

filing to be complete, the company must be in present compliance with the Act, and not merely promise that it will comply.”¹ Similarly, Sprint’s comments noted that the Commission should examine closely the factual underpinnings of Ameritech Michigan’s “draft” filing in light of the discovery of SBC Corporation’s misleading filings in other states’ § 271 dockets. Sprint urged the Commission to

take a hard look at [Ameritech Michigan’s] filings; to not take short cuts; and to evaluate the filing as a whole, not in piece parts in order to determine if [Ameritech Michigan] has adequately opened the [Michigan] local market for competition.²

AT&T concurs in these remarks and in those other parties’ similar comments, and urges the Commission to scrutinize the totality of Ameritech Michigan’s filing and reject it as premature. Eventually, the Commission will be called upon to conduct a thorough review to determine the level of Ameritech Michigan’s compliance with the competitive checklist. That time has not yet come, however, and Ameritech Michigan has not yet submitted a qualified filing. As AT&T noted in its initial comments, such a filing should consist of something substantially more than “draft” affidavits and mock filings for the FCC.

Moreover, the Commission should be alert to any attempt by Ameritech Michigan to “cure” the deficiencies created by its paper filing when it responds to the comments filed on June 29, 2001. For example, it would be completely impermissible and highly unfair for Ameritech Michigan to now file sworn statements or affidavits in the response

¹ Comments Of The Competitive Local Exchange Carriers Association Of Michigan, Its Members, Long Distance Of Michigan, Inc., And The Association Of Communication Enterprises To Ameritech Michigan’s Checklist Informational Filing, Case No. U-12320, p. 7 (filed June 29, 2001) (“CLECA Comments”).

² Comments of Sprint Communications L.P., Case No. U-12320, p. 3 (filed June 29, 2001) (“Sprint Comments”).

to comments and affidavit filed on June 29, 2001. Ameritech Michigan had its opportunity to submit compliance filings to the Commission on May 15, 2001 and could have (if its affiants were ready to swear at that time) submitted affidavits and other verified information at that time. It did not do so and it would not be proper for Ameritech Michigan to attempt to remedy the deficiencies of its May 15, 2001 filing after the fact and after the parties have responded.

AT&T continues to recommend that the Commission reject Ameritech Michigan's filing out of hand. Ameritech Michigan should be required to refile its Checklist Informational Filing when it is prepared to make a complete and verifiable showing, and certainly the Commission should order Ameritech Michigan to verify its filing with sworn affidavits. In this manner, the Commission will require Ameritech Michigan to satisfy basic concepts of due process and valid procedure.

II. Ameritech Michigan's UNE Combination Policies Are Unfairly Discriminatory and Restrict Competitive Growth.

In its opening comments and affidavits, AT&T showed that Ameritech Michigan continues its longstanding policy and practice of unfairly restricting competitive carriers' access to unbundled network elements, particularly combinations of UNEs. For example, the June 29, 2001 affidavit of Kathryn Massura filed on behalf of AT&T demonstrated that Ameritech Michigan continues to impede AT&T's access to shared transport and UNE combinations.

Other carriers filed materials on June 29, 2001 that corroborated AT&T's claims. In fact, one carrier that formerly supported Ameritech Michigan's § 271 UNE combination contract amendment (known as the "M2A" amendment), has now

withdrawn that support in the light of its real experience with Ameritech Michigan's policies. Z-Tel Communications states in its filing that Ameritech Michigan has never fulfilled the promises it made to the Commission when it sought approval of the M2A.³ Z-Tel Communications complains in its filing that Ameritech Michigan does not provide nondiscriminatory access to the OSS necessary to order UNE combinations, does not install or service these combinations at parity with Ameritech Michigan's performance to itself, and continues to place unapproved restrictions on UNE combinations.

WorldCom also filed comments suggesting that Ameritech Michigan's current provisioning of UNE combinations is highly discriminatory to CLECs. As WorldCom argues, every other state commission in the Ameritech region has confirmed that there should be no restriction on a competitive carrier's ability to order the same combinations of UNEs that Ameritech itself ordinarily combines in its network to provide services to its own retail customers.⁴ Yet, as WorldCom and others point out, Ameritech Michigan has interpreted the March 19, 2001 order in this docket approving the M2A amendment to also authorize Ameritech Michigan to restrict carriers from ordering UNE combinations for new and additional CLEC customer lines. Such restrictions have a direct and profound effect upon carriers attempting to compete against Ameritech Michigan in its local markets. The Indiana, Ohio and Wisconsin Commissions have recently reaffirmed that such restrictions are improper.

AT&T believes that these facts underscore the need for the Commission to carefully review the status of Ameritech Michigan's compliance with this Commission's

³ Comments of Z-Tel Communications, Case No. U-12320, p. 2 (filed June 29, 2001) ("Z-Tel Comments").

orders and the competitive checklist regarding UNE combinations. The Commission would be warranted in opening up a separate investigation in this regard. The investigation should consider, among other issues, whether Ameritech Michigan policies violate current legal requirements and existing contractual rights (as already claimed by AT&T, WorldCom and others) and whether the M2A has proven to be an adequate vehicle for introducing wide-scale competition, especially in Ameritech Michigan's local residential markets.⁵ The totality of the record in this case unequivocally demonstrates that the issue of UNE combinations continues to be of paramount importance. The Commission should review the status of this issue to determine whether the procompetitive policies imbedded in the Michigan Telecommunications Act and federal telecommunications law are being violated by Ameritech Michigan's narrowly drawn policies concerning UNE combinations.⁶

⁴ Response of WorldCom to Ameritech's May 15, 2001 Checklist Filing, Case U-12320, p. 7 (filed June 29, 2001).

⁵ AT&T would note that Ameritech Michigan's tariffs indicate that, as of the date of this filing, only two carriers (neither of which is a "major" carrier in the geographic or financial sense) have signed the M2A. See Michigan Bell Telephone Company Tariff No. 20, Part 19, § 22, First Revised Sheet No. 2, attached hereto as Exhibit A. Clearly, the M2A has not proven to be a major catalyst for competitive growth and, in fact, may have impeded such growth.

⁶ Ameritech's resale offerings are also impermissibly restricted. Specifically, the FCC in a recent decision has affirmed Ameritech's obligation to resell the DSL services provided by its affiliates. Like Ameritech here, Verizon in that §271 case argued that its version of AADS/ASI, named VADI, was not subject to section 251(c)(4) resale obligations for the DSL resale services it provided. Relying on the *ASCENT* case, the FCC strongly disagreed. The FCC found that "to the extent Verizon's attempt to justify a restriction on resale of DSL turns on the existence of . . . a separate corporate entity (or even a separate division), it is not consistent with the *ASCENT* decision." *In the Matter of Application of Verizon New York Inc., et al. for Authorization to Provide In-Region, InterLATA Services In Connecticut, CC Docket No. 01-100*, Memorandum Opinion and Order (rel. July 20, 2001), ¶¶ 31-32

CONCLUSION

For the reasons set forth in AT&T initial and response comments and affidavits, the Commission at this point should defer making any formal “evaluation” of Ameritech Michigan’s checklist compliance. Instead, Ameritech Michigan should be required to refile – with the information under oath – once third-party testing is successfully completed and three months of compliant performance results are available. The Commission should open an investigation regarding Ameritech Michigan’s UNE combinations policies. Finally, as specifically recommended in AT&T’s initial comments, the Commission should require Ameritech Michigan to file a structural separation plan, in accordance with Commission-approved principles, as a precondition to a favorable recommendation to the FCC on an Ameritech Michigan application pursuant to §271.

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Respectfully submitted,

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