

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

ATTORNEY GENERAL'S REPLY COMMENTS

JENNIFER M. GRANHOLM
Attorney General

Orjiakor N. Isiogu (P42788)
Assistant Attorney General
Special Litigation Division
6520 Mercantile Way, Suite 2
Lansing, MI 48911
(517) 373-1123

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Attorney General Jennifer M. Granholm submits the following reply comments in accordance with the Michigan Public Service Commission's ("MPSC" or "Commission") procedural schedule established in the May 15, 2001 order in this case as it relates to Ameritech Michigan's ("AM" or "the Company") filing in regards to Section 271 of the Federal Telecommunications Act of 1996 ("FTA").

AM Fails to Meet Important Performance Measurements

The results of objective performance measurements to date indicate that the basic local exchange market in Michigan is not fully and irreversibly open to competition, and that AM's OSS and provision of unbundled network elements ("UNE") and resale services are not adequate. The performance measurements indicate that AM does not provide competitive local exchange carriers ("CLECs") with nondiscriminatory access to services and facilities. Therefore, competitors are not provided services and facilities equal in quality to (i.e., substantially the same as) the level of access that AM provides to itself, or its affiliates, in terms

of quality, accuracy, and timeliness.¹ For those functions that have no retail analogue, AM has not reasonably demonstrated that the access it provides to CLECs would offer an efficient carrier a “meaningful opportunity to compete.”² Attachment AG-1 is a summary of the Attorney General’s findings regarding performance measurements. In more specific terms, the review of performance measurement results³ indicate:

- 1) AM fails to meet performance measurements in many cases;
- 2) AM’s performance is getting worse instead of better for some key performance measurements (an indication of backsliding and that competition is not full and irreversible);
- 3) AM cannot support commercial (or increased) volumes at this point for some key measurements;
- 4) AM discriminates by providing worse service as it affects higher revenue producing CLEC business customers, as compared to CLEC residential customers – which inhibits the CLECs’ ability to gain a competitive foothold; and
- 5) In many cases, AM’s performance measurements under a very best case scenario are sufficiently erratic and inconsistent that there is not even three recent consecutive months of viable performance to rely upon as an indication of full and irreversible competition.
- 6) The performance measurement violations are so broad and deep in their totality (including the vast number of exceptions, the key performance measures which are failed, the erratic performance and overall absence of consistency to date) that they do represent valuable evidence regarding AM’s noncompliance with checklist items.

¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19; and referenced by AM in its filing at Affidavit of Mr. Fioretti T. Fioretti, page 7.

² *Id.*

³ Performance measurement results are generally available from June 30, 2000, through June 30, 2001, although in some cases data is only for certain months through May 31, 2001. Attachment AG-1 evaluates the most recent 3 months of data available and the most recent 6 months of data available. By reviewing the most “recent” 3 and 6 month activity, this conservatively benefits AM because it eliminates some of the unusual changes and inconsistencies in the results of early months. However, these same unusual changes and inconsistencies still exist for certain important performance measurements using the most recent 3 and 6 month data available.

- 7) It is not clear how or when AM will be able to provide 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”⁴ - - as AM has established as a threshold.

The MPSC, Federal Communications Commission (“FCC”), the United States Department of Justice (“DOJ”) and AM all agree that performance measurements are very important and provide valuable evidence regarding a Bell Operating Company’s (“BOCs”) compliance or noncompliance with individual checklist items.⁵ Performance measurements help determine whether local competition is actually working, or whether it is still in the implementation stage subject to important refinements.

The MPSC sets forth the importance of performance measurements in its orders in Cases Nos. U-11830 and U-12320.

The Department of Justice describes the importance it places on performance measurements:

In evaluating the actual commercial experience of SBC’s competitors, the Department and the Commission place great weight on the reported performance data; the reliability of the reported data is critical. To properly validate metrics, one must verify that they are meaningful, accurate and reproducible. *Meaningful metrics* require clear definitions that will allow measurement of activities or processes in a way that has real-world, practical significance. *Accurate metrics* are faithful to established definitions in that they are correctly calculated from the proper subset of raw data using processes that ensure the data are accurately handled and transferred. *Reproducible metrics* can be reproduced at future dates for verification purposes because the raw data have been archived for an

⁴ Affidavit of Fioretti T. Fioretti, page 6, paragraph 8, *emphasis*.

⁵ AM admits in the affidavit of Fioretti T. Fioretti, page 7, para. 11, that the FCC has found that performance measurements provide valuable evidence regarding a BOC’s compliance or noncompliance with individual checklist items.

appropriate period in a secure, auditable form and because changes to the systems and processes used for gathering and reporting metrics are carefully controlled and fully documented.⁶

Mr. Fioretti, on behalf of AM, points out the FCC's position regarding the importance of performance measurements at pages 7 and 8 of his affidavit. Mr. Fioretti states:

11. As established in prior section 271 orders, the FCC has found that performance measurements and remedies provide valuable evidence regarding a BOC's compliance or noncompliance with individual checklist items. For example, in its order approving Bell Atlantic's application for long distance relief in New York. *In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (1999) ("*New York 271 Order*"), the FCC observed that "the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest." *Id.* ¶ 429.

12. Similarly, in approving the application of Ameritech's affiliate Southwestern Bell Telephone Company ("SWBT") to provide in-region interLATA services in Texas, the FCC observed that "[p]erformance measurements are an especially effective means of providing us with evidence of the quality and timeliness of the access provided by a BOC to requesting carriers." *In re Application by SBC Communications Inc. et al. to Provide In-Region, InterLATA Services in Texas*, , 15 FCC. Rcd. 18,354, (2000) ("Texas 271 Order") ¶53. The FCC expressly approved the "clearly defined performance measurements and standards" developed by the Public Utility Commission of Texas ("Texas PUC") and used by SWBT to demonstrate its compliance with the competitive checklist. *Id.* ¶5.

Mr. Fioretti continues by pointing out that the FCC evaluates each application on a case-by-case basis and considers the totality of circumstances to determine whether the

⁶ Evaluation of the United States Department of Justice, SWBT Texas Order, CC Docket No. 00-4, Feb. 14,2000, Pg. 5-6.

nondiscrimination requirements of the Act are met.⁷ Mr. Fioretti indicates the FCC does not consider performance measurements a substitute for the 14-point competitive checklist, but as valuable evidence as to whether a BOC has complied with the checklist requirements.⁸ Despite Mr. Fioretti's attempt to justify AM's performance measures as "broad" compliance with the checklist, it is clear that the totality of AM's performance measure violations and inconsistencies could not be construed as compliant with the 271 checklist under any reasonable interpretation as summarized at Attachment AG-1. Although Mr. Fioretti proffers this conditional language, he then proposes that AM will make a subsequent filing with the MPSC which, "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."⁹ (*emphasis*).

Based on performance measurement data provided through June 30, 2001, the totality of violations and inconsistencies indicate that AM is a significant distance from meeting compliance with "all" performance measurements. On the surface, AM's commitment to make a subsequent filing which meets "all" performance measures appears highly presumptive in light of the numerous violations and inconsistencies over the last 12 months and through June 30, 2001. Based on AM's current record with respect to performance measurements, it is difficult to envision the Company's compliance with even a significant majority of key performance measures let alone all of the measurements at anytime in the short-run.

⁷ Fioretti affidavit, page 8, para. 13.

⁸ Fioretti affidavit, page 9, para. 16.

However, given AM's statements about a "subsequent filing" to show compliance, it is unclear as to how and whether other interested parties would be able to review this information given the current time schedule for this proceeding. The Attorney General is concerned that AM may intend to only make this "subsequent filing" available as part of its 271 filing before the FCC. If this is the case, the MPSC should not only reject AM's current filing, but strongly discourage any attempt to circumvent the appropriate procedure under which all relevant and important information is subject to review and scrutiny at the state level under this kind of important

The Attorney General will address the details of certain key performance measures with which AM has failed to meet, and which clearly indicate that basic local exchange competition is not full and irreversible in Michigan. The Attorney General has summarized her findings regarding performance measures at Attachment AG-1. The Attorney General will use the Department of Justice's ("DOJ") language from the SWBT Texas Order to emphasize the importance of certain key performance measurements for which AM is not compliant at this time. The totality and depth of noncompliance and inconsistencies cannot readily be explained away as minor violations or isolated situations. These are serious violations which undermine the creation and promotion of robust basic local exchange competition in Michigan.

**Performance Measures 29, 58 and 62 -
AM Caused Missed Due Dates for Various Services**

The Attorney General will address performance measures ("PM") 29, 58 and 62 as one group, since they all address AM's caused or missed due dates for various services or facilities

⁹ Fioretti affidavit, page 6, para. 8.

which CLEC's seek access via AM. Attachment AG-1 summarizes the Attorney General's findings. The importance of PM 58 and 62 are explained by the DOJ in its evaluation of the SWBT Texas 271 filing, and are addressed later. In addition, the general importance of PM's 58 and 62 are applicable to PM 29 since it also addresses AM's caused or missed due dates. Measures 29, 58 and 62 are examples of discriminatory performance regarding ordering and provisioning. Ordering and provisioning are especially important to competitors because this is the customer's first contact and experience with a competitor. If there are unnecessary or untimely delays caused by AM (the incumbent), then the customer becomes frustrated and may unknowingly blame the competitor and return their service to AM. This discriminatory action impedes competition and is a significant barrier for CLECs to overcome.

Performance Measure 29 – Percent of AM Caused Missed Due Dates for POTS Business Customer Loops – Field Work

Issues regarding discrimination and AM's failure to comply with PM 29 are set forth below:

- 1) AM caused or missed due dates in a range of 10 to 14% of the orders of CLEC POTS business customers, while it only incurred delays of about 7 to 8% for its retail customers based on the most recent six months ending June 30, 2001.
- 2) There is no clear trend showing improvement when looking at just the most recent 3 months of consecutive data, since AM caused or missed due dates for about 12 to 13% of the orders of CLEC POTS business customers, while it only incurred delays of about 8% for its retail customers. The June 2001 percent of missed loops of 12.44% is higher than three of four previous months, and it is considerably higher than March's 10.33% of missed loops.
- 3) This is evidence of discrimination since AM missed due dates for CLEC customers about twice as often as it incurred missed due dates for its customers. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

- 4) Performance has deteriorated in the most recent three months from the standpoint that the percentage of missed due dates has increased to about 13% on average (compared to 12% for the prior three months).
- 5) In the most recent three months as the average volumes have increased, the missed due dates have increased. This could be an indication that AM cannot support commercial (or greater) volumes which will be necessary in a competitive environment.
- 6) AM misses a much higher percent of order due dates for CLEC business customers, compared to residence customers. In June 2001, AM missed 12.44% of business due dates and 7.03% of residence due dates - - AM misses due dates almost twice as often for CLEC business customers. This is important because the first competitive battle is for business customers which have higher revenues (and greater profits), and securing business customers will allow CLECs to gain a competitive foothold to enhance future competition for residential customers. AM gains substantial competitive benefits by delaying or frustrating potential CLEC business customers.

Performance Measure 58 – Percent of AM Caused Missed Due Dates for UNE BRI Loops Without Test Access:

Issues regarding discrimination and AM's failure to comply with PM 58 regarding UNE BRI loops are set forth below:

- 1) AM caused or missed due dates in a range of 13 to 31% of the orders of CLEC UNE BRI loops, while it only incurred delays of about 5 to 10% for its customers based on the most recent six months ending May, 2001.
- 2) There is no clear trend showing improvement when looking at just the most recent 3 months of consecutive data (and it has arguably deteriorated), since AM caused or missed due dates for about 13 to 20% of orders, while it only incurred delays of about 5 to 8% for its retail customers. For the most recent month available (May 2001), CLECs incurred missed dates on 20.24% of loops, whereas AM only incurred missed dates on 5.48% of its loops. CLECs incurred delays about 4 times greater than AM customers, this is not an indication of improvement. The May figure of 20.24% of missed due dates is greater than the three previous months.
- 3) This is evidence of discrimination since AM missed due dates for CLEC customers about two or three times as often as it incurred missed due dates for its customers. This is a clear indication of noncompliance for this measurement, since CLECs are

not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

- 4) Performance has not improved in the most recent three months from the standpoint that the percent of CLEC missed due dates is still three times greater than AM based on average.
- 5) The two months with the highest volumes in the last six months show the highest percent of missed due dates, including 28.43% for December 2000 and 31.04% for January 2001. This could be an indication that AM cannot support commercial (or greater) volumes which will be necessary in a competitive environment.

Performance Measure 58 – Percent of AM Caused Missed Due Dates for UNE DSL Loops Without Test Access:

The importance of PM 58 is illustrated by the DOJ's comments in the SWBT Texas 271 filing:

One of the most significant measures for DSL provisioning is PM 58 ("Percent SWBT Caused Missed Due Dates"), a high Tier 1 and 2 measure. The measure shows a rate of 12.1 percent missed due dates for CLECs in December (on a total of 495 loops), compared to 6.3 percent missed due dates for SBC's retail service. This result is especially troubling because the number of missed due dates has steadily increased over the last three months as the number of CLEC orders has increased -- although the total number of loops is still far below expected commercial volumes." (Footnotes omitted.)¹⁰

Issues regarding discrimination and AM's failure to comply with PM 58 regarding UNE DSL loops are set forth below:

- 1) AM caused or missed due dates in a range of 12 to 24% of the orders of CLEC UNE DSL loops, compared to an AM benchmark of 5% based on the most recent six months ending May, 2001.
- 2) There is a slight trend showing improvement when looking at just the most recent 3 months of consecutive data, since AM caused or missed due dates for about 12 to 18%, compared to its benchmark of 5%. However, the percent of missed due

¹⁰ Evaluation of the United States Department of Justice, SWBT Texas 271 filing, CC Docket No. 00-4, Feb. 14,2000, Pg. 18-19.

dates is still three times greater for CLECs, compared to AM, using averages of the most recent three months. This is a clear indication of AM's continuing noncompliance by a large degree since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

- 3) AM would need to reduce the percent of missed dates for CLEC customers to about 5% for a consecutive period of time in order for there to be any interpretation that AM is not acting discriminatorily in regards to this measurement. The DOJ has previously indicated in the SWBT Texas 271 filing that this is a very important performance measure – compliance is critical to competition regarding the DSL loop.

Performance Measure 62 – Average Delay Days for AM Caused Missed Due Dates for UNE 8.0 dB Loop Without Testing:

The importance of PM 62 is illustrated by the DOJ's comments in the SWBT Texas 271 filing:

Another incident that casts doubt on the reliability of SBC's performance data relates to data for PM 62 ("Average Delay Days for SWBT Caused Missed Due Dates"), which the Texas PUC has designated as a Tier 1 and 2 performance measure. In reports submitted to this Commission and the Texas PUC as recently as February 1, 2000, SBC reported that the average number of "delay days" was "0.00" for September through December 1999. This statistic might have led one to infer that there was little competitive significance in SBC's failure to install a DSL-capable loop at the time promised on the FOC because the average reported delay in installing such loops was insignificant. After SBC was asked to demonstrate how the reported result was mathematically possible, it filed a correction, discussed below, which shows a significant disparity between average delays for CLECs and average delays for SBC's retail operations in November and December."¹¹ (Footnotes omitted.)

Issues regarding discrimination and AM's failure to comply with PM 62 regarding UNE loop provisioning are set forth below:

¹¹ Evaluation of the United States Department of Justice, SWBT Texas 271 filing, CC Docket No. 00-4, Feb. 14, 2000, Pg. 14-15.

- 1) AM caused or missed delays in a range of 12 to 24 days for orders of CLEC UNE 8.0 dB loops, while it only incurred delays of about 5 to 8 days for its customers based on the most recent six months ending May, 2001.
- 2) Performance is not improving from looking at just the most recent 3 months of consecutive data, since AM caused or missed delays in a range of 11 to 24 days for CLECs, while it only incurred delays of about 5 to 8 days for its retail customers. For the most recent month available (May 2001), the number of delay days is the highest ever at 24.36 days for CLECs compared to 7.54 days for AM. CLEC customers are experiencing delays more than three times greater than AM retail customers.
- 3) This is a clear indication of discrimination and noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measure 60 and 61
AM Caused Missed Due Dates and Delays Due to Lack of Facilities

PM 60 and 61 is similar to 29, 58 and 62, except it relates to AM missed due dates because of the “lack of facilities.” Attachment AG-1 summarizes the Attorney General’s findings. The concerns with PM 60 and 61 are similar to those identified in PMs 29, 58 and 62.

Performance Measure 60 – Percent of AM Caused Missed Due Dates Due to Lack of Facilities for UNE BRI Loops Without Test Access:

Issues regarding discrimination and AM’s failure to comply with PM 60 for UNE BRI loops are set forth below:

- 1) AM caused or missed due dates for lack of facilities of CLECs in a range of 7 to 19% for BRI loops, while it only incurred delays of about 3 to 8% for its retail customers based on the most recent six months ending May, 2001.
- 2) The three month results are erratic and show no permanent long-term trend of improvement. AM caused or missed due dates for lack of facilities of CLECs in a range of 7 to 11% for BRI loops, while it only incurred delays of about 3 to 7%

for its retail customers based on the most recent three months ending May, 2001. As recent as May 2001, the percent of missed due dates for CLECs increased by 4%, up to 10.71%.

- 3) This is evidence of discrimination since CLEC missed due dates are still double the AM retail due dates based on the most recent three month average. The CLEC three month average of 9.55% is double that of the 4.97% for AM retail customers. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measure 60 – Percent of AM Caused Missed Due Dates Due to Lack of Facilities for UNE DS1 Loops Without Test Access:

Issues regarding discrimination and AM's failure to comply with PM 60 for UNE DS1 loops are set forth below:

- 1) AM caused or missed due dates for lack of facilities for CLECs in a range of 4 to 9% for DS1 loops, while it only incurred delays of about 3 to 8% for its retail customers based on the most recent six months ending May, 2001.
- 2) The three month results are erratic and show signs of deterioration. AM caused or missed due dates for lack of facilities of CLECs in a range of 4 to 9% for DS1 loops, while it only incurred delays of about 1 to 2% for its retail customers based on the most recent three months ending May, 2001. As recent as May 2001, the percent of missed due dates for CLECs increased by 3%, up to 7.5%. For the most recent three months ending May 2001, the percent of missed due dates for CLECs is 6.94%, and this has increased from a prior three month average of 5.18% for the period December 2000 to February 2001.

Performance Measure 61 – Average Delay Days for Missed Due Dates Due to Lack of Facilities for UNE 8dB Loops:

Issues regarding discrimination and AM's failure to comply with PM 61 for UNE 8dB loops are set forth below:

- 1) The delay days for missed due dates from lack of facilities for CLECs is a range of 10 to 36 days for 8dB loops, while AM only incurred delays of about 8 to 12

days for its retail customers based on the most recent six months ending June 30, 2001.

- 2) The three month results are erratic and show signs of deterioration. The delay days for lack of facilities available to CLECs is in a range of 10 to 24 days for 8dB loops, while AM only incurred delays of about 9 days for its retail customers based on the most recent three months ending June 30, 2001. As recent as May 2001, the delay for CLECs was 36.25 days, compared to 9.35 days for AM. The May delay days of 36.25 for CLECs is the highest ever. This means that AM is causing CLECs to experience delays almost four times greater than that of AM.
- 3) This is evidence of discrimination since AM is causing CLECs to experience delays almost three times greater than AM based on a three month average of recent data. CLECs incur delays days of about 24 days using most recent three month data, and AM's incurs delays of about 9 days for this same period. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measures 35, 40, 41, 59, 66 and 68
Trouble Reports for Installation, Maintenance and Repair

The Attorney General will address PMs 35, 40, 41, 59, 66 and 68 as one group, since they all address trouble reports for installation, maintenance and repair. Attachment AG-1 summarizes the Attorney General's findings. Trouble reports for installation, maintenance and repair are important to track since unnecessary or untimely delays in this area can also frustrate the customer and cause them to unknowingly blame the competitor and return their service to AM. This discriminatory action impedes competition and is a significant barrier for CLECs to overcome.

Performance Measure 35 – Percent of Trouble Reports Within 30 Days of Install for POTS Business Customers – Field Work:

Issues regarding discrimination and AM's failure to comply with PM 35 are set forth

below:

- 1) The percent of trouble reports for installation of CLEC customers ranged from 10.6 to 20%, whereas AM's retail customers experienced trouble reports from 8 to 11%, based on the most recent six months ending June 30, 2001.
- 2) There is no consistent improving trend, since the percent of trouble reports for installation of CLEC customers ranged from 11 to 16%, whereas AM's retail customers experienced trouble reports from 8 to 11%, based on the most recent three months ending June 30, 2001. The latest figures show the June 2001 trouble report percent for CLEC customers is 15.96%, the highest level in the three prior months.
- 3) While the CLEC percent of trouble reports increased by about 5% (from 10.64% in May 2001 to 15.96% in June 2001), AM's retail trouble report percent only increased about 1% (from 9.43% in May 2001 to 10.64% in June 2001). It is not clear why trouble reports for CLEC customers would increase at a faster rate than AM's retail customers. It is clear that this is a negative and disturbing occurrence in the two most recent months.
- 4) This is evidence of discrimination since AM installation trouble reports for CLEC customers significantly exceed the trouble reports AM incurs for its retail customers. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.
- 5) Installation trouble report percentages are greater for business CLEC customers, compared to residence customers. In June 2001, the business installation trouble report percent was 15.96%, compared to 10.07% for residence customers. It is clear that AM would benefit from increased trouble reports to CLEC business customers. AM gains substantial competitive benefits by frustrating potential CLEC business customers by failing to timely respond to maintenance or service problems.

Performance Measure 40 – Percent of Out of Service Trouble Reports Cleared Within 24 Hours for POTS Business Customers:

Issues regarding discrimination and AM's failure to comply with PM 40 for business customers are set forth below:

- 1) The percent of out of service (“OOS”) trouble reports cleared for CLEC business customers ranged from 48 to 74%, whereas AM’s retail business customers experienced cleared trouble reports from 50 to 71%, based on the most recent six months ending June 30, 2001.
- 2) Performance has declined consistently from March to June 2001. The percent of OSS trouble reports cleared for CLEC business customers ranged from 54 to 64%, whereas AM’s retail customers experienced cleared OSS trouble reports from 59 to 68%, based on the most recent three months ending June 30, 2001. To the disadvantage of CLECs, AM has demonstrated it is clearing a greater percent of its customers OOS trouble reports in recent months, compared to CLEC customers OOS trouble reports.
- 3) This is evidence of discrimination since AM consistently clears a greater percent of its retail business customer OOS trouble reports, versus CLEC business customer trouble reports. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measure 40 – Percent of Out of Service Trouble Reports Cleared Within 24 Hours for POTS Residence Customers:

Issues regarding discrimination and AM’s failure to comply with PM 40 for residence customers are set forth below:

- 1) The percent of OOS trouble reports cleared for CLEC residence customers ranged from 34 to 68%, whereas AM’s retail residence customers experienced cleared trouble reports from 48 to 73%, based on the most recent six months ending June 30, 2001.
- 2) Performance has declined consistently from March to June 2001. The percent of OSS trouble reports cleared for CLEC residence customers ranged from 48 to 60%, whereas AM’s retail residential customers experienced cleared OSS trouble reports from 56 to 64%, based on the most recent three months ending June 30, 2001. To the disadvantage of CLECs, AM has demonstrated it is clearing a greater percent of its residence customers OOS trouble reports in recent months, compared to CLEC residence customers OOS trouble reports.
- 3) This is evidence of discrimination since AM consistently clears a greater percent of its retail residential customer OOS trouble reports, versus CLEC customer trouble reports. This is a clear indication of noncompliance for this measurement,

since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measure 41 – Percent Repeat Trouble Reports for POTS Business Customers:

Issues regarding discrimination and AM's failure to comply with PM 41 for POTS business customers are set forth below:

- 1) The percent of repeat trouble reports for CLEC business customers ranged from 11 to 17%, whereas AM's retail business customers experienced cleared trouble reports from 13 to 15%, based on the most recent six months ending June 30, 2001.
- 2) There are no consistent improving trends. The percent of repeat trouble reports for CLEC customers ranged from 10 to 13%, whereas AM's retail customers experienced trouble reports from 13 to 14%, based on the most recent three months ending June 30, 2001. To the disadvantage of CLECs, there are more repeat trouble reports for CLEC customers versus AM retail customers.
- 3) The percent of trouble reports for CLEC customers is erratic from month to month, whereas AM maintains a fairly consistent repeat trouble report rate for its customers. For example, the percent of CLEC repeat trouble reports fluctuated from 14.88%, 10.50%, 13.34% and 11.67% from March to June 2001. In contrast, AM's retail trouble reports stayed fairly static at 13.75%, 13.45%, 14.03% and 13.73% from March to June 2001. This is evidence of discrimination since AM consistently shows a small percent of repeat trouble reports for its customers, compared to CLEC customers - - and repeat trouble reports do not fluctuate for AM customers. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measure 59 – Percent of Trouble Reports Within 30 Days of Install for UNE BRI Loops Without Test Access:

Issues regarding discrimination and AM's failure to comply with PM 59 are set forth below:

- 1) The percent of trouble reports for installation of BRI loops of CLEC customers ranged from 11 to 17%, whereas AM's retail customers experienced trouble reports from 5 to 6%, based on the most recent six months ending June 30, 2001.
- 2) The performance measurement is getting worse with recent data. The percent of trouble reports for installation of BRI loops of CLEC customers ranged from 16 to 17%, whereas AM's retail customers experienced trouble reports at about 5%, based on the most recent three months ending June 30, 2001. CLEC trouble report percentages are consistently three times greater than AM retail trouble report percentages. The latest figures show the June 2001 trouble report percent for CLEC customers is 17.26%, the highest level in the nine prior months. The April 2001 figure is also the second highest over this same period.
- 3) While the CLEC percent of trouble reports increased by about 3% (12.07% to 15.17%) from January to February 2001, and increased about 6% (11% to 17.25%) from March to April 2001, AM's retail trouble report percent actually decreased 1% from January to February 2001 and stayed about the same from March to April 2001. It is not clear why trouble reports for CLEC customers would increase at a faster rate than AM's retail customers. It is clear that this is a negative and disturbing occurrence in recent months that shows erratic and discriminatory results.
- 4) This is evidence of discrimination since AM installation trouble reports for CLEC customers significantly exceed (usually about three times greater) the trouble reports AM incurs for its retail customers. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measure 66 – Percent of Missed Repair Commitments for UNE 2-Wire Analog 8dB Loops:

Issues regarding discrimination and AM's failure to comply with PM 66 are set forth below:

- 1) The percent of missed repair commitments for UNE 2-wire of CLEC customers ranged from 9 to 23%, whereas AM's retail customers experienced missed repairs from 7 to 9%, based on the most recent six months ending May, 2001.
- 2) The performance measurement is getting worse with recent data. The percent of missed repair commitments of CLEC customers ranged from 14 to 23% , whereas AM's retail customers experienced missed repairs at about 7 to 8%, based on the most recent three months ending May, 2001.

- 3) This is evidence of discrimination since CLEC missed repair percentages are consistently two to three times greater than AM retail percentages for the most recent six months. The latest figures show the May 2001 missed repair percent for CLEC customers is 21.28%, compared to AM's retail level of 7.83%. This indicates that AM is missing repair commitments at a pace that is three times greater for CLECs compared to its own levels. This is a clear indication of noncompliance for this measurement, since CLECs are not receiving equivalent services that AM provides itself/affiliates in terms of timeliness and quality.

Performance Measure 68 – Percent Out of Service Troubles Cleared Within 24 Hours for 2-Wire Analog 8dB Loop:

Issues regarding inconsistencies and erratic changes with PM 68 are set forth below:

- 1) The percent of OOS troubles cleared for CLEC customers ranged from 79 to 92%, whereas AM's retail customers experienced cleared troubles from 34 to 73%, based on the most recent six months ending May, 2001. This is a positive sign that CLEC OOS troubles are cleared at a higher percent than AM retail OOS troubles. However, the most recent data shows the trend is reversing, with CLEC OOS troubles cleared percentages declining and AM OOS trouble cleared percentages increasing at the detriment of CLEC customers.
- 2) Performance is declining in recent months. The percent of OSS trouble reports cleared for CLEC customers ranged from 79 to 87%, whereas AM's retail customers experienced cleared OSS trouble reports from 60 to 73%, based on the most recent three months ending May, 2001. It is not clear why AM retail OOS troubles cleared is increasing, and CLEC OOS troubles cleared is declining. Only 82% of CLEC OOS troubles have cleared in the last three months on average, compared to 91% for the prior nine month average. In the meantime, this reduction of about 10% for CLEC customers has been transferred to an improved trend for AM retail customers.
- 3) It is clear that additional information over an extended time frame is needed to sort out the erratic and inconsistent changes. The trade-off of lower service quality for CLEC customers, in exchange for higher service quality of AM retails customers may be a sign of discrimination.
- 4) Only about 79% of OOS troubles have cleared for CLECs in the last two months on average, and this is about 16% below the 95% threshold commonly used in the industry for measuring OOS troubles cleared.

Performance Measures 55 and 56
Installation Intervals and Completion

The Attorney General will now address PMs 55 and 56. Attachment AG-1 summarizes the Attorney General's findings. Installation intervals are extremely important to CLECS in order to remain competitive. Once again, any undue delay in installation can permanently damage CLECs chances of competing with AM since the CLEC would likely be held responsible by the customer for delays which are often beyond the CLEC's control.

Performance Measure 55 - Average Installation Interval for UNE 2-Wire Analog Orders for 1-10 Loops.

Issues regarding discrimination and AM's failure to comply with PM 55 are set forth below for 2-wire analog:

1. The installation interval for CLEC customers ranged from 4 to 6 days, compared to a benchmark of 3 days, for the most recent six months ending May, 2001, for 2-wire analog.
2. The installation interval for CLEC customers stayed the same for the most recent 3 months ended May 2001, ranging from 4 to 6 days for CLECs compared to a benchmark of 3 days. As recent as April 2001, the longest number of days for installing service occurred at 5.44 days over the most recent five months, and this is the second longest installation period over the most recent nine months. No improving trends are noted.
3. This is evidence of discrimination since AM's installation interval for CLEC customers of 6 days is about twice the benchmark of 3 days, and no substantial improvements are noted in recent months.
4. It is unclear why the installation period increased to its high level of 5.44 in April 2001, especially since volumes had not increased appreciably and were about one-half of the February 2001 installation volumes which had an interval of 4.81 days.

Performance Measure 55 - Average Installation Interval for UNE Digital Orders for 1-10 Loops:

Issues regarding discrimination and AM's failure to comply with PM 55 are set forth below for UNE digital orders:

1. The installation interval for CLEC customers ranged from 4 to 11 days, compared to a benchmark of 3 days, for the most recent six months ending May, 2001, for UNE digital orders.
2. The installation interval for CLEC customers stayed about the same for the most recent 3 months ended May 2001, ranging from 4 to 8 days for CLECs compared to a benchmark of 3 days.
3. This is evidence of discrimination since AM's installation interval for CLEC customers was at 6 days as recent as May 2001, and was 8 days as recent as March 2001. This about twice the benchmark of 3 days, and no substantial improvements are noted in recent months, although erratic changes are noted.

Performance Measure 55 - Average Installation Interval for UNE DS1 Loops Orders That Include PRI:

Issues regarding discrimination and AM's failure to comply with PM 55 are set forth below for UNE DS1 Loop orders:

1. The installation interval for CLEC customers ranged from 6 to 23 days, compared to a benchmark of 3 days, for the most recent six months ending May, 2001, for UNE digital orders.
2. The installation interval for CLEC customers ranged from 6 to 8 days for the most recent three months ended May 2001. While some progress has been made, AM's installation interval is still consistently twice that of the benchmark and so there is still noncompliance regarding this measurement.

Performance Measure 56 - Percent of Installations Completed by Three Days for UNE 2-Wire Analog Loops With 1-10 Loops:

Issues regarding discrimination and AM's failure to comply with PM 56 are set forth below for UNE 2-wire loops:

1. The percent of installations completed within 3 days for CLEC customers ranged from 58 to 90%, compared to a benchmark of 95%, for the most recent six months ending May, 2001.
2. The percent of installations completed within 3 days for CLEC customers ranged from 75 to 90%, compared to a benchmark of 95%, for the most recent three months ending May, 2001. While there has been improvement in the last 3 months, results are erratic since for the most recent 6 months still only 75% of loops have been installed on average - - which is still 20% below the required benchmark.
3. AM has not demonstrated it can handle commercial, or increasing volumes. In the months of January and February 2001 the installation percent declined significantly to 58 and 71% when volumes doubled when compared to April and May 2001 volumes.
4. This is evidence of discrimination since AM's installation interval for CLECs lags the benchmark on a consistent basis and AM cannot handle increasing volumes without a substantial decline in installation percentages.

Performance Measure 56 - Percent of Installations Completed by Three Days for UNE Digital Loops With 1-10 Loops:

Issues regarding discrimination and AM's failure to comply with PM 56 are set forth below for UNE digital loops:

1. The percent of installations completed within 3 days for CLEC customers ranged from 46 to 80%, compared to a benchmark of 95%, for the most recent six months ending May, 2001.
2. The percent of installations completed within 3 days for CLEC customers ranged from 59 to 80%. For the most recent 3 months, only 70% of loops have been installed, which is 25% below the benchmark. As recent as March 2001, the installation percentage was as low as 59%.
3. This is evidence of discrimination since AM's installation interval for CLECs lags the benchmark on a consistent basis.

Public Interest Standard

The Attorney General views the public interest standard as the final overarching test of reasonableness of AM's 271 application. Both the FCC and the DOJ have employed a fairly

broad application of this standard to address 271 applications in other jurisdictions. Ameritech says little about the public interest standard in its filing. The Attorney General offers a few comments regarding the public interest standard, from a broad perspective these findings point out some other concerns which have not been satisfactorily addressed.

The Attorney General is aware that a particular level of local exchange market share lost by AM, or gained by competitors, is not a condition for 271 approval or the 14-point competitive checklist. However, there seems to be a significant difference between various parties regarding measures of competitor growth and indicators of competitors' presence in the Michigan local exchange market. The Attorney General believes this information should be properly reconciled regardless of any final recommendation. One of the larger discrepancies exist between Staff data and Ameritech data regarding lines served via resale, UNEs, UNE platform, other, CLEC facilities and xDSL lines. Staff compares its numbers to those of AM at Attachment A and B of the May 23, 2001, Staff Report for Results of 2nd Competitive Market Conditions Survey. Ameritech reports total CLEC access lines that are almost twice those reported by Staff and CLECs in the Staff Report. It would be helpful to have one clear and proper method for evaluating the level of CLEC access lines, which is in the public interest from the standpoint it prevents manipulation of data and provides for a clear and consistent record in this area. The difference between Staff and Ameritech's findings are too broad and significant to leave unexplained and unreconciled.

It is clear that the Michigan local exchange market is not as competitive as other states. CLECs serve about 20% of lines in New York, 15% of lines in Minnesota, 14% in Louisiana,

13% in Kansas, 12% in Texas, 11% in Massachusetts and 10% in the states of Georgia, Illinois, Iowa and Pennsylvania according to a recent FCC study.¹² Obvious by omission is the state of Michigan. In addition, the FCC's May 21, 2001, release regarding data on local telephone competition indicates that CLEC market share grew 93% for the one-year period January to December 2000. This document is shown at Attachment AG-2. The Attorney General did not identify this level of market share growth for any reasonable measure of CLEC market share in Michigan. The aggressive growth statistics in the FCC release do not appear to comport with actual market changes in Michigan.

Ameritech's filing does not make any strong endorsements of specific benefits to accrue to local exchange customers or long distance customers from its entry into the interLATA arena. The focus should be on benefits to customers of local exchange service, since the DOJ has previously chided BellSouth for placing undue attention on interLATA entry in both their South Carolina and Louisiana applications. However, AM's filing is largely void of any specific or determinable benefits to local or long distance customers. The Attorney General does not necessarily believe there will be any immediate and meaningful long distance rate relief for consumers by approving AM's application. Ameritech does not commit to a specific level of long distances rates, or reductions, to be brought about by the potential approval of its filing. Attachment AG-3 is a newspaper article identifying the SWBT long distance rate charade that occurred in Texas. The article indicates that SWBT responded to its interLATA entry by subsequently increasing long distance rates by 1-cent a minute, Caller ID rates were also increased by 30% on the local exchange side. This sort of "competitive" response is certainly not shown to be in the public interest.

¹² Per the May 28, 2001, Telecommunications Reports, page 8.

The executive summary of a report on the absence of competition in the Michigan local exchange area is provided at Attachment AG-4.¹³ Mr. Wolfram's report explains how Public Act 295 of 2000 was necessary to inject some form of competition due to the failure of the 1995 Michigan Telecommunications Act. However, much of the Public Act's components are on hold, have been rejected by the Courts or are still tied up in the Courts (such as the elimination of the intrastate EUCL and the rate freeze). Therefore, it remains to be seen if any additional level of local exchange competition is injected by Public Act 295. Mr. Wolfram reports at page 1 that Michigan's local phone rates were the third highest in the nation (presumably as of December 2000, the date of his report). However, nothing has occurred since this date to reduce local rates in Michigan. In fact, local rates have increased since that date for carriers such as Verizon. Therefore, Michigan's local rates may now exceed the third highest ranking which was attributed in December 2000. It is doubtful that approval of AM's 271 filing will have any positive impacts on local exchange rates or service quality. AM has yet to make any commitments in its filing, and AM has historically rejected legislation aimed at injecting competition. Therefore, a more persuasive argument is made to allow competitors to gain a stronger foothold in the local exchange arena prior to approving AM's 271 application. It appears that only through potential actions of competitors in the future that Michigan's local rates can be driven downwards from their lofty status of third highest in the nation. However, premature approval of AM's 271 application will only allow AM to strengthen its market power and its local exchange presence via one-stop shopping advantages - - and local exchange competition will be sacrificed.

CONCLUSION

The Attorney General recommends that AM's 271 filing not be endorsed by the MPSC at this time. The MPSC should strongly suggest to AM that additional information and documentation is necessary before any formal recommendation to the FCC is forthcoming. Ameritech needs more historical data showing a consistent, complete and compliant track record for key areas such as performance measures and OSS. Ameritech's filing does not confirm that the 271 checklist has been met and that Michigan local exchange markets are fully and irreversibly open to competition. A clear and complete history of results showing compliance with performance measurements and satisfactory OSS testing will significantly improve AM's application in the future.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

Orjiakor N. Isiogu (P42788)
Assistant Attorney General
Special Litigation Division
6520 Mercantile Way, Suite 2
Lansing, MI 48911
(517) 373-1123

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¹³ Report titled, **Telecommunications Reform in Michigan: The Beginning of Competition in the Local Telecommunications Market**, by Gary Wolfram, Ph.D., Professor at Hillsdale College, report dated December 2000.

