

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
ROBIN M. GLEASON
ON BEHALF OF AMERITECH MICHIGAN**

DATED: JULY 30, 2001

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I, Robin M. Gleason, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

INTRODUCTION

1. My name is Robin M. Gleason. My business address is 3893 Okemos Road, Suite A-1, Okemos, Michigan 48864. I am the Vice President-Regulatory Affairs for Michigan Bell Telephone Company d/b/a Ameritech Michigan (“Ameritech Michigan”).¹
2. I am the same Robin M. Gleason who sponsored an Affidavit filed with Ameritech Michigan’s Brief in this proceeding on May 15, 2001. 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 OF REPLY AFFIDAVIT

3. The purpose of this Reply Affidavit is to respond to certain claims and inaccuracies made by other parties in their affidavits or comments submitted in response to Ameritech Michigan’s May 15, 2001 §271 Checklist Informational Filing with the Michigan Public Service Commission (“MPSC” or “Commission”) in this proceeding.

¹Michigan Bell Telephone Company, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc. Michigan Bell offers telecommunications services and operates under the names "Ameritech" and "Ameritech Michigan" pursuant to assumed name filings with the state of Michigan.

4. More specifically, I will address in my Reply Affidavit comments made by XO Communications (“XO”), McLeodUSA, Sprint Communications Company L.P. (“Sprint”), MCI WorldCom Communications, Inc. (“WorldCom”), CLEC Association of Michigan (“CLECA”), Michigan Consumer Federation (“MCF”), and AT&T Communications of Michigan (“AT&T”). The specific issues that I address include: Ameritech Michigan’s compliance with the MPSC’s February 9, 2000 Order that established this proceeding (“Order”); the local market entry options for local competition in Michigan; Ameritech’s commitment to, and its on-going efforts to improve quality of service; Ameritech Michigan’s rate structure; and Ameritech’s long-standing and current initiatives to open the local market to competition in a manner consistent with numerous MPSC orders, the Michigan Telecommunications Act (“MTA”) and the federal Telecommunications Act of 1996 (“Act”).
5. As I demonstrate: Ameritech Michigan’s Checklist Informational Filing was properly filed; the Michigan local exchange market has been fully opened by Ameritech Michigan to all CLECs; Ameritech Michigan is committed to providing good quality retail and wholesale service to its customers; Ameritech Michigan is acting in a pro-competitive manner; Ameritech Michigan’s rate structure is proper; and Ameritech Michigan is complying with the MTA, the Act, and all of the numerous MPSC Orders cited by AT&T in its comments filed in this proceeding.

PROCESS AND PROCEDURE

6. Several parties have commented that Ameritech Michigan's May 15, 2001 Checklist Informational Filing is somehow "premature"² or "procedurally improper."³ The basis for these claims is that the third-party evaluation of Ameritech Michigan's Operations Support Systems ("OSS") by KPMG has not yet been completed and Ameritech Michigan has not yet submitted the required 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 required under §271 and the MPSC's orders in this proceeding. That type of "all or nothing" approach is precisely what the MPSC's Order intended to avoid. These claims are in direct conflict with the process established by the MPSC for this proceeding and, therefore, should be rejected.
7. The Order 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." (Order at 5, paragraph 14(d)). The MPSC appropriately recognized that "[l]ast minute filings may limit the ability of the Commission to give full, or any, consideration to the information in those filings." (Id., at 6, paragraph 14(d)).
8. In its Order initiating this proceeding, the MPSC established a detailed framework under which it intended to fulfill its responsibility to consult with the FCC regarding Ameritech Michigan's compliance with §271 of the Act. The MPSC's framework

² CLECA Comments, at 9; AT&T Comments, at 5.

³ WorldCom Comments, at 4.

includes significant participation by interested parties through MPSC Staff supervised collaboratives, expedited dispute resolution mechanisms, and the opportunity to comment and submit information relevant to the MPSC's consultation "at any time during the pendency of this matter." (Order at p. 5).

9. Recognizing "the severe time constraints of this process" (Order at p. 5), the MPSC appropriately established a framework under which discrete aspects of Ameritech Michigan's compliance with §271 could be evaluated in a systematic, step-by-step basis, rather than waiting until all requirements were complete before beginning the task.
10. Pursuant to the Order, the MPSC clearly did not contemplate requiring Ameritech Michigan to wait until completion of OSS testing and submission of performance data before submitting information regarding its checklist compliance, a key step in the process to obtain §271 authority.
11. Clearly, pursuant to the MPSC's Order, any comments that Ameritech Michigan's May 15, 2001 Checklist Informational filing was somehow "premature" or "procedurally improper," are misplaced and contrary to the plain language and intent of the Order. In fact, the MPSC's May 15, 2001 Order in this proceeding clearly recognized what Ameritech Michigan's filing would contain and ordered a specific comment and reply cycle for parties to follow. (May 15 Order, p. 2).
12. It should further be noted that while several parties dwell on the past and focus on cases that were litigated years ago (e.g., AT&T, through its affiant Cate Hegstrom), none of these parties claim that the process that was initiated in Case No. U-12320 on February 9, 2000 has not worked, or even suggested that since inception of this

proceeding, Ameritech Michigan has not cooperated with the industry and made significant progress. Clearly, the focus on a revisionist rendition of history by some parties speaks for itself.

AT&T's Plan for Its "Test" of Ameritech Michigan's OSS

13. According to AT&T, it plans to conduct its own "test" of Ameritech Michigan's operational support systems ("OSS"), separate and in addition to the test now being conducted under the auspices of the MPSC Staff by KPMG pursuant to the Master Test Plan ("MTP") developed in the collaboratives in this proceeding. (Ms. Samonek, ¶¶ 28-31).
14. Ms. Samonek discloses that AT&T may seek to submit the results of this "test" to the MPSC in connection with its consideration of Ameritech Michigan's anticipated §271 application to the FCC for interLATA authority. The use of such "test" results would be improper.
15. The MPSC's February 9, 2000 Order in this proceeding required an independent third party test of Ameritech Michigan's OSS. As contemplated by that Order, selection and retention of the independent third party vendor and the development of the MTP were conducted through the collaborative process, similar to the process used in other jurisdictions which have addressed §271 applications. It should be noted that AT&T actively participated in this collaborative process. The obvious reason for an independent third party to conduct the test is to assure that no interested party skews the results of the test to serve their particular interests. AT&T's "test," clearly, is not independent, and is therefore subject to possible manipulation.

16. In addition and as more fully described in the July 30, 2001 affidavit of Mark Cottrell (“Cottrell Affidavit”), AT&T’s “test,” by the very nature of it not being conducted in a controlled environment with valid testing protocols, cannot portray or produce valid test results.
17. Because AT&T’s test is not independent and is not being conducted in a controlled environment, one must question both the relevance and motives of AT&T’s “test.”
18. Moreover, Ameritech Michigan is concerned that AT&T’s “test” could have adverse impacts on the ongoing third party independent test already being conducted by KPMG. Ameritech Michigan is also concerned about possible adverse impacts of the “test” on other wholesale customers and CLECs, as well as Ameritech Michigan’s retail customers.
19. Because of the potential adverse impacts of the AT&T “test” as described above, and more fully in the Cottrell Affidavit, the MPSC needs to intervene to determine whether AT&T’s “test” needs to be modified to avoid these potentially negative consequences.

LOCAL MARKET ENTRY IN MICHIGAN

20. Few, if any parties, alleged that the local market in Michigan is not open. Of course it is, and has been open for many years in Michigan. However, Sprint mentions alleged difficulties in market entry, stating that “resale” has little ability, by itself, to seriously erode Ameritech's market power; and further, that “resale” restricts CLECs’ provision of services to the ILEC suite of services at a discount off of the ILEC’s prices. (See comments of Sprint at p. 13). Sprint further comments that facilities-based entry requires expensive capital build-outs to meet demand that may not materialize, and

that market entry using unbundled network elements (“UNEs”) depends on the sort of cooperation from the ILEC that is the topic of this proceeding. (See comments of Sprint at p. 13).

21. Of course, the Act provides three methods for competitive local exchange carriers to compete with incumbent local exchange carriers, such as Ameritech Michigan, including: 1) resale of an ILEC’s services at wholesale rates; 2) purchase of UNEs at cost based rates; and 3) interconnection of its own facilities with that of the ILECs. When Ameritech Michigan measures the impact of competition, it looks at all three of these methods, which are discussed in further detail below.

22. Resale: Ameritech Michigan is required to sell its retail telecommunications services to CLECs at an “avoided cost” discount. The CLEC then resells the services to its end users on a retail basis. That discount reflects the cost Ameritech Michigan “avoids” when selling to wholesale customers instead of retail customers and was determined in the biennial cost docket (Case No. U-11831) and approved by the MPSC.

23. Unbundling: Ameritech Michigan is required to unbundle its network into elements to facilitate competition in the local competition marketplace. The unbundling allows CLECs to buy piece parts of an ILEC’s network to use, usually in concert with its own equipment, to provide an end-to-end telecommunications service to its end-users.

There are two ways that a CLEC may use UNEs:

a. Stand-alone UNEs- The CLEC may choose to only buy the piece parts of Ameritech Michigan’s network that it needs and combine those piece parts with its own equipment and facilities to provide the end-to-end service to its end users. UNEs are provided at cost-based rates as reviewed and approved by the MPSC.

b. UNE Platform- UNE-P is a combination of three network elements- that is, the combined network elements include: Unbundled Loop, Unbundled Local Switching, and Shared Transport. The UNE-P provides all the network elements CLECs require to provide local exchange services to their end users; the CLECs do not need to provide any network facilities themselves. In addition, the UNE-P is available at cost-based rates as reviewed and approved by the MPSC.

24. Interconnection- The Act requires ILECs to interconnect with CLECs so that traffic between the two networks can be exchanged. This ensures that there is no barrier to competition because an end user of a CLEC can call an end user of another carrier, or vice versa.

25. Contrary to Sprint's comments concerning economic barriers to entry, industry market data overwhelmingly demonstrates that CLECs are using all three methods to effectively compete in Michigan. For a further discussion of market data demonstrating CLEC competition in Michigan, please refer to the affidavits filed by Deborah Heritage in this proceeding. (May 15, 2001 Heritage Affidavit and July 30, 2001 Heritage Reply Affidavit).

26. Ameritech Michigan further responds that Sprint's vague insinuations regarding "cooperation" from ILECs in offering UNEs, is misplaced. (See comments of Sprint at p. 13). The Heritage affidavits overwhelmingly demonstrate that CLECs in Michigan are using the UNE-P and UNE loops as effective strategies in competing on a mass market basis in Michigan.

QUALITY OF SERVICE

27. XO, McLeodUSA, and Sprint comment that Ameritech Michigan's §271 application should be denied because of Ameritech Michigan's previous service quality

problems.⁴ McLeodUSA also comments on the record number of customer complaints related to Ameritech's service⁵, while Sprint further comments that CLECs cannot be sure they will receive the level of service quality needed to compete with Ameritech and if so, they will be unsure that adequate penalties are available to compensate them for poor service as well as spur Ameritech to provide good quality wholesale service.⁶

28. Ameritech Michigan has taken extensive steps to address potential and actual service quality problems for both its retail and wholesale customers. First, the MPSC approved a plan to address Ameritech Michigan's retail quality of service problems, including the establishment of a series of customer credits to enforce various stringent quality standards. As the MPSC has openly acknowledged, Ameritech Michigan has made "significant headway" in addressing its retail service quality problems and Ameritech Michigan customers are again receiving quality service. Second, the MPSC has established performance measurements and a remedy plan to ensure that Ameritech Michigan meets specific wholesale performance measure service levels as well.

Ameritech Michigan's Compliance with Quality of Service Standards

29. Regrettably, but not surprisingly, the above referenced parties fail to comment on the MPSC proceedings last year which squarely addressed the retail quality of service problems encountered by Ameritech Michigan in the spring and summer of 2000, and

⁴XO, at 16; McLeodUSA, at 2; Sprint, at 13.

⁵ McLeodUSA at p. 2.

⁶ Sprint, at 13.

the subsequent and significant steps taken by Ameritech Michigan to successfully resolve its service quality problems.

30. On August 17, 2000, the MPSC issued an order in Case No. U-12571 initiating a legislative-type inquiry into the quality of telecommunications services of Ameritech Michigan. Also, on September 7, 2000, the MPSC initiated a contested case proceeding in Case No. U-12598 for the purpose of establishing retail service quality standards, including enforcement provisions, to address Ameritech Michigan's service quality.⁷ In a consolidated Order issued on December 20, 2000 in Cases No. U-12571, U-12598, and U-12599⁸, the MPSC approved a settlement agreement that was negotiated by Ameritech Michigan, the MPSC Staff, and the Attorney General. The settlement agreement established stringent retail quality of service standards along with stiff enforcement provisions, including extensive customer credits if certain installation and repair deadlines were not met. In adopting the proposed settlement agreement, the MPSC also concluded in its December 20, 2000 Order that:

“Ameritech Michigan is making significant headway in addressing its service quality problems. The interim commitments made by Ameritech Michigan in Case No. U-12571, as well as the additional commitments agreed to by Ameritech Michigan in the settlement agreement, will help ensure that Ameritech Michigan customers do not experience unreasonable delays in out-of-service repairs and installation commitments.” (Order at p. 3). (Emphasis added).

31. Ameritech Michigan has acknowledged that its quality of service problems in the spring and summer of 2000 were unacceptable. However, as the MPSC stated in its

⁷The MPSC, in Case No. U-13013, is considering the promulgation of rules governing the quality of telecommunication services for all providers in Michigan. The rules would replace the existing rules, R 484.1 et seq., which expire on September 1, 2001.

⁸On September 7, 2000, the MPSC issued an order in Case No. U-12599 requiring Ameritech Michigan to show that its administration of the provisions for out-of-service bill credits was being done in compliance with the Commission's rules and the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.

consolidated Order, Ameritech Michigan has made significant headway in addressing its service quality. Ameritech Michigan customers are once again receiving the quality service they have come to expect from Ameritech Michigan. On this point, Ameritech Michigan continues to beat the 36-hour average repair standard. In fact, Ameritech Michigan has beaten this standard every month beginning February 2001.

32. Wholesale performance has also been the subject of extensive MPSC effort. As a result of voluntary agreements with the CLECs participating in the collaborative process, Ameritech Michigan has implemented a large number and wide variety of performance measures, supported by rigorous standards. The MPSC has approved these measures and standards, and each update to them. And on April 17, 2001 in Case No. U-11830, the MPSC adopted a plan for self-executing remedies to enforce those standards.⁹ In addition, Ameritech Michigan's performance results will be addressed in a subsequent phase of this proceeding; subsequent to submission by Ameritech Michigan of its performance measurements, and therefore need not be considered here.¹⁰

RATE RESTRUCTURING AND COMPLIANCE WITH ACT

33. The Michigan Consumer Federation ("MCF") claims that "Ameritech has pursued its aggressive policy of "rate rebalancing" in which it lowers the cost of its most

⁹Multiple parties, including Ameritech Michigan, filed for rehearing or clarification on this Order. On July 25, 2001 in U-11830, the MPSC issued an Order in response to the petitions for rehearing or clarification. The MPSC's July 25th Order is in the process of being reviewed internally and implemented. (For a further discussion, please refer to the affidavit of Salvatore Fioretti, "Fioretti Affidavit").

¹⁰The process by which to address Ameritech Michigan's submission of its performance results was recently agreed to by the collaborative and will be submitted shortly to the Commission via a Joint Motion of the parties.

competitive offerings while maintaining or even raising the very least competitive offering—basic rates.” (MCF Brief at pps. 17-18).

34. MCF’s comments are misplaced and wrong.¹¹ Ameritech Michigan was required under the MTA to “restructure its rates for basic local exchange, toll, and access services, to ensure that the rates are not less than the total service long run incremental cost of providing each service.” (MTA, §304(a)(1)). In accordance with §304(a)(1), Ameritech Michigan’s rates for basic local exchange, toll, and access services, are set at not less than the total service long run incremental cost of providing the service. Cost studies filed with and approved by the MPSC by Ameritech Michigan demonstrate that the rates Ameritech Michigan charges for basic local exchange service are in compliance with §304(a)(1).

35. Regarding MCF’s comments that Ameritech Michigan lowers the cost of its most competitive offerings, Ameritech Michigan responds that its retail prices may be lower for the more competitive services. (It should be noted again, however, that the pricing of Ameritech Michigan’s regulated services are in full compliance with §304(a)(1)). Additionally, MCF ignores the long history of incumbent local exchange carriers (“ILECs”). For many years, ILECs were monopolies and were heavily regulated under rate of return regulation. In that regulatory framework, a number of subsidies were built into the prices charged for various services by the regulatory commissions in the interest of universal service and the public interest.

¹¹Interestingly, MCF’s comments on rate rebalancing and its impact on CLECs are directly refuted by the recent comments of AT&T’s Chairman and CEO, C. Michael Armstrong. At the recent MARC conference on June 11, 2001 on Mackinac Island, Michigan, Mr. Armstrong addressed the issue of rates in Michigan, stating that Michigan regulators, after struggling with the issue for five years, set rates “that would give competitors a reasonable chance of competing.” (See also, AT&T Press Release, June 11, 2001).

These included subsidies from business service to residential service, toll services to local services, and carrier access services to local services. Under all of these regulatory frameworks, the generally lower cost-based services were priced higher to subsidize the higher cost-based services. These subsidies are simply not sustainable in a competitive market and the legislature recognized this when providing in the MTA that all regulated services must cover their costs. Thus, it is not surprising in a rate restructuring that basic local exchange service rates may go up in order to eliminate the subsidies that are no longer sustainable in a competitive environment.

36. Further, market forces, in part, dictate the pricing of telecommunication services. This is clearly evidenced in the long distance market where prices have fallen when an ILEC, such as Southwestern Bell Telephone (“SWBT”) in Texas, Kansas and Oklahoma, or Verizon in New York, has been authorized to enter the long distance arena.
37. MCF also alleges that “the message from ILECs, (including Ameritech) bring into their lobbying, regulatory and media campaigns, is contrary to the intent and goals of the federal Act.” (MCF at p. 22). Not surprisingly, MCF fails to provide any evidence in support of its hollow and misplaced allegations that all ILECs, including Ameritech Michigan, are violating the intent of the Act. Clearly, Ameritech Michigan’s lobbying and regulatory efforts, and media campaigns, in no way violate the plain language or the spirit of the Act.

AT&T—LOOKING BACKWARDS

38. For the remainder of my affidavit, I address the comments of AT&T and its affiant Cate Hegstrom. Ms. Hegstrom's "background" and "context" are misleading, largely irrelevant to Ameritech's May 15 filing, and if left unchallenged would result in an inaccurate record for this proceeding. As a result, it is important to set the historical record straight.

Ameritech's Past Long Distance Filings

39. Ms. Hegstrom's affidavit begins with the statement: "Ameritech's efforts to gain long distance authority date back to before the Telecommunications Act of 1996," citing the "Customers First Plan" announced by Ameritech in early 1993 (p. 6). The affidavit then immediately dispatches the filing to the dustbin of history, mentioning that it was superseded by the passage of the Telecommunications Act of 1996. Several things should be added so that the record on this issue is accurate and complete.

40. Ms. Hegstrom's affidavit should first have noted that the Customers First regulatory initiative was undertaken by Ameritech without any statutory or regulatory compulsion. (e.g., no statute, regulatory commission order, or judicial order, at the state or federal level at that time, mandated that Ameritech propose and effectuate unbundling of its local network as was proposed in the Customers First Plan).

41. AT&T should also have noted that Ameritech engaged in intensive negotiations with the U.S. Department of Justice (DOJ), and AT&T, to seek approval of a waiver to the Modification of Final Judgment (MFJ) as part of the Customers First Plan. AT&T failed to note that it was a key stakeholder in those discussions, and its then CEO

publicly supported the proposal. It should finally have noted that the result of those negotiations was the filing by the DOJ on April 3, 1995 of a motion with the MFJ court for a modification of the decree to permit a limited trial of interLATA service by Ameritech. Again, AT&T supported this motion. Its May 31, 1995 "Response to Motion of the United States for a Modification of the Decree to Permit a Limited Trial of Interexchange Service by Ameritech" was remarkable in its support for Ameritech's entry into the interLATA market, albeit on a geographically scoped trial basis. Nonetheless, over six years ago, AT&T went on record supporting Ameritech Michigan's entry into the interLATA market in the Grand Rapids LATA, to be followed by the real potential of extending that trial into the other Michigan LATAs. AT&T's filing with the MFJ court came on the heels of its April 3, 1995 media release in which it hailed the DOJ motion, calling it "good public policy, the right kind of evolution for our industry, and a high value proposition for the American consumer." The release further mentioned AT&T's high hopes that the trial, "an outgrowth of Ameritech's so-called 'Customer First' [sic] proposal for opening its local market to competition", "would succeed".

42. These contemporary statements certainly are at odds with the sense of Ms. Hegstrom's affidavit, which paints a picture of an Ameritech that has never had an interest in opening its markets.

43. As a final note on this point, it should be recalled that 23 other parties besides AT&T commented in support of the waiver, including the FCC, the Governor of Michigan, the MPSC Staff, the leaders of the Michigan Legislature, principal IXCs, the leading cable television and competitive access providers, and numerous trade associations.

Clearly, Ms. Hegstrom's recent affidavit on Ameritech's Customers First Plan strains credibility.

44. Ms. Hegstrom's affidavit next recites the history of Ameritech Michigan's filings in 1997 to secure interLATA relief under the Telecommunications Act of 1996 (pp. 6-7). Again, these filings need to be placed into context.

45. First, in large part because of Ameritech Michigan's prior Customers First initiative, its §271 filing on January 2, 1997 was the first such application under the Act in the nation. Its filing in CC Docket No. 97-1 was supported by the MPSC, which found that Ameritech Michigan was in compliance with the competitive checklist. The filing was later withdrawn because of the temporary lack of finality in the interconnection agreement with AT&T. After refileing, the FCC did reject the application in CC Docket No. 97-137. (For a further discussion of Ameritech Michigan's prior §271 efforts, please refer to my May 15 affidavit, ¶¶ 7-10). Ms. Hegstrom's affidavit curiously cites then-Ameritech Chairman Notebaert's assessment that the FCC roadmap decision in that proceeding would require significant time and expense to fulfill. Given that no RBOC was able to satisfy the FCC that it had complied with the roadmap until 1999, it is clear Mr. Notebaert's statement was correct. But Ms. Hegstrom's affidavit misses the point. It was not Ameritech alone that found compliance with the roadmap an arduous proposition; all BOCs found that compliance was not going to happen overnight. Out of the 50 states, only six have seen successful applications approved, three of which involve SBC. Nonetheless, Ameritech Michigan has continued to work on compliance issues following issuance of the FCC's 1997 decision, as witnessed by the entry in February 2000 of the

MPSC's order in this docket, convening proceedings to facilitate the finalization of the long process.

46. Ms. Hegstrom's affidavit next speculates that Ameritech turned its attention away from compliance with §271 in favor of a merger with SBC (pp. 6-7). That is simply not the case. The merger itself was a result of changes in the industry that necessitated the combining of the two companies to become a global competitor. AT&T itself has engaged in various combinations, such as its multi-million dollar investment in cable (not telephony) networks, and AT&T is currently in the throes of a massive corporate reorganization it portrays as necessary in today's telecommunications marketplace. Clearly, the SBC/Ameritech merger proceedings themselves, in which the FCC and certain state commissions engaged in months of contested proceedings and negotiations, were extremely time-consuming. But they did not distract Ameritech from continued market-opening commitments. To the contrary, the various orders approving the merger attached certain conditions, to which SBC and Ameritech agreed, designed to advance competitive goals.

47. Thus, it is only the biased observer who would say Ameritech did nothing during 1998-2000 to advance competition.

48. Last, Ms. Hegstrom uses this distorted picture of the past to warn the MPSC not to "cut corners" and to scrutinize compliance with §271 "carefully and fully" (p. 8). Apparently, AT&T believes that the MPSC needs to be lectured on how to evaluate Ameritech Michigan's filing. In light of the extensive role that the MPSC Staff has played in this proceeding since its inception, and in view of the track record demonstrating that the MPSC will comply with its statutory duties on this issue, there

is plainly no real danger that the MPSC will cut corners. Rather, it would seem obvious that the real purpose for Ms. Hegstrom's affidavit is to distort Ameritech Michigan's past and present compliance with requirements of §271. I am confident that the MPSC will give Ms. Hegstrom's claims all the weight they deserve.

Ameritech's Record on Competition and "Cooperation" in Opening Markets

49. Ms. Hegstrom accuses Ameritech Michigan of falsely portraying the state of local competition as thriving in Michigan (p. 8). Relying on Mr. Turner's affidavit, which incorrectly focuses on minutes of use to develop an estimate of market share, AT&T declares that there is very little "real" local competition in Michigan. Ms. Heritage's Reply Affidavit demonstrates the flaws in Mr. Turner's analysis. Moreover, AT&T's reliance on market share data is misplaced. The FCC has consistently held, in each of its §271 orders, that there is no "market share" test under either the Track A or public interest requirements of §271.

50. Rather than a market share test, the relevant question is whether the local market is open to entry. To that question, Ms. Hegstrom implies that Ameritech has not "cooperated" in opening the local market. However, Ameritech takes strong exception to that allegation. In fact, Ms. Hegstrom's own affidavit demonstrates that progress has been made as a result of this proceeding. For example, Ms. Hegstrom, in a moment of candor, admits that "progress" has been made during the collaboratives to demonstrate Ameritech Michigan's compliance with the competitive checklist (p. 21). Ms. Hegstrom however fails to acknowledge AT&T's recent competitive activity in the local Michigan telephone market. Contrary to Ms. Hegstrom claims, the local Michigan market is open to entry.

51. Most significantly, however, Ms. Hegstrom's accusation that Ameritech has not "cooperated" is belied by the MPSC's own recent positive statements about the cooperation among the parties in this and related dockets. Guided by the MPSC Staff, the numerous collaboratives in this proceeding demonstrate Ameritech Michigan's pro-competitive efforts. For example, as recently as July 11, the MPSC commended all parties -- including Ameritech Michigan -- for constructively working on revisions and additions to the performance measurements:

"Once again, the Commission acknowledges and commends the efforts of the collaborating parties to develop reasonable performance measures and data reporting requirements through mutual cooperation." Order Amending Prior Orders, Case No. U-11830, issued July 11, 2001.

52. The MPSC made a similar statement in its February 22, 2001 order in the same docket:

"The Commission takes this opportunity to express its appreciation for the efforts of the collaborating parties in working together to develop performance measures that are reasonable and provide information needed to ensure that CLECs are provided with nondiscriminatory service, thereby allowing an opportunity to compete fairly in the basic local exchange market." Order Amending Prior Orders, Case No. U-11830, issued July 17, 2000, p. 4.

53. Rather than AT&T's false slant, these statements of the MPSC concerning Ameritech Michigan's participation in good faith discussions to meet the needs of local competitors should be the basis for the review here.

54. Because there are no facts to support the claim that Ameritech has not cooperated to open the local market, Ms. Hegstrom resorts to past proceedings to justify her claim of anti-competitive behavior. She relies on regulatory and judicial proceedings involving intraLATA toll dialing parity, intraLATA toll, "PIC" changes, reciprocal

compensation, shared transport, and (the only recent proceeding) Ameritech's remedy plan. Upon scrutiny, these examples are no proof for her assertion.

IntraLATA Toll Dialing Parity

55. AT&T first cites Ameritech Michigan's conduct on intraLATA toll dialing parity as evidence of a desire to block entry into the local market (pp. 11-13). I would first note that the issue here was not competition in the local market but in the intraLATA toll market. AT&T itself has admitted on many occasions that customers do not make a distinction between interLATA and intraLATA toll calling. Thus, a customer's ability to obtain both forms of toll calling from a provider is vitally important to be successful in the market. By contrast, the interLATA prohibition is a key competitive disadvantage for Ameritech Michigan. In recognition of this significant disadvantage, the Michigan Legislature enacted, and the Governor signed into law, §§312a and 312b of Public Act 216 of 1995. These two sections attempted to rectify and balance the competitive toll landscape. In compliance with these MTA amendments, Ameritech Michigan implemented intraLATA dialing parity in ten percent of its exchanges on January 1, 1996.

56. Despite the passage of these two provisions in 1995, the MPSC in 1996, issued orders directing Ameritech Michigan to implement complete toll dialing parity by January 1, 1997. Doing so would have cost Ameritech Michigan millions of dollars in revenue, which the Legislature and Governor had determined was not an appropriate public policy goal. Consequently, Ameritech Michigan obtained a stay from the Michigan Court of Appeals of the Commission's orders. *Ameritech Michigan v PSC*, 229 Mich App 664, 679 (1998). On the merits, the Court of Appeals found the MPSC orders

unlawful and void. Notwithstanding the status of the proceedings, Ameritech Michigan proceeded to implement further stages of toll dialing parity as discussed more fully below. In its May 1998 decision, the Court reversed the MPSC orders, finding them null and void. *Id.*

57. On review, the Michigan Supreme Court agreed with substantial portions of the Court of Appeals' decision. *In Re: MCI Telecommunications Complaint*, 460 Mich 396; 596 NW2d 164 (1999). It found that the MPSC orders were unlawful from the period of January 1, 1996 to July 1, 1997, and thus Ameritech Michigan had no requirement to implement dialing parity during that time period. It did hold that after July 1, 1997, Ameritech Michigan had an obligation to complete its dialing parity conversion, something that Ameritech Michigan had already done due to orders of the FCC under the Act. In subsequent proceedings before the MPSC in the cases involved (U-10138, U-11743), the MPSC acknowledged that its 1996 orders were unlawful and void.

58. Ms. Hegstrom also fails to note that IXCs, including AT&T, have had the ability to compete in the intraLATA toll market using 1+ in: 1) 10% of the Ameritech Michigan exchanges since January 1, 1996; 2) an additional 40% of the Ameritech Michigan exchanges since December 2, 1996; and 3) an additional 20% of Ameritech Michigan exchanges since January 2, 1997. Thus, IXCs have had the ability to fully compete in the intraLATA toll market using 1+ dialing in 70% of Ameritech Michigan exchanges since January 2, 1997. Further, on May 12, 1999, Ameritech Michigan converted the remaining 30% of its exchanges to 1+ dialing, thereby allowing IXCs to have the ability to fully compete in the intraLATA toll market using

1+ in 100% of the Ameritech Michigan exchanges since May 12, 1999. Clearly, these facts demonstrate that contrary to the comments of Ms. Hegstrom, Ameritech Michigan never dragged its feet in implementing 1+ intraLATA dialing parity.

59. Thus, far from the picture of an Ameritech Michigan that resisted lawful MPSC attempts to open up the intraLATA toll market, the true picture is that Ameritech Michigan attempted to pursue its legal rights to appropriate compliance with state statutes, and the Michigan appellate courts agreed with its position in substantial part. Finally, it is uncontested that Ameritech Michigan is in compliance with the MPSC's decisions.

Provisioning of IntraLATA Toll Service

60. Ms. Hegstrom's affidavit next cites the complaints filed by Brooks Fiber and LCI in Cases No. U-11350 and U-11498, leading to the MPSC's generic investigation in Case No. U-11525, on the issue of providing intraLATA toll to customers who switched to another local provider (pp. 12-13).

61. It should be noted that the intraLATA market has actually been open to competition since 1984, with competitors using various means to gain entrance and market share. There are no significant barriers to intraLATA entry for toll providers in Michigan. As mentioned above, 1+ intraLATA toll dialing parity has been available to competitors in certain Ameritech Michigan exchanges since January 1, 1996, and 100% of Ameritech Michigan exchanges have been open to 1+ since May 12, 1999. Business customers use dedicated connections with high capacity trunks, pre-programmed private branch exchanges (PBX), microwave and satellite technology. Residence customers also use dial around 10 XXX.

62. Ms. Hegstrom, in citing the cases filed by Brooks Fiber and LCI, fails to note that Ameritech Michigan reached a settlement agreement with these providers for the provisioning of intraLATA toll service. Under the terms of the settlement, Ameritech Michigan agreed to develop a method that would allow a customer with an Ameritech Michigan intraLATA toll ValueLink contract to switch local providers (e.g., to Brooks, LCI, and MCI), and still retain their Ameritech Michigan intraLATA ValueLink contract. To Ameritech Michigan's knowledge, this was the first arrangement of its type offered by any provider.
63. In response to the proposed settlement, Brooks Fiber filed a motion to withdraw its Complaint and no other party, including LCI, objected. However, the MPSC Staff objected to the proposed settlement agreement because Ameritech Michigan was not offering to provide its intraLATA toll service to all of Brooks Fiber's customers (not just those with ValueLink contracts), even though that is not what Brooks Fiber (or any of the other mentioned carriers) requested. Subsequent to the Staff's opposition to the proposed settlement agreement, the MPSC approved the settlement, but at the same time, initiated the above referenced generic proceeding, Case No. U-11525. In an order issued on November 5, 1998, the MPSC held, in part, that Ameritech Michigan's refusal to provide intraLATA toll service to customers of other basic local exchange service providers that are located in a geographic area in which Ameritech Michigan provides intraLATA toll service to its own basic local exchange service customers, was contrary to the public interest and violated the anti-discrimination provisions of state and federal telecommunications laws.

64. Ameritech Michigan strongly believes that it has no legal requirement to provide intraLATA toll service on a stand alone basis to the local exchange customers of CLECs, and is currently appealing the MPSC order. Ameritech Michigan further believes that the above referenced settlement agreement with Brooks Fiber and LCI clearly demonstrates that it was not acting in an anti-competitive manner, as commented on by Ms. Hegstrom.

65. During the pendency of the appeal in Case No. U-11525, Ameritech Michigan is fully complying with the MPSC's order.

Primary Interexchange Carrier ("PIC") Protection

66. Ms. Hegstrom's next sets her attention on Primary Interexchange Carrier ("PIC") protection, bill inserts, and third party verification, all in the context of slamming protection. Again, the affidavit paints an incomplete and misleading picture of the MPSC proceedings addressing these issues.

67. The Ameritech Michigan "PIC Protection" bill insert issued in December of 1995, referenced at p. 13 of Ms. Hegstrom's affidavit, arose out of a concern, recognized by the FCC, that slamming continued to be a significant problem to customers.

68. By way of background, in 1995, the FCC issued an order implementing new rules designed to address slamming. That order explained that slamming continued to be a serious problem, despite a series of FCC orders throughout the early 1990's adopting several types of consumer safeguards. (See Report and Order, Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers, FCC Dkt. 94-129, 10 FCC Rec. 9560, 9561-63 (June 14, 1995)).

69. PIC Protection was widely recognized as an appropriate response to the dangers of slamming in both the interLATA and intraLATA markets. In its June 1995 order, the FCC “encourage[d] entities such as LECs to take additional steps [beyond verification procedures] that might help reduce slamming in their service areas...” (Id). The FCC endorsed PIC Protection as an appropriate measure to protect customer choice, in addition to the FCC’s verification procedures, and also endorsed the California Commission’s view that PIC protection should be offered to customers both before and after slamming has occurred. FCC Slamming Order at 9574 n. 58 (June 14, 1995). It was against that backdrop that Ameritech Michigan issued a bill insert, informing customers of the availability of its “PIC Protection” program, and warning them of the dangers of slamming.

70. Ms. Hegstrom's affidavit also cites to a specific complaint filed by Sprint in Case No. U-11038, a case in which Sprint alleged that an Ameritech Michigan PIC Protection bill insert was deliberately misleading and anticompetitive in violation of the MTA.

71. In a 2-1 decision in Case No. U-11038, the MPSC found the PIC Protection bill insert to be “deceptive and misleading.” However, there was a dissenting opinion by Commissioner Shea, taking strong issue with the majority’s conclusion. The dissent opinion stated:

The trouble with this argument [that the bill insert was misleading and anti-competitive] is that there is simply no evidence that any party to this proceeding was misled or deceived. Even assuming for the sake of argument that Ameritech’s competitors may have been competitively harmed by the bill insert, I do not understand them to have alleged in this proceeding that they were mislead or deceived by the bill inserts. This fact, coupled with the complete absence of any testimony from customers alleging deception, is fatal to the complaint.

72. With the further development of competition between telecommunication providers in Michigan, slamming continued to be a serious problem. The extent of the problem prompted the Michigan Legislature in 1998 to enact more stringent protection against slamming by the passage of Public Acts 259 and 260 of 1998. The MPSC in an Order issued on July 11, 2001 in Case No. U-11900, stated that those acts which amended the MTA, expressly "...prohibited a provider from switching a customer to another service provider without first verifying, through one or more approved methodologies, that the customer truly authorized the switch."
73. Following these enactments, the MPSC initiated two proceedings (Cases No. U-11757 and U-11900) initially to establish and then later to refine a set of anti-slamming procedures to be followed by all providers in Michigan. Of significance to the allegations of AT&T in the Hegstrom affidavit is that the MPSC has now recognized the benefits of, and need for, a PIC protection program for customers.
74. In its April 23, 1999 Order in U-11900, the MPSC mandated that all LECs offer LEC and PIC protection to customers as a tool against slamming. The current requirements establish explicit and detailed protections against a reoccurrence of the activities that AT&T challenges.¹²
75. Paragraph 22 of the Hegstrom Affidavit refers to the MPSC proceedings initiated by a Complaint filed by MCI (U-11550) in which Ameritech Michigan was found to have violated a prior MPSC Order in Case No. U-11038 with regard to the implementation

¹²AT&T's criticism of Ameritech is ironic in light of the recent finding that AT&T had engaged in deceptive and misleading conduct in violation of the Michigan Telecommunications Act. In an Opinion and Order issued on July 11, 2001, in consolidated Case Nos. U-12759 and U-12764, the Commission imposed fines on AT&T of \$30,000 and issued a cease and desist order finding that AT&T engaged in "cramming".

of a new PIC protection program. Again, the affidavit fails to point out several important facts concerning this proceeding.

76. First, the MPSC declined to impose any fines or penalties on Ameritech, finding that the manner in which Ameritech implemented the PIC protection plan was based on a “good faith interpretation”, albeit an erroneous one, of the MPSC’s prior order in U-11038.
77. Second, the MPSC declined to award any compensatory damages to MCI, finding MCI failed to carry its burden of proof that it had lost profits from customers whose PIC selection of MCI for intraLATA toll had been delayed. This finding was affirmed by the Court of Appeals which rejected both Ameritech’s appeal and MCI’s cross-appeal in their entirety, except as to an award of attorneys fees to MCI which was reversed.
78. Third, Ameritech Michigan’s conduct was due, in part, to confusion concerning the MPSC’s requirements governing the interplay between the procedures for third party verification of PIC changes and the use of PIC protection. The existence of that confusion was implicitly recognized by the MPSC in its refusal to impose fines or penalties because Ameritech Michigan had a good faith belief in the correctness of its interpretation of the prior MPSC order. That potential for confusion and improper conduct was greatly reduced by the MPSC’s subsequent adoption of comprehensive guidelines for slamming protection and PIC change procedures in Cases No. U-11757 and U-11900. Thus, the likelihood of a repetition of the alleged anti-competitive conduct at issue in U-11550 was greatly reduced by subsequent MPSC actions to clarify how PIC change procedures and PIC protection should be coordinated.

Reciprocal Compensation

79. Ms. Hegstrom's affidavit also comments on Ameritech Michigan's actions challenging MPSC orders regarding reciprocal compensation for Internet traffic. (pps. 15-16). Once again, AT&T cites Ameritech Michigan's legitimate right to have its duties and rights determined under law as some kind of evidence of animus, which clearly finds no support from the facts. Further, Ms. Hegstrom fails to note that Ameritech Michigan has complied with the MPSC reciprocal compensation orders, and has continued to pay all compensation required by those orders, while judicial review is ongoing.

Shared Transport

80. Ms. Hegstrom next comments on the provisioning of shared transport for UNE-P. (p. 16). As more fully discussed in Ameritech Michigan's Reply Brief filed concurrently with my Reply Affidavit, Ms. Hegstrom's comments on this issue, along with her attempts to regurgitate and re-write history, are again misplaced. Also, it should be noted that although Ameritech Michigan has filed various appeals, it is in compliance with all decisions dealing with the provisioning of shared transport as ordered by the MPSC in Case No. U-12622.

Other MPSC Cases

81. Finally, Ms. Hegstrom cites to Ameritech Michigan's remedy plan, petition to the FCC on provision of unbundled access to high-capacity loops, the Ameritech Communications, Inc. ("ACI") certification order in Case No. U-11053, and merger order compliance as further indicators of anti-competitive intent (pp. 16-19). This

grasping at straws shows the real purpose behind AT&T's game plan: to urge the MPSC to implement structural separation (pp. 19-20). AT&T's misguided and self-serving comments concerning structural separation are further addressed in Ameritech Michigan's Reply Brief, filed concurrently with my Reply Affidavit. Suffice it to say here that: the remedy plan has recently been addressed by the MPSC in its Order on Rehearing issued July 25, 2001, and is in the process of being reviewed internally and implemented (See the July 30 Fioretti affidavit); SBC/Ameritech has a perfect right to petition the FCC for relief when it believes it appropriate; there is no allegation that the ACI certification order has been violated; and SBC/Ameritech is in compliance with the merger order, as witnessed by the very act of paying the penalties cited by AT&T.

The Public Interest

82. Last, under this heading, Ms. Hegstrom's comments again state that the MPSC should not prematurely approve §271 entry. Again, I would note that AT&T betrays an apparent, yet unfounded, fear that this MPSC will not perform its statutory duty to appropriately evaluate Ameritech Michigan's checklist compliance. What really takes place in this portion of the affidavit is AT&T's attempt to reintroduce an issue that has nothing to do with §271 -- its long-standing yet consistently rejected goal of reducing access charges to TSLRIC. What is particularly amazing about this portion of Ms. Hegstrom's affidavit is AT&T's audacity in making this point given recent history.
83. On January 21, 2000, AT&T filed a complaint against Ameritech Michigan at the MPSC seeking to have intrastate access charges set at TSLRIC. After the close of the evidentiary record, the ALJ issued a PFD recommending that the MPSC dismiss the

complaint: ". . . the ALJ's dispositive recommendation was that the Commission should continue to adhere to its long-standing policy of mirroring access rates. The ALJ reasoned that the Legislature gave implicit approval to this policy by enacting the provision in Section 310(2) [of the MTA] declaring that intrastate access rates in excess of mirrored levels are not just and reasonable. . . . The ALJ found that existing rates based on mirrored FCC tariffs are just and reasonable and are not excessive." Opinion and Order, Case No. U-12287, issued August 17, 2000, pp. 3-4. After exceptions were filed by AT&T (and others) to the PFD, the MPSC issued its order agreeing that the complaint should not be granted. Although the MPSC did not agree with all of the bases for dismissal in the PFD, it did reach the following conclusion:

Ultimately, however, the Commission is not persuaded on the merits that it should reduce intrastate access rates to their TSLRICs, but rather it finds that it should not now abandon the long-standing practice of allowing intrastate interexchange carrier access rates to mirror interstate rates. As Ameritech Michigan notes, mirroring, by picking up the effects of access charge reductions on the federal level, has provided substantial benefits to Michigan IXCs in the past several years. As recent developments indicate, there is even more reason to believe that access charge reform on the federal level will continue to produce rate reductions. Moreover, there is no apparent reason to find that mirroring of federal charges has somehow produced rates that are fundamentally unjust, unreasonable, or otherwise inconsistent with the competitive policies of the MTA. In addition to its consistency with sound policy, mirroring has proven to be an eminently workable and pragmatic approach to reducing access rates.

(Opinion and Order, p 11.)

84. Moreover, in response to the very "price squeeze" argument posited in the Hegstrom affidavit, the Commission had this to say:

The Commission rejects the view that maintaining different rate structures for toll access and local interconnection is unjustly discriminatory. As already noted, the rate differences have converged in the aftermath of the CALLS proposal. More to the point, toll access service is simply not the same as local interconnection service, even if the underlying network functions used to provide the services are similar. The services are

dissimilar in the same manner that retail local and long-distance calling are dissimilar.

Although toll access and local interconnection services are components of providing retail long-distance and local service, respectively, the rate structures for local and toll service are different as a matter of long-standing ratemaking and regulatory practice. ILECs charge their local service customers substantially different rates and apply different rate structures, compared to the time-of-day/location/minutes-of-use structures traditionally used for long-distance calling. Because the underlying costs, regulatory concerns, pricing structures, and competitive pressures faced by providers of local and long-distance calling have been, and for now continue to be, different, it is appropriate to continue to differentiate between toll access and local interconnection services for rate purposes. Although one premise of competitive markets for all telecommunications services is that someday all segments of the market will be fully competitive and subject to similar cost pressures, that day has yet to arrive. For the present, the distinctions between the two types of service are deeply embedded in the MTA, and the Commission cannot ignore them.

The Commission finds no merit in the claim that the toll access rates are discriminatory in the sense that Ameritech Michigan need not actually pay them (at least in an economic sense; it is not clear whether some affiliated entity within the Ameritech/SBC holding structure actually transfers funds to Ameritech Michigan as payment for toll access services). The MTA uses the statutory imputation test to avoid those types of abuses. There is no indication that Ameritech Michigan's toll rates do not comply with imputation, nor is there any showing on the record that Ameritech Michigan actually engages in the types of abuses of which the IXC parties complain.¹³

85. Thus, finding that the complaint should be dismissed (p. 17), the Order so provided

(Id.).

86. It is clear that AT&T does not agree with the MPSC's decision. But its attempt to revive the argument here -- after losing it in Case No. U-12287, and after obviously concluding that it had no basis to seek reversal of the decision since no appeal was

¹³At present, federal law precludes Ameritech Michigan from offering interLATA service in Michigan. Thus, the only toll market segment in which Ameritech Michigan now competes with other IXCs is intraLATA toll service.

filed -- is nothing more than rearguing a policy position that the MPSC has already rejected.

87. The notion that "premature approval of long distance authority" (See p. 23) will occur is laughable. But AT&T's persistent attempts to circumvent the admonition of § 271(d)(4) -- the prohibition on changing the checklist by arguing for structural separation and access priced at TSLRIC -- is not. The obvious goal of delaying interLATA entry in order to preserve AT&T's market position is perhaps understandable, but that goal should not be one that regulators embrace as it is completely contrary to the competition-promoting policies the MPSC has adopted since the late 1980s when it first opened the intraLATA WATS market to competition.

CONCLUSION

88. In sum, Ameritech Michigan's Checklist Informational Filing was properly filed; the Michigan local exchange market has been fully opened by Ameritech Michigan to all CLECs; Ameritech Michigan is providing good quality retail and wholesale service to its customers which it is continuing to improve; Ameritech Michigan is not acting in an anti-competitive manner; Ameritech Michigan's rate structure is proper; and Ameritech Michigan is complying with all of the numerous MPSC Orders cited by AT&T in its comments filed in this proceeding.