

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

JOHN S. HABEEB

ON BEHALF OF

AMERITECH MICHIGAN

DATED: JULY 30, 2001

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I, John S. Habeeb, being of lawful age and duly sworn upon my oath, do hereby
depose and state as follows:

INTRODUCTION

1. My name is John Habeeb. I am the same John Habeeb who previously filed an affidavit in this proceeding on May 15, 2001 ("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 on 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

2. The purpose of this Reply Affidavit is to respond to the claims made by AT&T and Z-Tel in their affidavits or comments filed in this Docket on June 29, 2001, concerning resale of DSL in compliance with Section 251(c) of the Telecommunications Act of 1996, and the decision of the U.S. Court of Appeals,

D.C. Circuit in Association of Communications Enterprises v. Federal Communications Commission, No. 99-1441, Slip Op. (D.C. Cir. January 9, 2001) (“ASCENT”). First, contrary to AT&T’s claim, ASI’s generic interconnection agreement and its OSS are in full compliance with Section 251(c)(4) and the ASCENT decision. Second, contrary to the claims of AT&T and Z-Tel, ASI is not required to offer its wholesale DSL Transport, which is provided to Internet Service Providers (“ISPs”), as an input to the ISP’s Internet Access service, for resale pursuant to Section 251(c)(4).

CHECKLIST ITEM 14: RESALE

ASI’s Generic Interconnection Agreement and OSS

3. As an initial matter, Mr. Finney claims that ASI’s generic interconnection agreement is nothing more than “vague promises” (Page 4). He then questions why AT&T would even need to enter into a separate interconnection agreement (“ICA”) with ASI, or why it should be required to interface with ASI’s additional operational support systems (at Page 5). ASI is complying with its 251(c)(4) obligations as outlined in ASCENT to resell all telecommunications services it provides at retail by offering to negotiate an interconnection agreement (“ICA”) with any interested CLEC. With all due respect to Mr. Finney, ASI’s generic interconnection agreement is a sufficiently detailed and comprehensive document, and if a CLEC wishes to obtain services from ASI an ICA with the CLEC will be required. As I previously stated, ASI has made available to all CLECs a generic ICA that covers all five Ameritech states (the “ASI-North ICA”). ASI is in negotiations with a number of

CLECs. In fact, IG2, Inc., has executed the ASI-North ICA, and ASI and IG2 will soon be making a joint filing with the Michigan PSC for its approval of this ICA.

4. Mr. Finney's concerns regarding ASI's offer to resell its Customer Service Contracts ("CSCs") are completely unfounded (at 10-11). As described in my May 15 affidavit, these CSCs are clearly available for resale at the same wholesale discount that has been approved by the Commission for Ameritech Michigan.
5. Finally, it is necessary to enter into a separate interconnection agreement with ASI, and it is necessary to use ASI's separate OSS, because the Advanced Services are provided by ASI. As described in more detail below, these services are not provided by Ameritech Michigan

Resale of "DSL Internet service" and "DSL Transport"

6. Mr. Finney's main point is that ASI is not making its "DSL service" available for resale pursuant to Section 251(c)(4) as required by checklist item 14. In support of its argument that Ameritech Michigan should be required to make all DSL services available for resale at the wholesale discount, AT&T contends that Ameritech Michigan holds itself out as a provider of "stand-alone" service described as "DSL Transport" or "retail DSL services" directly to end-user customers.¹ However, this is not correct.
7. Under the FCC's SBC/Ameritech Merger Conditions, Ameritech Michigan is not permitted to provide "Advanced Services", which are defined as intrastate and interstate wireline telecommunications services that "rely on packetized technology and have the capability of supporting transmission speeds of at least 56 kilobits per

¹ AT&T Comments at 27-30.

second in both directions.”² The definition of “Advanced Services” includes DSL Transport. Thus, consistent with the terms of the SBC/Ameritech Merger Conditions ASI, the separate affiliate created to own and operate Advanced Services, currently is the only Ameritech affiliate that provides DSL Transport in Michigan. The definition of “Advanced Services” specifically excludes (1) data services that are not primarily based on packetized technology, such as ISDN, (2) x.25-based and x.75-based packet technologies, or (3) circuit switched services regardless of the technology, protocols or speeds.³ However, there is no claim that to the extent Ameritech Michigan provides such services, that it is not in compliance with Section 251(c)(4). Therefore, notwithstanding AT&T contentions, there is no factual dispute that all Advanced Services, such as “DSL Transport service” are provided by ASI, an affiliate of Ameritech Michigan; they are not provided by Ameritech Michigan.

8. Moreover, the service referred to by Mr. Finney that is being offered to Michigan end-user customers is DSL Internet Service. This is not “DSL Transport”. Rather, this retail service is an Internet Access service (a component of which is the DSL Transport Service furnished by ASI). This DSL Internet Access service is provided to retail customers by Ameritech Interactive Media Services, Inc. (“AIMS”), an affiliate of both Ameritech Michigan and ASI.⁴
9. It is true that Ameritech Michigan markets and sells this DSL Internet Access service. Ameritech Michigan is permitted to sell and market AIMS’ services, including the

² Merger Order, Appendix C, ¶1.2.

³ Id.

⁴ See AT&T Comments at 28; AT&T’s Finney Decl. ¶ 5.

DSL Internet Service described by Mr. Finney. Ameritech Michigan offers these sales and marketing services under an affiliate transaction agreement with AIMS.

10. As stated in my May 15 Affidavit, AIMS is an SBC-affiliated company that provides information services. AIMS provides high speed Internet access service in Michigan and in doing so utilizes DSL Transport obtained from ASI as the method of transmission of data using the Internet protocol. AIMS offers this high-speed Internet access service directly to end-user subscribers. AIMS does not offer ASI's DSL Transport on a stand-alone basis to retail customers. The information service offered by AIMS is not regulated nor is it subject to the resale requirements of the Section 251(c)(4). To the extent AT&T is seeking to require that this "DSL service" provided by AIMS be resold, their request should be rejected. Moreover, the fact that Ameritech Michigan markets and sells an information service on behalf of its affiliate does not somehow convert that information service into a telecommunications service. Information services whether marketed, sold or provided by Ameritech Michigan are not subject to Section 251(c)(4), either before or after ASCENT.
11. Thus, Ameritech Michigan provides neither DSL Transport nor DSL Internet Service and Ameritech Michigan's affiliate, AIMS, does not provide DSL Transport to end users.⁵
12. In my May 15 Affidavit, I explained that ASI does not currently provide retail DSL Transport to retail end user (i.e., residential or small business) customers. Instead, ASI's primary business with respect to DSL Transport is to provide DSL Transport as a wholesale input to Internet Service Providers ("ISPs"). That involves the marketing

of DSL Transport to ISPs, but not to end-user customers. An ISP, whether affiliated or unaffiliated, is the only entity that can combine the DSL Transport provided by ASI with the ISP's Internet Access Service, and sell that package of services on a retail basis. In the Second Advanced Services Order,⁶ the FCC held "that Section 251(c)(4) does not apply where the incumbent LEC offers DSL services as an input component to Internet Service Providers who combine the DSL service with their own Internet service" as ASI does here. As the FCC reasoned, section 251(c)(4) refers to services provided "at retail", and its resale obligations thus apply only to "sale(s) to an ultimate consumer".⁷ DSL services sold to ISPs "are not targeted to end-user subscribers, but instead are targeted to Internet Service Providers that will combine a regulated telecommunications service with an enhancement, Internet service, and offer the resulting service, *an unregulated information service*, to the ultimate end-user."⁸ Thus, "such services do not fit within the type of transaction Congress intended to include under the discounted resale obligation in section 251(c)(4)."⁹ The D.C. Circuit affirmed this decision on appeal, finding "the Commission's Order in all respects reasonable".¹⁰

13. There are practical reasons why ASI does not provide its DSL Transport to retail end-users on a stand-alone basis. For example, even if an end-user customer were able to

⁵ As I explained in my May 15 Affidavit, ASI does provide some DSL Transport to large business customers, and ASI will make such DSL Transport available for resale in accordance with all of the provisions of § 251(c)(4). See Habeeb Aff. ¶ 41.

⁶ Second Report and Order, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 19,237, 19,238, ¶3 (1999) ("Advanced Services Second Report and Order"), ¶19

⁷ Id. ¶17.

⁸ Id. (emphasis added).

⁹ Id.

purchase DSL Transport on a stand-alone basis, it would provide them with little functionality without the means to access the Internet typically provided by an ISP. Without the connection to the ATM network, and thus to the internet, provided by the ISP's server, the connection the end user has with the ATM network through the HFPL (DSL Transport) will literally disappear into the ether. For that simple reason, when an end-user customer in Michigan calls to inquire about DSL services, they are offered DSL Internet Service from AIMS, and not "DSL with an ISP". If the caller states that they wish to use an unaffiliated ISP as the DSL Internet Access provider, they are referred to the unaffiliated ISP. That unaffiliated ISP may itself provide the transport component of Internet access. For example, a cable television provider may offer "cable modem service" and use its cable facilities for "transport". Or, the unaffiliated ISP may obtain DSL Transport from a so-called "DLEC" who purchases unbundled network elements from Ameritech Michigan and combines them with its own facilities, including a DSLAM and splitter.

14. Or, the unaffiliated ISP may have a business relationship with ASI and, therefore, has established ATM connectivity with ASI so that ASI can provide to it DSL Transport. Contrary to the mistaken claims of AT&T and Mr. Finney, an end-user cannot order, nor can ASI provision, the DSL Transport used for Internet Access without an ISP. The serving ISP must have connectivity to ASI's ATM network before DSL Transport can be provided. Likewise, an ISP representative cannot transmit an order to ASI if that ISP does not have connectivity. ASI's order systems would reject the order as incomplete. For all of these reasons, ASI does not market DSL Transport for

¹⁰ Association of Communications Enterprises v. FCC, ---F.3d---, 2001 WL 709210 (D.C. Cir. June 26, 2001).

Internet access to retail end-users on a stand-alone basis. Instead, ASI's customer is the ISP, not the retail end-user who purchases retail DSL service from the ISP.

Conclusion

15. ASI is in compliance with the provisions of 251(c) (4) because it offers to resell all telecommunications services it provides "at retail". ASI is ready and willing to negotiate an interconnection agreement ("ICA") with any interested CLEC. ASI has made available to all CLECs a generic ICA that covers all five Ameritech states (the "ASI-North ICA"). As noted above, IG2, Inc., has executed the ASI-North ICA. ASI and IG2, Inc., will soon be making a joint filing with the Michigan PSC for its approval of this ICA. However, contrary to the claims of AT&T and Z-Tel, ASI does not provide DSL Transport to retail customers. Rather, ASI is a wholesale provider of DSL Transport to Internet Service Providers. Because of this, ASI has structured its offering of DSL Transport around the needs and capabilities of its primary customers, Internet Service Providers. ASI's systems and processes are structured to accommodate those customers, and to facilitate their ability to package the DSL Transport with their Internet access and sell it at retail to their end-user customers, the ultimate consumers of DSL Internet Service. Therefore, although the DSL Transport provided to ISPs is subject to resale under Section 251(b)(1), it is not subject to resale under Section 251(c)(4). And, the DSL Internet Service provided to retail end users by ISPs is an information service and, therefore, not subject to any resale.

16. This concludes my reply affidavit.