the baseline performance measures adopted by the MPSC in Case No. U-11830 are incomplete because there are no performance measures for resold DSL. The short answer is that Ameritech Michigan has no performance measures for DSL service because Ameritech Michigan does not offer DSL service. The product(s) that AT&T refers to as “resold DSL” are either not subject to Section 251(c)(4) wholesale resale requirements, or are so limited and unique that it would be impractical and unnecessary to implement performance measurements.

e. **Special Access**

This Section-271 compliance proceeding is not an appropriate venue to address WorldCom's concerns with special access services. The purpose of this filing relates to the performance measurements to be implemented to demonstrate the non-discriminatory provision of OSS to CLECs as required by the FCC pursuant to Section 271 of the Act for interconnection, access to unbundled network elements and resale services. In contrast, Special Access services are purchased under the FCC tariff rather than from terms of an interconnection agreement or resale or unbundled network element tariff. They are not relevant to Ameritech Michigan's provision of UNEs as required by the checklist in Section 271.

f. **AT&T Market Entry Trial**

AT&T discusses a "market entry trial" that it is conducting in Michigan which she claims will provide additional information that should be considered by the MPSC in conjunction with the official, MPSC sponsored, independent third party test of Ameritech's OSS systems. AT&T's proposed test may very well have a negative impact on the reported wholesale, and perhaps retail, performance measurement results during the test period and could potentially impact the associated remedy payments that Ameritech may incur during this period, and thus should be excluded from actual results.

## **CHECKLIST FILING**

### **PROCEDURES APPROVED BY THE MPSC**

5. As noted in several of the Intervenor filings, Ameritech's May 15, 2001 Checklist Informational Filing did not provide three consecutive months of compliant performance as required by the MPSC's order dated February 9, 2000 in Case No. U-12320. AT&T discusses this fact in their brief (p.25) and in the affidavits of Ms. Moore (p.13-14) and Ms. DeYoung. Ms. DeYoung notes that "Certainly it is very early on in this process, in that the Third-Party test has not yet reached the stage of actual transaction testing and there has not yet been any real performance audit or review" (p. 23).
6. Ameritech does not dispute these statements; in fact I acknowledged them in ¶8 of my May 15 Affidavit by stating "A subsequent filing will provide the details of Ameritech's

actual performance for each of the checklist items. This subsequent filing will include a minimum of three consecutive months of performance data reporting Ameritech's compliance with all of the performance measures required by the Michigan Commission's orders in Case No. U-11830".

7. What the Intervenors ignore is the fact that the procedures adopted by the Commission in this docket contemplate the "bifurcated" approach taken by Ameritech. The Commission's May 15, 2001 Order specifically approved of an initial checklist filing followed by a subsequent review of KPMG's third party test and three months of actual performance measurement reporting as required by its February 9, 2000 Order.
8. Accordingly, the intent of my May 15 Affidavit regarding performance measures was simply to present the foundation or framework for that subsequent evaluation by providing: (a) a description of the baseline performance measurements; (b) a description of the collaborative process that produced them, (c) their basis in the Texas proceedings; (d) the status of the proceeding on the performance remedy plan for Michigan; and, (e) comparing the order from the MPSC with the plan that Ameritech proposed.

#### **AMERITECH'S PERFORMANCE REPORTING**

9. Ms. DeYoung (AT&T) at pp. 6 and 9 of her affidavit, Ms. Moore (AT&T) at pp. 17-18 of her affidavit, and the AG on page 3 of its Brief all refer to recent actions by the FCC and the Texas PUC regarding SBC's performance measures.
10. The AG states that "recent reports of SBC violations and penalties for missing benchmarks of service quality to competitors and failing to meet the standards established as part of its merger with Ameritech argues in favor of stricter performance and remedy

standards in Michigan.” (p. 3). However, the alleged failure of SBC to meet standards is overblown, mostly originating from a difference in interpretation of business rules. There is ample evidence that the overall compliance rate in other SBC states is high for both federal and state performance plans.

11. Ms. DeYoung (and the AT&T brief in describing her affidavit) refers to the FCC 's Order On Review, File No. EB-00-IH-0432 (Rel. May 29, 2001), ("Order on Review") regarding SBC's failure to have provided accurate performance data reporting, and suggests that confidence in SBC performance reports has been seriously undermined. Ms. DeYoung (p. 10) cites language from the order that SBC “willfully and repeatedly violated” merger conditions, but fails to state that the definition of "willfully" does not require a demonstration that SBC knew that it was acting unlawfully, as was also stated in the Order on Review, *Id.* ¶8. Additionally, as was pointed out by the dissent to the Order on Review:

"I am troubled by the Commission's finding that SBC "willfully" and "repeatedly" violated the complex set of rules imposed by the merger conditions. Although the Bureau and the Commission find that the rules at issue were "clear," I suspect that they were at the very least open to reasonable differences of interpretation . . . [R]ules must be clear if they are to be fairly enforced." See Dissenting Statement of Commissioner Harold Furchtgott-Roth.

12. The Order on Review resulted in a penalty of \$88,000 imposed by the FCC, based on the performance measurements that SBC submits to the FCC as a condition of its merger with Ameritech. This order applied only to the performance measurement data submitted from the states of Texas, Oklahoma, Kansas, Missouri, Arkansas, California and Nevada, and can be described as affecting only a fraction of the data reported by the company. Much of the controversy surrounded the interpretation of business rule language.

Further, the Order did not apply to performance data submitted by Ameritech.

13. The Texas PUC's audit of SWBT's flow-through measurement data involved performance data provided only by SWBT. Ameritech's processes and resources to implement performance measures are separate from SWBT, and in any case, Ameritech has not even implemented the system (EASE) which was one source for the controversy in Texas. Although Ameritech is migrating to systems and processes similar to those used in Texas, the end product is performance reporting that accurately captures Ameritech's own flow-through performance, not SWBT's.
14. Additionally, the Ameritech performance data collection and reporting systems and processes are under review by KPMG in the OSS Third-Party Test. As Ms. DeYoung concedes, it would be premature to pass judgment on these systems and processes prior to the completion of that review. Given the military style of the OSS test in progress, all interested parties can be confident that Ameritech's processes will be closely scrutinized, thus ensuring that no issues remain by the completion of the OSS test.
15. Curiously, although Ms. DeYoung seems to have difficulty with comparing the Ameritech OSS environment with that at SWBT, she has little difficulty in arguing that unrelated findings in the SWBT and Pacific Bell regions have direct application to Ameritech. From a performance measurement perspective, Ameritech's only reliance on SBC's prior successful 271 applications stems from one important fact -- the FCC previously approved SWBT's Texas performance measurements, finding them "workable

measures to sufficiently capture SWBT's wholesale performance,"<sup>1</sup> and these same measurements are the origin of Ameritech Michigan's own measurements. This framework provides an extensive and detailed structure for evaluating the performance of Ameritech. KPMG was selected by the collaborative participants to evaluate these processes in the OSS third party test. In the mean time, should AT&T or any other CLEC dispute the accuracy of its specific performance data, Ameritech is willing to participate in a data reconciliation at the CLEC's request.

16. The AG also states "It is important that performance measures be met to ensure irreversible competition and prevent backsliding by AM, and the FCC underscored this point in approving the SBC Kansas/Oklahoma filings" (p. 3). Ameritech agrees with these as primary objectives of establishing a proper framework for performance reporting and believes that it has done just that with the implementation of the current baseline performance measurement set. Ameritech has implemented 163 performance measurements that disaggregate into over 3000 sub measurements on which to report data. Coupled with the extensive and thorough testing envisioned in the OSS Third-Party Test, Ameritech has put a mechanism into place that will meet and exceed the FCC's objectives.

## **REMEDY PLAN**

### **INTERCONNECTION AGREEMENT AMENDMENTS**

17. AT&T's Affiant Moore (p. 4-10), MCI in its brief (p-82-83) and McLeodUSA in its brief

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<sup>1</sup> Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunication Act of 1996 To Provide In-Region, InterLATA Services in Texas Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000) ("*SBC Texas Order*"), para.423.

(p. 20-21) contend that Ameritech Michigan has not complied with the requirement established in the Remedy Order that Ameritech Michigan offer a performance remedy plan. These parties base their opinion on Ameritech contract documents that clearly were a generic (CLEC name blank) Amendment and Appendix to their interconnection agreements with Ameritech Michigan. This issue was also raised by AT&T and McLeodUSA via a petition to reopen the record they submitted to the MPSC on June 27, 2001 in Case No. U-11830, asking the MPSC to take notice of a document, Appendix Performance Measurements, that Ameritech Michigan had provided to them for the purpose of implementing the requirement of the Remedy Order requiring Ameritech Michigan to incorporate the performance remedy plan into its interconnection agreements.

18. In her affidavit (similarly repeated in McLeodUSA's brief), Ms. Moore states there are two objectionable aspects to this proposal, each of which she believes shows that Ameritech has decided to ignore the MPSC's Remedy Order. First, she maintains that the Appendix indefinitely delays implementation of the MPSC's mandate in the Remedy Order by stating it is not effective until any MPSC order "becomes final, non-modifiable, and any appeals are exhausted". Ms. Moore states "One need not be an attorney to figure out that this clause encourages Ameritech to endlessly appeal the Commission's decision in the courts, to prevent the remedy plan from going into effect".
  19. Second, Ms. Moore maintains the Appendix confers on Ameritech the unilateral ability to veto the application of the MPSC's remedy plan because the Appendix provides: "The parties expressly reserve all of their rights to challenge any liquidated damage/remedy
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award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and AM-MI does not at this time so agree.” According to Ms. Moore, in this clause, Ameritech is stating that it, not the MPSC, decides on whether it needs to offer the remedy plan. She also states, “Not surprisingly, once it establishes its 'right' to self-regulation, Ameritech decides it does not like the idea of paying remedies to CLECs, and opts to ignore the Commission’s decision.”

20. AT&T’s Ms. Moore has submitted a proposed contract Appendix offered by Ameritech Michigan to implement the Remedy Order. However, Ms. Moore fails to describe the context in which that offer was made, and most significantly fails to fully describe the Amendment which was submitted at the same time as the Appendix. (This same omission is found in the June 27 AT&T/McLeodUSA letter to the MPSC.) Based on her incomplete and misleading discussion of the two documents, she contends that Ameritech does not intend to comply with the MPSC Remedy Order or to pay performance remedies to CLECs. That is not true, and as I show below, Ms. Moore has misrepresented and misconstrued the contract proposal.
21. In its Remedy Order the MPSC adopted, with some modifications, the remedy plan proposed by Ameritech Michigan. Both Ameritech and various CLECs filed petitions for rehearing of certain aspects of that order, as is their right under law. The MPSC ruled on those petitions by order of July 25, 2001 (“Remedy Rehearing Order”). It granted Ameritech Michigan’s petition in part, denied the CLEC petition, and modified its April 17, 2001 Order accordingly. While the rehearing petitions were pending, Ameritech Michigan proposed a contract Amendment to its interconnection agreements. The

contract Amendment that was provided to AT&T clearly provided that the Amendment would become effective 10 days *after it was approved* by the MPSC (par. 5 of Amendment.) Moreover, the contract Amendment provided that: “Performance Measure remedies shall be available based on performance data from the next full month following the Amendment’s Effective Date.” (Par. 6 of Amendment.)

22. To avoid any appearance of delay, Ameritech subsequently revised the Amendment to reflect that the effective date be 10 days *after filing* of the Amendment with the MPSC. In short, Ameritech Michigan clearly intended to comply with the Remedy Order, and to pay remedies in accordance with that Remedy Order’s terms, so long as the Remedy Order remains in effect. To avoid further confusion, Ameritech Michigan strongly recommends that CLECs read the contract Amendment before they jump to the conclusions contained in AT&T Ms. Moore’s Affidavit.

23. Turning to the Appendix, Ms. Moore misconstrues its intent and purpose. The intent of section 1.6 in the Appendix referred to by Ms. Moore was not to evade compliance with MPSC orders now or at any future date. In fact, the first sentence of that 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.” This is consistent with the approach the Commission favored in its July 25, 2001 Remedy Rehearing Order in which it stated that contract amendments should “include a procedure that does not require the filing of an application for approval of an amendment to the interconnection agreements each time the Commission adjusts some aspect of the performance remedy plan.” (p. 10)

24. However, to avoid any further confusion regarding its intentions, Ameritech issued a revised version of its proposed contract Appendix. Attachment A to this affidavit includes the revised versions of the Amendment and Appendix. These revisions were also provided to the MPSC in Ameritech Michigan's July 5, 2001 letter sent in response to the June 27 AT&T/McLeodUSA letter. Additionally, Ameritech provided the new Amendment and Appendix to AT&T and has posted them on the CLEC Online web-site to make them available to any interested CLEC.
25. The Revised Appendix is substantially the same as agreed to by the parties in similar proceedings in Illinois and Ohio. The revised language is contained in a new section entitled " 2. Results of Collaborative Process." Section 2.2, like the aforementioned section 1.6, contains a mutual reservation of any rights both parties may have to challenge MPSC orders in this area. Without such a reservation, one party may argue that the other waived, in advance, its legal rights to challenge a future remedy order. Note that this sentence states: "The parties expressly reserve all of their rights to challenge..." It does not state and it was not intended to suggest that, out of the blue, one party may decide it does not want to pay remedies or obey Commission orders anymore. Rather, the last sentence simply reserves whatever rights either party may have to argue, in an appropriate forum, that a Commission-ordered remedy plan is not appropriate. Ameritech Michigan and the CLECs have rights according to law to seek revision of Commission orders, and this language protects each of their respective rights in a thoroughly even-handed fashion.
26. Ameritech Michigan had made two additional corrections to its proposed Appendix language. The original Appendix proposal contained a standard provision in Section 1.5

relating to delays or problems caused by a CLEC's Service Bureau Provider. While the matter was pending before the Commission, we added reservation language to the new Section 1.6 of the Appendix.

27. Finally, as noted by WorldCom (Brief at pp. 82-83), the original Appendix also contained a section 2.1 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 MPSC's approval of the remedy plan. 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. Accordingly, the revised offer does not contain any language regarding exclusivity.
  
28. As I noted above, on July 25, 2001, the Commission issued its order on the petitions for rehearing in Case No. U-11830 ("Remedy Rehearing Order"), in which the CLECs made the same allegations they raise here. The Remedy Rehearing Order stated, "The Commission need not resolve this issue. Ameritech Michigan has withdrawn the appendix that did not comply with the Commission's order, and neither the amendment nor the appendix is before the Commission for approval at this time." Further, the Commission stated that the parties should "promptly" amend their agreements, and stated that it is its "intent that the interconnection agreements be amended in time to permit the first performance remedy payments to be paid on the basis of August or September 2001 data". (Remedy Rehearing Order at 9-10). Ameritech will comply with the Remedy Rehearing Order, as evidenced by the issuance of Accessible Letter CLECAM01-214 on

July 27, 2001,<sup>2</sup> making available the amendment with a further revised appendix. The appendix has been updated since July 5 to add clarity and address the issues that have been raised by the CLECs. Further, the letter lays out the timeline necessary for a CLEC to obtain August or September 2001 as its first data month for remedy payments.

## **REHEARING**

29. Z-Tel's brief (p.11) describes three issues proposed by the CLECs in their petition for rehearing of the Remedy Order. First, they take this opportunity to show their support for the CLEC filing in the request for rehearing and reiterate the CLEC positions that the MPSC should require direct payments from Ameritech to CLECs and that the MPSC should eliminate the "K-table" which, in their view, has reduced SWBT's remedies by 60%.
30. The MPSC has already denied the CLECs' rehearing requests on this matter and this 271 Checklist Informational Filing should not be viewed as an opportunity to re-state or re-emphasize arguments already presented by the parties to the MPSC. Further, the MPSC denied Ameritech's request for rehearing on the question of direct payments (versus credits). It did acknowledge, however, that "the parties may agree in their interconnections agreements to different payment arrangements." (Remedy Rehearing Order at 6). Ameritech will comply with the Remedy Rehearing Order.
31. The MPSC's Remedy Order clearly acknowledges the existence and function of the K-table and the Commission "concludes that Ameritech Michigan's plan is based on a reasonable statistical methodology that has been approved by the FCC and appears, at

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<sup>2</sup> Accessible letters are available at <https://clec.sbc.com/acclatters/home.cfm>.

least in large part, to have been supported by the CLECs at other times” (Remedy Order at 10). On rehearing, the Commission reaffirmed that “[t]he April 17 order is not fairly read as having eliminated the K statistic” and held that it “does not agree that elimination of the K statistic is necessary to a proper remedy plan.” Remedy Rehearing Order, pp. 7-8.

32. As for the K-table exclusions reducing SWBT’s remedy payments by 60%, this is exactly what should be expected, given the function of the K-table and the levels of performance provided in Texas. From June 2000 through February 2001 (the period addressed by the CLECs), Southwestern Bell met over 95 percent of its individual performance standards. Given that there were so few apparent “failures,” and given that one would expect a 5 percent failure rate on individual statistical tests based solely on random error, it should come as no surprise that the number and dollar amount of “failures” excused by the K table would represent a significant percentage of the overall “failure” rate.
33. In similar comments, AT&T’s Ms. DeYoung in her footnote 25 (p.20) incorrectly suggests that the “K-table” exclusion on remedies is used by Ameritech to reduce its remedy payments by over 60%. This is simply untrue. In my review of April and May 2001 data for Illinois and Ohio (the two states currently using the Texas plan), K-table exclusions ranged from 7% - 13% of the total remedy dollars.

#### **EFFECTIVENESS OF THE PLAN**

34. The MCF states that, “Performance reporting and monitoring requirements are insufficient to ensure that the public interest is being served.” (p. 22-25). They go on to make several predictions regarding what the future actions of Ameritech will be.

35. First, they predict that Ameritech will seek waivers of various requirements. But the recent decision by the MPSC on implementation of a remedy plan associated with the 271 performance reporting puts a self executing remedy plan in place to satisfy these concerns. The remedy plan ordered by the MPSC sets out very specific limited conditions (exclusions based on CLEC acts or omissions) for which Ameritech might seek any waivers of performance payments. These conditions are tightly drawn and offer no legitimate objection by CLECs or MCF, however speculative.
36. Secondly, MCF predicts that Ameritech will engage in the practice of legally challenging findings of noncompliance. It questions the use of the “threshold” not “capped” remedies and suggests that Ameritech will aggressively challenge any remedies that it considers “excessive”.
37. The MCF seemingly missed the point of the “threshold” on remedies in their comments. The very idea of the “threshold” adopted by the MPSC originated in the CLEC remedy proposal. It is intended that the MPSC would initiate a proceeding to determine if continued remedies – or even stiffer punishment – are warranted if the “threshold” is reached.
38. This “threshold” amount is initially set at \$337 million which is a higher threshold (in dollars) than put into place in either Texas or New York, both of which the FCC has already found “discourage[s] anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business” and “represents a meaningful incentive . . . to maintain a high level of performance.”
39. In its orders, the FCC noted that the CLECs in those proceedings (as is the case here)

proceeded under a mistaken basic assumption: that liability under a performance remedy plan “must be sufficient, *standing alone*, to completely counterbalance [the applicant’s] incentive to discriminate.”<sup>3</sup> The FCC pointed out other consequences, including federal enforcement actions pursuant to section 271(d)(6).<sup>4</sup> The MPSC reiterated this in their Remedy Order (at 10). Thus, the limits complained about by CLECs do not prevent the MPSC, the CLECs, the FCC, or any other party from pursuing other remedies, including seeking the revocation of Ameritech’s authorization to provide in-region interLATA service.

40. The Remedy Plan is just one of many tools to ensure compliance with performance standards. It provides for fast, automatic payments, without all of the procedures and protections that are typically required in an enforcement proceeding. For example, the CLEC does not bear the burden of proof, and Ameritech has only a limited opportunity to present its side of any case. There are some advantages to this kind of procedure, and the amounts at stake (up to 36% of net return) are more than substantial enough to have a meaningful effect on behavior. But at the same time, Ameritech is giving up much of the protection it would have in a traditional enforcement proceeding. Once penalties become large enough to reach the threshold, any further punishment should only be assessed following (1) an investigation to verify the existence and determine the root causes of the performance problems, and (2) a traditional enforcement proceeding that gives Ameritech its full rights, such as the presumption of innocence and the right to be heard.
41. Finally, MCF alleges that, “Even when found in non compliance, Ameritech management

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<sup>3</sup> *SBC Texas Order*, para. 424; *Bell Atlantic New York Order*, para. 435

<sup>4</sup> Id.

has a track record of preference for fines over compliance.” Ameritech does not have a preference for fines over compliance. Between the plan ordered by the FCC and that adopted by the MPSC, Ameritech has over \$360 million at stake in the initial year of its wholesale performance remedy plans associated with providing wholesale service in Michigan alone. This amount is not insignificant.

42. Ameritech has also implemented a process that assures ownership and visibility of its wholesale performance by its senior executives. The process assigns “ownership” of the results of performance measures (and the associated remedies) to senior executives in charge of the operating unit that is responsible for the performance measured. For example, remedies for missed due dates for unbundled loops are assigned to the Network President, while remedies related to firm order confirmations are assigned to the President of Industry Market, the organization that is responsible for Ameritech’s Local Service Center. Remedy payments for those measures are charged directly to the operating expense of the organization and manager that owns them – and can thus impact management’s future compensation, which is based in part on meeting the operating budget goals.

## **WHOLESALE PERFORMANCE**

### **THE IMPLEMENTATION OF PERFORMANCE MEASURES**

43. Ms. DeYoung (pp. 19, 33) suggests that Ameritech’s implementation of the Texas performance measures lack quality due to SBC’s decisions to “overlay the Texas performance measures and business rules onto Ameritech systems and processes”. This is somewhat of a mischaracterization of the process that Ameritech undertook with

respect to implementing merger agreements to implement the Texas measurements. Further, it was the Michigan collaborative that agreed to change out the Michigan performance measurement baseline to those based on the Texas measurements. Ameritech took care to evaluate the spirit and intent of the performance measurement business rule and how they should be applied to Ameritech systems and processes. Modifications with respect to how the performance measure business rules were to be implemented in Ameritech were discussed at performance measurement collaboratives throughout the Ameritech region. The only time that Ameritech simply overlaid business rules onto Ameritech systems and processes was when CLECs (by virtue of collaborative discussions) would not agree that differences in these processes necessarily drove differences in the business rules. Moreover, AT&T neglects to mention that it has been an active participant in the multi-state year long collaboration regarding Ameritech's performance measurements and has been similarly active in crafting and revising (twice) the SWBT's Texas performance measurements.

44. Ms. DeYoung cites problems with Performance Measure 56, "Percent of Installations Completed with "X" days and Performance Measure 111, "Average Update Interval" for DA Database for Facility Based CLECs" as those caused by inconsistencies between the performance measures and business rules imported from Texas and the Ameritech systems. In her affidavit she gives no details of AT&T's problems with Performance Measure 56, although she does discuss the differences that Ameritech allegedly had implemented for performance measure 56.1 which utilized a different interval than Texas for coordinated hot cuts. However, these comments are also misplaced. She states: "Similarly, AT&T's questions regarding the accuracy of results for Performance Measure

56.1 finally caused Ameritech to admit that the Texas business rule for this measure, which utilizes a 3 day standard interval, did not match up to the 5 day coordinated hot cut interval being utilized by the Ameritech Local Service Center or base lined in state collaborative discussions on the UNE-L hot cut process”. (pp. 33)

45. Ms. DeYoung is not only mistaken in her description of the cause of the disagreement on the hot cut interval, but she also incorrectly documents the performance measurement in question, since Ameritech currently has not implemented Texas measure 56.1 (although Ameritech has now agreed to implement performance measure 56.1 as part of six-month review discussions). The only issue of accuracy is with Ms. DeYoung's comments.
46. Although Ameritech and CLECs (AT&T in particular) did have extensive discussions surrounding the appropriate interval relative to the hot cut process, the discussions were pertinent to performance measure 55.2, which is the “Average Installation Interval for Loop with LNP”. These discussions were in the context of adding this new measurement. During the same time period, collaborative discussions regarding the Hot Cut process were ongoing. The hot cut collaborative participants worked with Ameritech to design a process which required intervals as follows:
  - 5 business days for CHC (1-10 lines)
  - 7 business days for CHC (11-20 lines)
  - 10 business days for CHC (21+ lines)
47. Although AT&T did not dispute these intervals in the hot cut collaborative, the performance measurement collaborative participants (particularly, AT&T) continued to insist on the overlay of the SWBT Texas intervals even though the Ameritech process

would not support such intervals. After several discussions (even joint discussions between the two collaborative groups) AT&T finally agreed to let the process define the interval rather than to import an interval which does not coincide with the process.

Again, there is no credible issue of accuracy raised by Ms. DeYoung.

48. On the issue of reporting errors for Performance Measure 111, Average Update Interval for DA Database for Facility Based CLECs, Ameritech acknowledges that it did have a problem in the initial application of the business rules for the three Directory Assistance data base performance measurements (PMs 110, 111, and 113). However, that problem made Ameritech's performance look worse, not better, than it really was. This problem went unrecognized until the calculation of remedy payments for Illinois and Ohio indicated a substantial sum owed to TCG. Further investigation indicated an error in the data collection process did not exclude CLEC-caused errors, as would be consistent with the business rules, causing the assessment of parity to be tilted in the CLECs favor. Ameritech has corrected its process going forward, no longer including these CLEC caused errors and rejected records in the count. Going forward, Ameritech only counts an error if Ameritech caused it, as the measure intended. Ameritech is in the process of crediting remedies based on the original performance documented.
49. Ms. Moore also asserts that Ameritech has "**never passed**" (p. 15) two other measures, Performance Measure #5, "Percent Firm Order Confirmations (FOCs) Returned Within "X" Hours" for interconnection trunks, electronically submitted UNE Loops (<50 loops), or for electronically submitted UNE-P orders and Performance Measure #7.1, "Percent Mechanized Completions Returned Within One Day Of Work Completion". Ms. Moore is not accurate in her statements.

50. First, let me say that the FOC benchmarks that Ameritech is targeting are among the most aggressive anywhere. The benchmarks are 95% met within 5 hours for electronically submitted and manually processed orders, and 95% met within 2 hours for electronically submitted and electronically processed orders. Ameritech only recently (February) implemented the disaggregation for the two-hour benchmark. Previously, all electronic orders were evaluated against the same five-hour benchmark regardless of how the order was processed. As such, Ameritech has just begun to work through the issues regarding meeting of the two-hour benchmark. It is my expectation that the implementation of the new LSOG 4 ordering interface (and its use by CLECs) will provide an architecture that will be more conducive to Ameritech meeting this benchmark.
51. That said, Ameritech has met these benchmarks and, where it hasn't, its performance approaches the benchmark. For electronically submitted/manually processed UNE-P orders, performance ranged from a low of 89.17% to 98.85% in the four months from February through May of 2001. The performance was greater than 92% in three of the four months, was 94.80% in May, and was 98.80% in February, **exceeding** the 95% benchmark. For electronically submitted/electronically processed UNE-P orders, Ameritech has not yet achieved the very difficult target of 95% performance within two hours.
52. Ameritech has had similar results for UNE Loops. For electronically submitted/manually processed orders (< 5 hours), Ameritech's performance ranged from 78.67% to 93.14% and was greater than 91% in two of the four months from February through May. For electronically submitted/electronically processed orders (<2 hours), Ameritech's performance ranged from 82.08% to 94.27% and again was greater than 91% in two of

the four months.

53. Ameritech is also reviewing its processes regarding interconnection trunk FOCs in order to improve performance. Although the performance is trending in a positive direction, the upper range of performance is 82.35% for the Percentage of Interconnection Trunk FOCs (<5 DS1s) in less than 6 days and 83.33% for the Percentage of Interconnection Trunk FOCs (>5 DS1s) in less than 8 days.
54. Regarding Performance Measure 7.1, Mechanized Completions, Ms. Moore again is incorrect. For UNE-P, Ameritech's performance ranged from 91.12% to 99.01% from March through May of 2001. Ameritech **exceeded** the 97% benchmark in February. For UNE Loops, performance ranged from 62.94% to 98.35% in the ten months where data is available. In six of the ten months Ameritech performed in excess of 92% and clearly **exceeded** the benchmark in January (97.78%) and February (98.35%). For resale, performance was even better, ranging from 83.87% to 99.37% for the ten months where data is available. For resale, Ameritech performed at over 95% in eight of the ten months and **exceeded the benchmark** in six of those ten months.

#### **FLOW THROUGH PERFORMANCE MEASURES**

55. Several of the parties contend that Ameritech has experienced difficulty in implementing the SWBT designed measurements associated with Order Flow Through (PM 13, "Order Process Percent Flow Through", and PM 13.1, "Total Order Process Percent Flow Through").
56. AT&T's Ms. DeYoung (pp. 18, 32) questions the accuracy of flow through lists and its

connection with performance measurements. Ameritech reflects the flow through matrix in the queries and code it uses to query the MorTel database. This fact will, of course, be validated by KPMG in the course of testing.

57. Both Ms. DeYoung (pp. 18-19, 33) and Ms. Moore (p. 16) cite erroneous data reported by Ameritech in PM 13 and PM 13.1. Ameritech has had difficulty implementing PM 13, which evaluates the effectiveness of Ameritech's processing by measuring the percentage of orders designed to flow through that actually do flow through. The difficulty stemmed from the differences in the architecture of Ameritech order processing systems versus the SWBT systems on which this PM was based.
58. Ameritech initially could not easily make the distinction between what was designed to flow through and what was not designed to flow through, and therefore consistently reported results that understated flow through. This made performance look worse, not better, than it really was. We have, since mid 2000, refined the measurement and order processing code to better identify those orders that are designed to flow through and have implemented enhancements to Ameritech's OSS to bring the "designed to flow through" performance for Resale, UNE Loops, and UNE -P consistently into the 90-100% range. Ameritech continues to work with Local Number Portability ("LNP") (classified in the "Other" disaggregation in performance measure 13) flow through measurements, which Ameritech acknowledges are clearly understated and not indicative of true flow through performance for this product.
59. PM 13.1 was implemented, based on extended discussions with CLECs, to indicate the total process flow through. Ameritech did, from initial implementation in September

2000 through February 2001, have incorrect coding in collecting the LNP data. This data was mistakenly included in the category of Loop With Local Number Portability (“LSNP”) (indicating a single request for a combined loop and LNP), which does not flow through, when the correct category should have been standalone LNP. This coding problem was fixed in March 2001 and these LNP orders are no longer being counted as LSNP. However, it has come to Ameritech’s attention that this most recent modification may have caused unanticipated (and unwanted) consequences in the counting of LNP orders for both PM 13 and PM 13.1. Thus, Ameritech is continuing to review and refine its calculations of both PM 13 and PM 13.1 so that the results reported accurately reflect the intent of the business rules for these measures.

60. Ms. Moore (p. 14-15) points out that “Ameritech Michigan has **never passed**” the PM 13 disaggregation for UNE Loops. While this statement is technically correct it is disingenuous at best. Several times in the initial stages of the performance measure collaboratives Ameritech attempted to convince the CLECs that there really was no retail analog for UNE Loop flow through. The processes and systems involved in the ordering of UNE Loops are very different than those used for ordering retail POTS service, to which it is being compared. Just the same, CLECs required Ameritech to “overlay” the SWBT Texas business rules on Ameritech systems and processes, and insisted on a retail analog. Ameritech has worked very diligently to improve its effectiveness, and hence measurement, of UNE Loop flow through and since the beginning of 2001 has regularly reported performance in the 94-97% range. Only in the recent six-month review did CLECs finally acknowledge that this (UNE Loop) comparison to the 98-99% retail flow though was unfair. CLECs have now agreed on implementing a benchmark of 95% for

this measurement. Using that as a standard, Ameritech would have been in parity in three of the five months between January and May 2001, and would have been within 0.5% of reaching 95% in the other two months.

61. WorldCom's Affiant Lichtenberg at pp. 16-17 of her Affidavit makes two assertions regarding the Ameritech flow through measurements. First, she critiques the accuracy of the flow through measurement by stating that, even though Ameritech reports a large percentage of orders that flow through, MCI's experience suggests that a large number of the orders which WorldCom places do not flow through. Secondly, she states that Ameritech's measurement of flow through is flawed because it excludes orders that are included by "contract FIDS" which are not designed to flow through, and asserts that Ameritech has "misled" the MPSC by reporting a flow through measure that is "fatally flawed".
  
62. Ms. Lichtenberg is mistaken, or at least premature, in her judgment on both counts. On the matter of whether the performance measurements for flow through are accurate, she is premature in her assessment. The Michigan collaborative has selected KPMG as an independent third party to manage the 271 OSS test under the direction of the MPSC Staff. One major component of the test is an audit of Ameritech's performance measurements. This audit will provide an independent view on the accuracy and completeness of the performance measurement system that Ameritech has implemented. Short of the audit being completed and the final report submitted to the Commission, any assessment, especially one based on such a high level description as to not even include the performance measurement number in question, is a hasty one at best.

63. On the definition of PM 13, "Order Process Flow Through", being flawed, the business rule description for the measurement clearly points out that "This measure is based on orders designed to flow through". This measurement is intended to evaluate the effectiveness of flow through enhancements that Ameritech has implemented, and not the rate of overall flow through.
64. To evaluate overall flow through performance, the participants in the performance measure collaboratives (which included other WorldCom representatives, but not Ms. Lichtenberg) worked with Ameritech to design and Ameritech implemented a second measurement -- PM 13.1, "Total Process Flow Through". This measure provides exactly the evaluation that she seems to be looking for in PM 13. Ameritech made no effort to mislead the MPSC on this point, but rather responded to CLEC requests with a second performance measurement that evaluates overall flow through.

#### **MCLEODUSA COMMENTS**

65. On page 11 of its brief, McLeodUSA characterizes Ameritech as "substandard, continuing, and even deteriorating, in many areas". They attempt to substantiate these claims by identifying a narrow cross-section of performance measurements for specific months, specific sub-measurements, or specific instances in order to depict Ameritech service in the worst possible light. McLeodUSA presents three separate tables on pages 13, 14, and 15 where they list the range of performance for specific disaggregated sub-measurements over a period from November 2000 to April 2001. They compare the range of performance for each sub-measurement to the range for the associated retail comparison and do so at only the "state" level of disaggregation.

66. In a full review of the ten performance measurements (including all of the sub-measurements) that are referenced in McLeodUSA's tables (performance measures 29, 35, 41, 55, 56, 58, 59, 60, 61, and 66), I identified 1794 disaggregated sub-measures from August 2000 through May 2001 which included a minimum of ten (10) observations. Of these, 1276 or 71.1% of these disaggregated sub-measures were in parity (based on a Z-score of less than 1.68). Ameritech agrees that this level of performance needs to be improved, but it is also not as poor as the narrow evaluation that McLeodUSA makes it out to be.
67. Ameritech has taken several positive steps in addressing the wholesale performance issues in Michigan. These include:
- The appointment of a full-time network vice president to direct our wholesale operations task force and to provide more focus on correcting process deficiencies in our wholesale operations and reducing our penalty payments. Currently, there are approximately 100 managers assigned to this effort.
  - The creation of a dedicated "CLEC customer care group" to address customer escalations, expedited requests, and customer service issues and to attend ongoing customer meetings.
  - The expansion of the hours of coverage in assignment centers so that CLEC orders can be dispatched/completed more quickly.
  - The establishment of an interdepartmental UNE Provisioning Improvement Team.
  - The preparation and delivery of training packages to central office and field personnel to address deficiencies that are identified by the wholesale operations task force.
68. Ameritech Michigan anticipates that these initiatives will soon result in even greater improvements in wholesale performance. In any event, McLeod's selectively skewed and narrow assessment of Ameritech's performance is premature and based on incomplete information. Consistent with the procedures adopted by the Commission, an overall

assessment of Ameritech's performance should only be made after Ameritech has submitted its proof of three consecutive months of performance results.

#### **LONG DISTANCE OF MICHIGAN, INC.'S COMMENTS**

69. In his affidavit, Mr. Reid of Long Distance of Michigan, Inc. ("LDMI") alleges the service quality of Ameritech is not satisfactory. (pp. 2-3) However, the performance data for LDMI as posted on Ameritech's PM web-site indicates that service quality to LDMI is frequently better than the performance received by Ameritech's retail customers. This does not discount Ameritech's commitment to providing better service to each individual access line customer (whether they are with a CLEC or with retail) but does reflect, in general, improved service levels contrary to Mr. Reid's affidavit.
70. Mr. Reid asserts that the average time to resolve a trouble ticket has increased from the year 2000. While the time to clear an individual trouble ticket varies, the performance measurement data that Ameritech makes available each month tracks LDMI's service levels as compared to the retail base. Performance Measure 39, Receipt to Clear Duration, is segmented by type of line (residence, business, UNE combinations), whether or not the ticket required dispatch, and if the trouble ticket was associated with an affecting service or out of service condition. A review of this performance measure data shows LDMI has generally received service in a shorter time duration than retail in almost all categories. There are a few exceptions, but for PM 39, LDMI received parity or better service as compared to retail for \*\* \*\* of \*\* \*\* (or \*\* \*\*%) disaggregated categories from January to June 2001.
71. Mr. Reid commented that for May 2001, LDMI averaged 85 hours for trouble ticket

duration. However, Ameritech shows the following data for May:

<u>Category</u>	<u>LDMI Duration (Hours)</u>	<u>Retail Duration (Hours)</u>
Res./Dispatch/Affecting/All	** **	** **
Res./Dispatch/OSS/All	** **	** **
Res./No Dispatch/OSS/All	** **	** **
Bus./Dispatch/Affecting/All	** **	** **
Bus./Dispatch/OSS/All	** **	** **
Bus./No Dispatch/OSS/All	** **	** **
Bus./No Dispatch/Affecting/All	** **	** **
UNE/Res./Dispatch/Affecting/All	** **	** **
UNE/Res./Dispatch/OSS/All	** **	** **
UNE/Res./No Dispatch/Affecting	** **	** **
UNE/Res./No Dispatch/OSS/All	** **	** **

72. While there is one category where LDMI duration was of greater duration than Ameritech retail, it is only slightly greater. And, in none of the categories does the time reflect the 85 hours as LDMI alleges. Once again, it is possible LDMI may have experienced this type of duration on individual tickets, but, in general, Ameritech's service level to LDMI is good.

### **RESOLD DSL**

73. Ms. Moore claims that the existing performance measures in Michigan do not cover the entire section 271 competitive checklist, but she cites only one shortcoming. On pages 11-13 of her affidavit, Ms. Moore alleges that the baseline performance measures adopted by the MPSC in Case No. U-11830 are incomplete because there are no performance measures for resold DSL. The short answer is that Ameritech Michigan has no performance measures for DSL service because Ameritech Michigan does not offer DSL service. It should be noted that AT&T just recently initiated discussion on this issue in Michigan by virtue of a request to the Master Test Plan and subsequent discussions in the

performance measure six-month review collaborative. It is Ameritech's view that the product(s) that AT&T refers to as "resold DSL" are either not subject to Section 251(c)(4) wholesale resale, or are so limited and unique that it would be impractical and unnecessary to implement performance measurements.

74. Ameritech Michigan itself does not provide "DSL services"; although it does provide xDSL-capable loops, including HFPL, that may be utilized by CLECs to provide xDSL-based services. Performance measures evaluating Ameritech Michigan's processes for xDSL-capable loops are already included in the baseline performance measures and are being audited as part of the OSS Third-Party Test. Other Ameritech subsidiaries, Ameritech Michigan's separate advanced services affiliate (in Michigan, Ameritech Advanced Data Services of Michigan, Inc., also using the name SBC Advanced Solutions, hereinafter "ASI" or elsewhere as "ASI-North") and Ameritech Interactive Media Services ("AIMS"), offer services using xDSL-capable loops, including HFPL. However, Ameritech Michigan's provision of those unbundled network elements to its affiliate is already covered under the existing performance measures approved by the MPSC.

75. As Mr. Habeeb explained in his May 15 checklist filing affidavit and is also addressing in his Reply affidavit, ASI is an affiliate of Ameritech Michigan, and one of the services ASI provides is asymmetrical digital subscriber line ("ADSL") Transport Service to Internet Service Providers ("ISPs"). ISPs enhance the ADSL Transport they purchase from ASI with Internet Service and sell the combined offering (as high speed Internet Access Service) to retail end users. ASI provides ADSL Transport to many ISPs, including over 80 unaffiliated companies such as America Online. ASI also sells ADSL

Transport to an affiliated ISP, AIMS. ADSL Transport provided to ISPs is not “offered at retail;” nor is it provided “directly to the public.” Therefore, the Section 251(c)(4) wholesale resale obligation does not apply to ADSL Transport provided to ISPs, regardless of whether it is provided by Ameritech Michigan or ASI and, thus, performance measures are not required.

76. As Mr. Habeeb notes, ASI also provides ADSL Transport to large business customers who in turn enhance it with their own facilities to support a Local Area Network. Ameritech Michigan acknowledges that the provision of ADSL Transport directly to large business customers for their own use or consumption is the provision of a telecommunications service at retail. ASI is offering this ADSL Transport pursuant to Section 251(c)(4). However, as Mr. Habeeb reasons, it is neither practical nor necessary to include this more individualized offering to this narrow class of customers in a performance measure.
77. AIMS, another Ameritech Michigan affiliate, has an “enhanced offering” -- ADSL Transport Service combined with Internet Service, *i.e.*, high speed Internet Access service. The FCC has held that this combined service offering is an “information service” and not a “telecommunications service.” Since “information services” are not subject to the Section 251(c)(4) wholesale resale obligation, this high speed Internet Access service would not be subject to 271 related performance measures.

### **SPECIAL ACCESS**

78. WorldCom raises issues regarding special access provisioning and performance measures. Their comments regarding Ameritech Michigan’s special access provisioning

are addressed in the Reply Affidavit of Mr. Patrick Foster. I address their comments regarding special access performance measures and remedy plans. Specifically, WorldCom's Michael Beach (p. 11-15) recommends that special access and switched access services be incorporated into the Ameritech 271 Performance Measures, Remedy Plan, and included in the annual audit of performance measures defined in the MPSC's May 1999 order in Case U-11830. He suggests that Ameritech has "no effective incentive to improve its special access provisioning performance". (p. 11).

79. I disagree with Mr. Beach's position. First, this is not the proceeding to address an issue that is irrelevant to Section 271 compliance. In any event, contrary to Mr. Beach's contentions, Ameritech has numerous incentives to provide high quality Special Access services, including credits under its Special Access services tariff. But in any event there is no dispute that WorldCom can simply purchase unbundled interoffice transport to be used in connection with providing local service if it prefers that performance plan over the terms and conditions in the existing Special Access tariff.
80. As an initial matter, this Section 271-compliance proceeding is not an appropriate venue to address WorldCom's concerns with special access services. The purpose of this filing relates to Ameritech's entry into in-region InterLATA service under section 271 of the Act. My affidavit specifically relates to the performance measurements to be implemented to demonstrate the non-discriminatory provision of OSS to CLECs as required by the FCC pursuant to Section 271 of the Act for interconnection, access to unbundled network elements and resale services.
81. In contrast, Special Access services are purchased under the FCC tariff rather than from

terms of an interconnection agreement or resale or unbundled network element tariff. They have nothing to do with Ameritech Michigan's provision of UNEs as required by the checklist in Section 271. It is of no consequence that some carriers may choose to utilize special access services for providing local exchange service. The checklist does not address special access services, and the FCC has three times concluded that performance relative to provisioning of special access services is not relevant to checklist compliance.<sup>5</sup> The FCC has not wavered from its originally stated position:

“We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use the same physical facilities as a checklist item. We have never considered the provision of interstate access services in the context of checklist compliance before.”<sup>6</sup>

82. As to Ameritech's incentive to provide high quality interstate Special Access services, I completely disagree with Mr. Beach's position that Ameritech has none. First and foremost, it must be remembered that Special Access is an Ameritech service. Its reputation and good name are on the line each day it provides those services to carriers. Ameritech generates revenues from its sale of those services and it naturally seeks to maximize its revenue from that product. Carriers have readily available alternatives for these services and therefore, Ameritech is very directly incented to provide high quality service.

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<sup>5</sup> Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, released April 16, 2001, n. 489 (“As we held in the *SWBT Texas* and *Bell Atlantic New York Orders*, we do not consider the provision of special access services pursuant to tariffs for purposes of determining checklist compliance. *SWBT Texas Order*, 15 FCC Rcd at 18504, para. 335; *Bell Atlantic New York Order*, 15 FCC Rcd at 4126-27, para. 340.”)

<sup>6</sup> Memorandum Opinion and Order, 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, CC Docket No. 99-295, (1999) at ¶ 340

83. Ameritech also has a number of other incentives to provide high quality special access services to CLECs. For example, if high quality interstate Special Access service is not provided, service credits are already available to carriers under Ameritech's Special Access tariff on file at the FCC, which is mirrored in Michigan for intrastate Special Access. Below I describe the three areas where Ameritech provides credits to customers with regard to the performance in the provisioning and maintenance of Special Access Services.
84. The Enhanced Performance Assurance Program is found in Section 7.4.16, page 309.12.1 of Ameritech's FCC Tariff No. 2. This program provides an on time installation, installation interval, and service restoration assurance program to customers who purchase Special Access DS0 and non-channelized (point-to-point) DS1 services. The program establishes certain installation and repair performance parameters, and provides credits to customers, as specified therein, in the event that these performance parameters are not met.
85. The Installation Interval Guarantee provided for in Section 7.4.15 page 309.12 of Ameritech's FCC Tariff No. 2. This guarantee applies to DS1, DS3, Base Rate and Direct Analog and Direct Digital Services. This guarantee involves a credit of non-recurring charges where Ameritech fails to meet the installation interval service date as specified in Ameritech Interval Guide Publication AM-TR-MKT-000066.
86. The Credit Allowance For Service Interruption, Section 2.4.4, page 47 of Ameritech's FCC Tariff No. 2. This guarantee provides credit to customers for service interruption.
87. All three (the Enhanced Performance Assurance Program, Installation Interval Guarantee,

and Credit Allowance for Service Interruption) guarantees provide for the automatic application of credits to the customers when the committed objectives are not met.

According to the tariff, performance for the Enhanced Performance Guarantee is calculated on a quarterly basis. Payments for 4Q 2000 have been made and payments for 1Q 2001 and 2Q 2001 are pending.

88. The Installation Interval Guarantee and the Credit for Service Interruption are structured differently than the Enhanced Performance Guarantee, because they are calculated and applied on an order and trouble report basis. The Access Service Center (ASC) receives a report of missed due dates and for troubles with extended out of service duration from Network once each week. The ASC then utilizes a mechanized tool that calculates the adjustment amount and then issues the adjustment without the need for carrier customer request or intervention.
89. In short, CLECs are not disadvantaged by not including measurements for Special Access services in the 271 UNE performance measurements and remedy plan. Ameritech has established a well-defined set of performance measurements for Special Access Services that are available to carriers. Aggregate Ameritech performance is measured and remedies (credits) for not meeting objectives are calculated and applied to carriers' bills. This program is available in all five Ameritech states and does not discriminate by customer. It is applied to any party that purchases these services from the FCC Tariff No. 2.
90. But in any event, WorldCom has a choice of performance plans. If it chooses to purchase Special Access service, then the terms of the tariff apply. On the other hand, if it chooses

to purchase interoffice transmission facilities as an unbundled network element for its local services, then of course, Ameritech's provision of those network elements are subject to the performance measures and remedy plan adopted by this Commission in Case No. U-11830. If it prefers those terms, it should purchase interoffice network elements. The only reason WorldCom provides for not purchasing unbundled network elements is their claim that Ameritech has stringent requirements on measuring the amount of local traffic to use unbundled network elements. However, WorldCom appears to be confused with the limitations on converting an existing Special Access arrangement to unbundled network elements. The requirements regarding special access conversion, however, are not the creation of Ameritech, but rather are the result of the FCC's action in the UNE Remand proceeding. That issue has been fully addressed by this Commission and there is no reason to revisit the issue once again. WorldCom should not be permitted to "back-door" that important policy issue by forcing special access services into a UNE performance plan.

### **AT&T "TEST"**

91. After months of collaboratives, the MPSC approved a Master Test Plan for the third party test of Ameritech's operations support systems and performance measures. The basis of this test is that an independent third party (KPMG Consulting), under the direction and supervision of the MPSC's Staff, will assess whether CLECs have reasonable and nondiscriminatory access to Ameritech's systems, whether the appropriate level of documentation and support is available for CLECs to access and use the systems, and whether the systems are operationally ready and meet prescribed performance levels.

92. As part of that test, KPMG will also perform a review of the wholesale performance measures. As a participant in the collaborative meetings, AT&T played a key role in fashioning the test plan that was ultimately agreed to by the collaborative and filed with the MPSC. As an ongoing participant in the third party OSS test, AT&T is aware of many of the test plans and issues that may arise, and hence is in a position to unduly influence the test if it so chooses. In many cases, due to fact that many of the test aspects are unknown to Ameritech due to the necessity of “blindness”, AT&T may be more aware of test plans and timing than is Ameritech.
93. Given Ms. Samonek’s comments that the results of AT&T’s own unsupervised and non-independent test should be reviewed by the MPSC when it considers Ameritech’s application, I am very concerned that AT&T’s “test”, by its very nature, could negatively influence the performance data reported and the remedy payments made by Ameritech during the course of AT&T’s test, and thus should be excluded from actual results. As Ms. Samonek states, AT&T is installing 800 lines and intends on submitting a variety of orders designed to test Ameritech’s performance. Depending on the volume, the timing, the location and the nature of these test orders, AT&T could potentially influence not only its own performance data, but the performance data of all CLECs if, for example, they timed their order submissions to coincide with a planned KPMG test. The effect of these test orders should not be allowed to impact actual results from operations.
94. Given the potential impact on performance measures and remedies that AT&T’s test might have, in addition to the overall OSS test implications which Mr. Cottrell addresses in his Reply affidavit, plus the overall policy and operational issue raised by Ms. Gleason in her Reply affidavit, I feel that the MPSC should take appropriate action to insure that

AT&T's "test", which is nothing more than a "shadow" OSS test designed to refute the official KPMG test results, in no way impacts the performance measurement or remedy results of AT&T or of any other CLEC.

## **CONCLUSION**

95. As further demonstrated in this Reply Affidavit, Ameritech has put into place a framework for performance measurements and performance remedies that will effectively demonstrate Ameritech's ongoing compliance with the competitive checklist established by Section 271 of the Telecommunication Act of 1996.
96. This concludes my Reply Affidavit