

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) MPSC CASE NO. U-12320
the federal Telecommunications Act of 1996.)

AFFIDAVIT OF
SCOTT L. FINNEY

STATE OF ILLINOIS)
) s.s.
COUNTY OF COOK)

The undersigned, being of lawful age and duly sworn on oath, hereby certifies,
deposes and states the following:

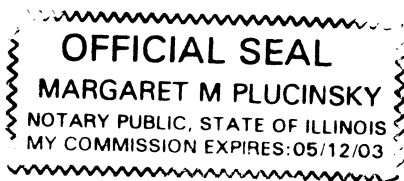
I have caused to be prepared the attached written testimony in support of AT&T
Communications of Michigan, Inc. in the above referenced docket. This
testimony is true and correct to the best of my knowledge, information, and belief.

Further Affiant sayeth not.

Scott L. Finney
Scott L. Finney, Affiant

Subscribed and Sworn to before me
this 27th day of June, 2001.

Margaret M. Plucinsky
Notary Public



STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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

AFFIDAVIT OF SCOTT L. FINNEY

ON BEHALF OF

AT&T COMMUNICATIONS OF MICHIGAN, INC. AND TCG DETROIT

JUNE 29, 2001

PUBLIC VERSION

I, Scott L. Finney, being of lawful age and duly sworn under oath, do hereby depose and state as follows:

I. INTRODUCTION AND QUALIFICATIONS

1. My name is Scott L. Finney. I am a District Manager in AT&T's Local Services and Access Management for the SBC Region. In this position, I lead a team working in the area of business applications for UNE loops and DSL deployment in Michigan and other SBC/Ameritech states. This effort entails analysis of SBC's local regulatory filings, including its applications to enter the Michigan long distance market under Section 271 of the Telecommunications Act of 1996 ("the 1996 Act").

2. I joined AT&T in 1998. I have over twenty years of telecommunications industry experience, including positions with Northern Telecom, Tellabs and Ameritech.

3. I have a BSEE from the University of Illinois, Champaign-Urbana, and have completed an M.B.A. at the Keller Graduate School, Chicago, Illinois.

II. PURPOSE AND SUMMARY OF AFFIDAVIT

4. The purpose of this Affidavit is to address whether Ameritech Michigan is in compliance with its obligations under the 1996 Act, and the Commission's orders, regarding the provision of advanced services, including line sharing and line splitting.¹ For the reasons stated below, Ameritech Michigan is not meeting its obligations with respect to advanced services in significant areas.

¹ See, e.g., Brief in Support of Application by Ameritech Michigan For Provision of In-Region, InterLATA Services in Michigan, filed May 15, 2001 ("Application"), at ¶¶ 59-66; Draft Affidavit of John Habeeb ("Habeeb Statement"), ¶¶ 29-59; Draft Affidavit of Michael Silver ("Silver Statement"), ¶¶ 14-25.

5. First, as discussed in Part III, Ameritech Michigan has not met the requirements of the recent *ASCENT* decision² that Ameritech and its affiliate Ameritech Advanced Data Services of Michigan, Inc. (“AADS”), also using the name SBC Advanced Solutions, Inc. (“ASI”), comply fully with the requirements of Section 251(c) of the 1996 Act. For example, even though Ameritech Michigan provides DSL service (e.g., DSL transport) to end-user customers at retail (as Ameritech states on its web site and in advertisements), Ameritech Michigan fails to offer those services for resale at wholesale rates, in violation of the resale obligations of Section 251(c)(4) of the 1996 Act and the Federal Communications Commission’s November 1999 *Second Advanced Services Order* in CC Docket No. 98-147.³ Instead, playing “hide-the-ball” with its multiple corporate affiliate entities, Ameritech persists in claiming it does not provide retail DSL services subject to resale at a wholesale discount. The MPSC should see through this ruse.⁴

6. Second, as discussed in Part IV, Ameritech Michigan has failed to meet its obligations to provide line splitting over UNE-P. Ameritech Michigan continues to resist its obligations to: (1) permit line splitting over UNE-P; (2) support migration from line sharing to line splitting arrangements; (3) support combining UNE-P voice with resold DSL service over the same loop; (4) not unnecessarily disassemble combinations of UNEs; and (5) permit line splitting over UNE-P and migration from line sharing to line splitting using a single order. Consistent with its refusal to provide line splitting in the above scenarios, Ameritech Michigan

² *Association of Communications Enterprises v. FCC*, Case No. 99-1441, slip opinion issued January 9, 2001, *clarified*, slip opinion issued January 18, 2001 (“*ASCENT*”).

³ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, 14 FCC Rcd. 19237 (1999), ¶¶ 3-5 (“*Second Advanced Service Order*”).

⁴ Indeed, as discussed below, the Indiana Utility Regulatory Commission recently ruled in favor of the CLECs on this very issue. See Order in Cause No. 41657, dated June 27, 2001, attached as Exhibit SF-1.

also refuses to modify the Michigan Master Test Plan to permit necessary OSS testing of the scenarios.

7. Third, as discussed in Part V, Ameritech Michigan has not demonstrated that, in accordance with the FCC's *Line Sharing Reconsideration Order*,⁵ Ameritech is providing CLECs with line sharing over fiber-fed loops. Indeed, Ameritech Michigan has not even alleged in its Application that it is willing to do so – much less shown that it does so on a nondiscriminatory basis, supported by appropriate operations support systems.

8. Fourth, as discussed in Part VI, information provided in discovery in this proceeding demonstrates that Ameritech Michigan's OSS appear to discriminate in favor of its affiliates.

The issues identified above, among others discussed by AT&T's witnesses, demonstrate that Ameritech Michigan has failed to meet its obligations under 47 U.S.C. 271(c) (2) (B)(ii) and (iv).

III. AMERITECH MICHIGAN HAS NOT COMPLIED WITH THE REQUIREMENTS OF SECTION 251(c) AND THE ASCENT DECISION REGARDING THE PROVISION OF ADVANCED SERVICES.

9. In its *ASCENT* decision, issued in January 2001, the U.S. Court of Appeals for the District of Columbia Circuit vacated the portion of the *SBC/Ameritech Merger Order* that had exempted the advanced services provided by ASI from the obligations imposed on incumbent LECs by Section 251(c). As Ameritech Michigan concedes, although the *ASCENT*

⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 98-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, released January 19, 2001 (“*Line Sharing Reconsideration Order*”).

decision focused on ASI's resale obligations under Section 251(c)(4) of the 1996 Act, the court's opinion plainly holds that ASI — like Ameritech Michigan — is subject to all of the requirements of Section 251(c).⁶

10. Ameritech Michigan and its witness, Mr. Habeeb, contend that ASI “has taken the appropriate steps to comply” with the requirements of Section 251(c) and the *ASCENT* decision.⁷ Ameritech Michigan's position is incorrect for a number of reasons.

11. First, Ameritech Michigan bases its claim of compliance with Section 251(c) and *ASCENT* in part on ASI's recent development of a generic interconnection agreement (ICA). The generic ICA purports to demonstrate how ASI will be meeting its Section 251(c) obligations.⁸ It is noteworthy that Mr. Habeeb does not reference any final and effective 251(c) interconnection agreements between ASI and a CLEC, let alone any such ICA approved in Michigan by the MPSC. Indeed, his entire discussion of the “generic” ICA is phrased in the future tense.⁹ He does mention in passing that “interested” CLECs may contact “the ASI Interconnection group in Texas” to obtain a copy of this agreement, but avoids any discussion of how ASI's off-the-shelf generic agreement satisfies the duty to negotiate in good faith.¹⁰ Thus, at best, it would be premature at this stage to give any weight to Mr. Habeeb's statements on this point or to the new “generic” agreement in determining whether the requirements of Section 251

⁶ Habeeb Statement, ¶ 29.

⁷ Id. at ¶¶ 29-32.

⁸ Id. at ¶ 32.

⁹ Id. at ¶¶ 32-35.

¹⁰ Id. at ¶ 34; There are undoubtedly terms and conditions in ASI's generic agreement that CLECs would find unacceptable, such as conditions that unreasonably limit ASI's obligations. For example, to the extent ASI under the agreement can avoid its resale obligations simply by limiting its capacity to the level necessary to serve its present retail customers, such a condition would be discriminatory against resellers and their customers.

and ASCENT have been met.¹¹ Given Ameritech Michigan's track record, the MPSC and CLECs need more than vague promises and generic agreements from Ameritech. AT&T also questions why a CLEC would need to enter into a separate interconnection agreement – and presumably interface with additional operational support systems – to order DSL resale. If the ASCENT decision stands for anything, it is that, in regard to its 251 obligations, Ameritech (and its conglomeration of affiliates) should be viewed as one entity. Thus, Ameritech should offer DSL resale pursuant to its own existing interconnection agreements and through its own existing OSS.

12. Second, even if Ameritech Michigan may properly rely on ASI's generic agreement for purposes of its application, neither Ameritech Michigan nor ASI is in compliance with the requirements of Section 251(c) with respect to advanced services. Ameritech Michigan asserts that most of ASI's services are not subject to the wholesale discount requirements of Section 251(c)(4) as interpreted in the *Second Advanced Services Order*, because they are “not retail services offered directly to subscribers,” but are sold almost entirely to internet service providers (“ISPs”) on a wholesale basis.¹² According to Ameritech Michigan, the only services that ASI is required to resell at a discount are: (1) the Frame Relay service that ASI sells at retail to business customers; (2) ATM Cell Relay; and (3) retail services that ASI sells to businesses under existing customer service contracts (CSCs), which services include Frame Relay, ATM

¹¹ In a similar situation, the FCC refused to consider an interconnection agreement not yet approved by the Michigan Public Service Commission in determining whether Ameritech Michigan was in compliance with the requirements of the checklist in Section 271. *Application by Ameritech Michigan Pursuant To Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 3309 (1997), ¶¶ 15-23.

¹² Habeeb Statement, ¶¶ 38-39. Ameritech Michigan acknowledges a “requirement to resell at a wholesale discount its retail services provided to subscribers who are not telecommunications carriers in accordance with § 251(c)(4), but limits its offer of such a discount to two retail services, Frame Relay and ATM Cell Relay. *Id.* at 36-40.

Cell Relay, and DSL Transport.¹³ According to Ameritech Michigan, ASI will offer for resale the DSL Transport services that it provides on a wholesale basis to ISPs only “in accordance with Section 251 (b)(1)” -- *i.e.*, without a discount.¹⁴

13. Mr. Habeeb further states that SBC-Ameritech’s data affiliate “provides only a limited set of services - - high speed advanced data services - - to a very limited base of customers.”¹⁵ He adds that ASI’s business plan is “focused primarily on providing advanced services on a wholesale basis to other service providers, particularly Internet Service Providers (“ISPs”).”¹⁶ In fact, Mr. Habeeb acknowledges that “ASI currently provides DSL Transport service to more than 400 ISPs, including SBC’s ISP affiliate Ameritech Interactive Media Services, Inc.”¹⁷ Mr. Habeeb claims that “ASI in Michigan has no retail end user (*i.e.*, residential or small business) DSL Transport customers.”¹⁸ He concludes that “to the extent large businesses obtain DSL Transport for their own use, these services would be available for resale along with other CSCs.”¹⁹

14. Mr. Habeeb’s statements are carefully crafted to avoid telling the full story; the fact is that Ameritech Michigan provides DSL service to retail end users. In the end, Mr. Habeeb’s confusing discussion (*i.e.*, shell game) of which Ameritech corporate affiliate does or does not provide which DSL-related service amounts to a difference without meaningful distinction.

¹³ Habeeb Statement, ¶¶ 40-41.

¹⁴ *Id.*, ¶ 39.

¹⁵ Habeeb Statement, ¶ 38.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 39, fn. 28.

¹⁸ *Id.* at ¶ 39.

¹⁹ *Id.*

15. Indeed, Ameritech Michigan's description of the sale of advanced services by Ameritech versus ASI or AADS is both misleading and contrary to the facts. For example, Ameritech Michigan gives the impression that Ameritech Michigan itself no longer provides advanced services such as DSL Transport services at retail to residential and business end-users, but (at most) provides DSL only to ASI as a wholesale service. In reality, Ameritech Michigan holds itself out to the public as a provider of retail DSL service – and is therefore subject to the resale discount requirements of Section 251(c)(4), even if the obligations of ASI itself under ASCENT are as limited as those described by Ameritech Michigan.

16. No matter how Ameritech claims it is “technically” offering its DSL services, it is beyond credulity for it to claim that it is not offering retail DSL services to Michigan end-users. Indeed, Ameritech directly markets its DSL service to Michigan end-users and is holding itself out as offering DSL services to retail customers. Checking Ameritech's own web page (at Ameritech.com) and clicking on the proper icons for business and residential offers in the region reveals that Ameritech is directly marketing DSL services to end-users. Indeed, the first page of Ameritech's web site includes advertising for “DSL” service. On its face, this is not an offering to ISPs, as Ameritech would have the Commission believe. Ameritech's web pages further provide that DSL services are available today to residential and business consumers, and provides specific pricing, ordering and installation information.²⁰

17. Ameritech's home page, www.ameritech.com, provides several ways to obtain information on Ameritech's DSL offerings. The "Ameritech DSL Center", available by simply clicking the large "DSL" icon, details Ameritech's residential and business DSL offerings. For example, under " Residential DSL", Ameritech's website states "Ameritech offers several

²⁰ The web pages, which were viewed and printed on June 26, 2001, are attached as Exhibit SF-2.

different DSL service packages to meet your data and internet access needs." Other clicks of the computer mouse provide consumers with billing details, installation instructions and answers to "frequently asked questions." Similar information is found by entering the "Residential Products and Services" section, and selecting "Michigan." There, Ameritech refers to its DSL service as "Ameritech DSL." Clearly, Ameritech itself is selling DSL services to residential end-users.

18. Moreover, in addition to accessing the Ameritech Michigan web site, AT&T has independently confirmed that Ameritech makes DSL available as a stand-alone retail service directly to business and residential end-users.²¹ Ameritech marketing and promotional materials clearly do not make any distinction among Ameritech, AADS, ASI, or other entities as the provider of retail DSL service.²³ To the contrary, Ameritech refers to its DSL service as "Ameritech DSL." An end user reading Ameritech's marketing materials (whether on the web page or as direct mailed) can come to but one conclusion: Ameritech itself is selling DSL service to end users.

19. In its report and press release on fourth-quarter 2000 results, SBC stated that it had 767,000 "DSL subscribers" and "DSL customers" by the end of 2000.²⁴ It is inconceivable that all of those 767,000 "subscribers" and "customers" could be ISPs. Furthermore, far from portraying itself or its affiliates as a mere wholesaler of DSL transport to ISPs, SBC's fourth-quarter report cited its efforts to "strengthen and extend" its relationship with Prodigy Communications (an ISP in which SBC is a "strategic investor") for the purpose of

²¹ Telephone conversations with Ameritech Indiana and AADS representatives and Ameritech direct mail brochures have confirmed that Ameritech provides retail DSL services to residential and business customers. Similarly, AT&T has learned in recent weeks that Ameritech Michigan's sister-company SWBT makes DSL available as a stand-alone retail service directly to business and residential end-users.

²² See Exhibit SF-3.

²³ See Exhibit SF-3.

enhancing SBC's ISP capabilities. SBC stated: "With more direct control of DSL customer relationships, SBC will be in a stronger position to expand its DSL offerings beyond high-speed access." SBC Investor Briefing at 4. These are hardly the statements of a modest wholesaler of DSL service.

20. Because Ameritech Michigan offers DSL as a stand-alone service at retail, it is required to resell that service to CLECs at a wholesale discount. Ameritech notes that the Commission's *Second Advanced Services Order* holds that where an ILEC sells advanced services such as DSL services to ISPs for inclusion in a high-speed offering, those services are not "retail" services and are not subject to resale under Section 251(c)(4).²⁵ But the *Second Advanced Services Order* also holds that where -- as here -- an ILEC sells advanced services at retail to residential and business end-users, those services *are* subject to the discounted resale obligations of Section 251(c)(4).²⁶ Ameritech Michigan clearly has not met that obligation.²⁷ It has refused to accept its responsibility under the *ASCENT* decision to resell its DSL services, including DSL Transport, at a discount.

21. In view of Ameritech's retail offering of DSL services, Ameritech Michigan is required to provide CLECs with nondiscriminatory access to its OSS with respect to the same service, both as part of its resale obligations under Section 251(c)(4) and as part of its duty to

²⁴ SBC Investor Briefing, dated January 25, 2001, at 2, 4 (*see* Exhibit SF-4) ; SBC press release, "SBC Reports Fourth-Quarter Results," dated January 25, 2001, at 1-2 (*see* Exhibit SF-5).

²⁵ Habeeb Statement, ¶ 39.

²⁶ *See Second Advanced Services Order*, ¶ 3 ("advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service").

²⁷ In view of Ameritech's offering of DSL transport as a stand-alone service at retail to business and residential end-users, it is immaterial that "ASI's business plan is focused primarily on providing advanced services on a wholesale basis" to ISPs. Habeeb Statement, ¶ 38. Whatever ASI's plans or activities may be, Ameritech itself is clearly marketing DSL transport as a stand-alone service on a mass-market basis today.

provide unbundled network elements on nondiscriminatory terms under Section 251(c)(3).²⁸ Ameritech Michigan, however, does not provide nondiscriminatory access to its own OSS. Instead, as discussed in greater detail below, CLECs are given access only to ASI's OSS – a completely different OSS that Ameritech Michigan itself describes as “extremely limited.”²⁹ Furthermore, DSL Transport is the only resold service for which ASI provides fully mechanized pre-ordering and ordering capabilities – and, in order to take advantage of those capabilities, CLECs must build interfaces entirely separate from those that they (and ASI) use to order services from Ameritech Michigan itself.³⁰ This requirement is both discriminatory and needlessly burdensome on a CLEC. Ameritech Michigan must provide resale services and unbundled network elements owned by itself and by its affiliate over one set of OSS.

22. Even if the scope of ASI's (and Ameritech Michigan's own) obligation to resell advanced services at a wholesale discount is as limited as Ameritech Michigan asserts, Ameritech has not shown that the terms and conditions under which ASI will offer CSCs to resellers at a wholesale discount are reasonable and nondiscriminatory, as required by Section 251(c). Ameritech Michigan states only that ASI will offer CSCs to any “similarly situated” customer that meets the terms and conditions of that particular arrangement.³¹ Neither Ameritech Michigan's Application nor its generic agreement sets forth any criteria for determining when a customer is “similarly situated,” or specifies whether a reseller may

²⁸ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996), ¶ 525 (“*Local Competition Order*”), vacated in part on other grounds *sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd. 20543 (“*Ameritech Michigan Order*”), ¶ 130.

²⁹ Habeeb Statement, ¶¶ 51-54.

³⁰ See Habeeb Statement, ¶¶ 20-25 (describing the interfaces used by ASI to submit transactions to Ameritech Michigan); ¶ 51-59 (describing ASI/CLEC interfaces).

³¹ Habeeb Statement, ¶ 42.

aggregate the volumes of its individual customers to meet the volume requirements of a particular CSC.³²

23. Similarly, although Ameritech Michigan states that a customer under a CSC with ASI may be subject to termination liability under the CSC if it elects to terminate its service with ASI, Ameritech Michigan fails to describe the extent of that liability.³³ Because the FCC has stated that termination liability provisions may be inconsistent with the requirements of Section 271, depending on the circumstances, the legality of the termination liability under ASI's CSCs cannot be presumed.³⁴ Ameritech Michigan also fails to explain why customers under CSCs with ASI may be subject to termination liability, when – according to Ameritech Michigan's Application – customers under CSCs with Ameritech Michigan itself are not.

24. In addition, Ameritech Michigan has improperly attempted to limit ASI's obligation to provide nondiscriminatory access to its OSS.³⁵ Although Ameritech Michigan

³² See Habeeb Statement, ¶ 42. The FCC has held that a BOC's requirement that customers be "similarly situated" is presumptively unreasonable to the extent that it "require[s] individual customers of a reseller to comply with incumbent LEC high-volume discount minimum usage requirements so long as the reseller, in aggregate, under the relevant tariff, meets the minimal level of demand." *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20599 (1998), ¶ 317 (emphasis added) ("Second BellSouth Louisiana Order"). See also *Local Competition Order*, ¶ 953. The FCC has also held that an applicant for Section 271 authority must make "an affirmative showing" that any restrictions on volume aggregation are reasonable. *Second BellSouth Louisiana Order*, ¶ 317.

³³ Habeeb Statement, ¶ 42.

³⁴ See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd. 3953 (1999), ¶ 390 ("Bell Atlantic New York Order") ("Although termination liabilities that apply when a customer terminates a contract to take service from another provider could, in certain circumstances, be unreasonable or anticompetitive, they may not on their face put a carrier out of compliance with checklist item 14"); *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, 13 FCC Rcd. 539 (1997), ¶ 222 ("BellSouth South Carolina Order") ("Because, depending on the nature of these [termination] fees, their imposition creates additional costs for a CSA customer that seeks service from a reseller, they may have the effect of insulating portions of the market from competition through resale. We, therefore, would want to review such fees and request that BOCs provide information justifying the level of cancellation or transfer fees in future applications").

³⁵ Although Ameritech Michigan admits that ASI is subject to the obligation of Section 251(c)(3) that it provide nondiscriminatory access to unbundled network elements, it asserts that ASI's obligation "should be limited," because advanced services equipment and OSS are the only UNEs that ASI "owns." Habeeb Statement, ¶ 48.

acknowledges that the obligations imposed by Section 251(c) include access to unbundled network elements, it asserts that ASI's obligation to provide nondiscriminatory access to OSS is "extremely limited," because of: (1) the "limited" number of ASI customers available for resale, (2) the "unique nature" of most of ASI's services, (3) the high cost that ASI would incur in providing fully electronic interfaces, (4) the "extremely limited" OSS that ASI uses; and (5) the absence of any need for CLECs to use ASI's OSS for interconnection with ASI's network.³⁶ Instead, ASI will provide resellers with electronic access to its OSS only for some services, while offering only manual submission and/or processing of pre-ordering and ordering transactions for services other than retail DSL Transport.³⁷

25. Ameritech Michigan's interpretation of ASI's OSS obligations is inconsistent with the *ASCENT* decision, which states that ASI is fully subject to the requirements of Section 251(c). Ameritech Michigan, in fact, cites no legal authority to support its position that ASI's OSS obligations are "extremely limited." Instead, Ameritech Michigan simply asserts that "It would make no sense to require unbundling of OSS merely because ASI has OSS."³⁸ But the FCC decided that issue nearly five years ago, when it held in the *Local Competition Order* that OSS is an unbundled network element to which an ILEC must provide nondiscriminatory access under Section 251(c).³⁹ In any event, Ameritech Michigan's limited offering of electronic access to ASI's OSS is clearly discriminatory, since Ameritech does not assert that orders from ASI customers for services other than DSL Transport are subject to the same degree of manual intervention that will occur when a reseller orders the same service.

³⁶ Habeeb Statement, ¶¶ 51-54.

³⁷ Id. at ¶¶ 55-59; see Affidavit of AT&T witness Karen Moore at pages 11-12, for a discussion of related issues that indicate Ameritech is in violation of *ASCENT*.

³⁸ Id. at ¶ 52.

26. Finally, the Indiana Utility Regulatory Commission recently issued an order in a proceeding examining the same issues that are before this Commission. (See Exhibit SF-1) The IURC ruled in favor of the CLECs and against Ameritech on almost all issues. The relevant findings and conclusions include the following:

- The record - - including Ameritech's admissions and the marketing information from Ameritech's web site - - proves conclusively that AIMS' [an Ameritech affiliate] services are designed for and sold to residential and business end-users. Furthermore, without the ADSL Transport Services provided to AIMS by ASI, AIMS could not reach its end-users;
- Under *ASCENT*, an ILEC cannot set up a wholly owned affiliate that offers the advanced services to avoid its resale obligations under § 251(c)(4). It follows that the ILEC certainly cannot set up more than one affiliate to do so . . . ;
- Contrary to Ameritech's position, AIMS is not simply an ISP that combines the DSL service with its own Internet service . . . Therefore, the Commission finds that Ameritech is effectively offering ADSL services at retail due to the affiliations; and
- Consequently, KPMG's test of Ameritech's OSS should evaluate Ameritech's wholesale provision of resold DSL services.⁴⁰

The Indiana Commission was not persuaded by Ameritech's strained arguments, nor should this Commission. The Commission here, like the IURC, should expand the scope of the third-party OSS test to include a test of Ameritech Michigan's DSL resale offerings.

27. In sum, no matter which Ameritech affiliate, Ameritech Michigan, AADS, or ASI, is providing DSL service, the *ASCENT* decision makes clear that an ILEC "may not . . . avoid [its] section 251(c)(4) [resale] obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services."⁴¹ That is, Ameritech cannot engage in a

³⁹ See *Local Competition Order*, ¶¶ 516-528. The FCC reaffirmed its decision to require the unbundling of OSS as a UNE in its *UNE Remand Order*. See *UNE Remand Order*, ¶¶ 433-437.

⁴⁰ IURC Order, pp. 4-5, attached as Exhibit SF-1.

⁴¹ *ASCENT*, 235 F.3d at 663, 668.

formalistic reliance on its corporate structure to avoid its Section 251 obligations. ASCENT requires that Ameritech Michigan, ASI, and any other Ameritech affiliates be viewed together for purposes of Section 251(c). Because Ameritech is offering its DSL services to Michigan end-users, it must make them available to CLECs on an unbundled basis with an appropriate wholesale discount.

IV. AMERITECH MICHIGAN HAS FAILED TO MEET ITS OBLIGATIONS RELATING TO LINE SPLITTING OVER UNE-P.

28. The business implications to AT&T (and other CLECs) of line splitting are significant. AT&T seeks to offer Michigan customers both voice and data services utilizing UNE-P and xDSL. AT&T anticipates that a variety of permutations of unbundled elements, AT&T facilities, partnerships with Data CLECs (D-CLECs) and resale of ILEC services will be required to provide competitive alternatives to Michigan consumers.

29. UNE-P is the combination of UNEs necessary to provide basic local exchange service to customers and includes the full combination of switching, shared transport, and loop UNEs. Entry by CLECs utilizing UNE-P is the only prospect for broad-based residential and small business local exchange competition in Michigan any time in the near future. It will be a very long time indeed, if ever, before competitors build their own facilities out to every residence or small business in Ameritech's service territory.

30. The essence of "line splitting" is the ability of a Voice CLEC (V-CLEC), by itself or in a partnering arrangement with a D-CLEC, to offer consumers both voice and data services over one loop. In order to reach residential and small business customers on a mass-market scale, the ability to offer both voice and data utilizing a UNE-P product is critical. Robust residential and small business local exchange competition in Michigan for either voice or data services cannot develop without it. Making data services overly expensive, difficult, or

impossible for competitors to provide in conjunction with UNE-P over a single local loop would do great harm to competition for both combined voice and data services and for voice services themselves.

31. In its draft 271 filing, Ameritech Michigan fails to acknowledge the business implications and OSS requirements related to line splitting, i.e., providing DSL service over the UNE platform (UNE-P). Specifically, Ameritech Michigan continues to resist its obligations to: (1) permit line splitting over UNE-P; (2) support migration from line sharing to line splitting arrangements; (3) support combining UNE-P voice with resold DSL service over the same loop; (4) not unnecessarily disassemble combinations of UNEs (i.e., to the extent rewiring is required for UNE-P line splitting, Ameritech must perform the same central office work it performs for itself for line sharing); and (5) permit line splitting over UNE-P and migration from line sharing to line splitting using a single order and using a provisioning process that minimizes (if not eliminates) unwarranted work activities and unnecessary nonrecurring costs to the CLECs involved. Ameritech's current position raises questions on all of these issues.

32. The dispute over Ameritech Michigan's refusal to provide line splitting over UNE-P extends to its refusal to modify the Michigan Master Test Plan ("MTP"). AT&T and other carriers have attempted to obtain modification of the MTP, which controls the third party test of Ameritech's OSS, in order to incorporate fully the MSPC's and FCC's decisions on line sharing and line splitting. In other words, competitive carriers wish the MTP to test the MPSC's requirement that Ameritech permit line splitting over UNE-P. Ameritech has refused to cooperate in such testing. As Staff succinctly summarized on May 23, 2001, "AT&T, WorldCom and Ameritech do not agree on Ameritech's obligations relating to line splitting over

UNE-P as discussed in the MPSC’s March 7, 2001 Order in Case No. U-12540 as well as in other related FCC orders.” From AT&T’s perspective, Ameritech’s position is rooted in a fundamental misinterpretation of the MPSC’s and FCC’s relevant orders. Ameritech Michigan continues to refuse to permit line splitting over UNE-P, even when the CLEC/DLEC involved provides the splitter. All of Ameritech’s “compromise” solutions fail to resolve the situation, because they suggest the addition of test scenarios for a process/product that does not include UNE-P. Ameritech’s OSS still requires the CLEC to submit three separate orders to accomplish line splitting; as I discuss below, however, CLECs must have a seamless, single-order process that at a minimum approximates the migration-like activities that Ameritech enjoys when it is in a line sharing configuration.

33. The MPSC’s and the FCC’s orders establish the line splitting requirements that apply to incumbent LECs like Ameritech Michigan. “Ameritech Michigan must permit line splitting *over the UNE-P*, at least when the CLECs provide the splitter, as the FCC has now ruled.”⁴² The MPSC ruled directly against Ameritech Michigan on this point, noting Ameritech Michigan had asserted “that it is not required to permit or facilitate line splitting over the UNE-P.”⁴³ In my mind, there is no doubt that the MPSC ruled that line splitting must be allowed in conjunction with (*i.e.*, “over”) UNE-P. For Ameritech to claim otherwise seems to be a direct challenge to the March 7, 2001 order of the Commission.

34. Ameritech’s position is also in conflict with the FCC’s reconsideration order on line splitting.⁴⁴ Paragraph 19 of that order requires an incumbent LEC like Ameritech

⁴² MPSC Order, Case No. U-12540, p. 7 (March 7, 2001) (“U-12540 Order”) (emphasis added).

⁴³ *Id.* at 6.

⁴⁴ See Third Report and Order on Reconsideration in CC Docket No. 98-147, *In the matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 01-26 (rel. Jan. 19, 2001) (“Line Splitting Reconsideration Order”).

Michigan to “permit competing carriers to engage in line splitting *using the UNE-platform* where the competing carrier purchases the entire loop and provides its own splitter.” (emphasis added) The FCC explains that, as it stated in its Texas 271 order, an incumbent has a “current obligation” to allow a competing carrier... to provide combined voice and data services on the same loop” (§ 18) and “must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless the loop was used for the UNE-Platform is not capable of providing xDSL service.”⁴⁵ Ameritech’s position requires the UNE-P carrier to order a *new* loop (even if it turns out to be the existing loop) and a new switch port in every case that line splitting is sought. Inherent in this position is the certainty that every time a UNE-P customer seeks line splitting, there will be a service disconnection, there will be potentially an extended period of loss of dial tone, there will be increased chance of loss of facilities (such as working telephone number, facilities assignment), there will be increased complexity in the ordering process, and there will be increased numbers of nonrecurring service order charges. Both the MPSC’s and the FCC’s orders clearly contemplate avoiding such a situation by requiring Ameritech to allow line splitting over UNE-P.⁴⁶

35. To date, Ameritech has avoided providing the detailed methods and procedures that it will use to allow a UNE-P carrier to line split. Only this week did carriers

⁴⁵ *Id.*, § 19.

⁴⁶ Moreover, paragraph 20 of the Line Splitting Reconsideration Order states "incumbent LECs are required to make all necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements. Thus, an incumbent LEC must perform central office work necessary to deliver unbundled loops and switching to a competing carrier’s physically or virtually collocated splitter that is part of a line splitting arrangement." And paragraph 21 provides that "In particular, we encourage incumbent LECs and competing carriers to use existing state collaboratives and change management processes to address, among other issues: developing a single-order process for competing carriers to add xDSL service to UNE-platform voice customers; allowing competing carriers to forego loop qualification if they choose to do so (i.e., because xDSL service is already provided on the line); enabling competing carriers to order loops for use in line splitting as a “non-designed” service; and using the same number of cross connections, and the same length of tie pairs for line splitting and line sharing arrangements."

learn some of the details concerning the processes involved and the rates that will be charged. Fundamentally, Ameritech's position rests on the concept that all line splitting arrangements involve the "disconnection" of UNE elements. This approach purposefully introduces unneeded complexity and cost to the CLEC/DLEC/end user relationship. Consider the response to a recent AT&T data request seeking a description for "how Ameritech Michigan will process, provision, and bill (including all non-recurring charges)... [a] CLEC order to covert a current UNE-P voice customer to a line splitting arrangement" Ameritech's response indicates that it views lines splitting as having "disconnection" of network elements and a multi-order process as absolute predicates to line splitting:

The CLEC would submit related orders *that would serve to "disconnect" the current UNE-P arrangement*, order an xDSL capable loop that would re-use the same facility that served the UNE-P arrangement if such loop was xDSL capable, and order an Unbundled Local Switching with Shared Transport (ULS-ST) line port that would re-use the same facility including telephone number that served the UNE-P arrangement. Ameritech Michigan would be required to perform the physical work in the central office to install the cross-connects to take the unbundled loop and ULS-ST port to the CLEC's collo. Ameritech Michigan would also perform a loop conditioning as requested by the CLEC. The CLEC would be required to prepare and configure its splitter and cross-connects within its collo to establish the voice and data service to its end user. Non-recurring and recurring charges would apply pursuant to the CLEC's interconnection agreement or tariff, whichever is applicable. (emphasis added)

36. Ameritech Michigan's response incorporates the three-order process that has been rejected by the FCC and is being replaced in all other regions (and is supposed to be supplanted in the Ameritech region). The response gives no other specifics on billing, nonrecurring charges or ordering requirements. In the Line Sharing Reconsideration order, by way of contrast, the FCC (at ¶ 21) noted that "we encourage incumbent LECs and competing carriers to use existing state collaboratives and change management processes to address, among

other issues: developing a single-order process for competing carriers to add xDSL service to UNE-platform voice customers”

37. On June 25, 2001, Ameritech produced spreadsheets of various rates and charges it would assess under different line splitting scenarios. The June 25, 2001 email “supplements Ameritech Michigan's Response to AT&T's Information Request No. ATAM0015.” Moreover, Ameritech admits that it has not yet completed its response and that CLECs will not know until, at the earliest, mid-July, 2001, what are Ameritech’s exact procedures for providing line splitting:

Ameritech Michigan is in the process of providing additional documentation that will give CLECs further direction on how to place the related orders for various line splitting scenarios. That documentation should be available on CLEC OnLine, with notification via accessible letter, by mid-July, 2001.

Given its appearance only recently, I have not yet had an opportunity to analyze this new information completely.⁴⁷ Nor, apparently, do I have (or CLECs have) all of the information that Ameritech will provide. But what I have been able to review suggests to me that Ameritech continues to base its stance on its “new” versus “currently combined” dichotomy, with all of the advantages going to Ameritech.

38. For example, the May 25, 2001 email makes the following point: “[W]e also address an additional scenario in #4b, which reflects that a CLEC will be purchasing a New UNE-P pursuant to its Mi2A (Michigan 271 Amendment) or its merger commitments amendment as the two UNEs that will make up the combination are not currently combined within Ameritech's network.” In other words, contrary to the MPSC’s and FCC’s orders to allow

⁴⁷ For example, Ameritech apparently continues to require CLECs to “order” an xDSL loop when line splitting is provisioned over UNE-P. AT&T has not had sufficient opportunity to review Ameritech’s current position on this issue. Ameritech’s position continues, apparently, to conflict with the FCC’s requirement that CLECs be able to re-use loops currently being used to provide voice services.

CLECs to provision line splitting on UNE-P, Ameritech takes the position that once line splitting is incorporated, UNEs are no longer “currently combined.” This has many ramifications, most of which will only increase the costs and inefficiency of CLEC voice/data sharing arrangements.⁴⁸

39. In my view, Ameritech's position represents a fundamental misinterpretation of the FCC's and MPSC's orders requiring it to permit line splitting over UNE-P. Instead, Ameritech has contended that CLECs must combine elements in order to migrate to and from line splitting arrangements: "to convert from line splitting back to UNE-P, the CLEC would make the direct cross connect from the loop to the port in its collocation, since both UNEs would be cross-connected to that location already. Under this approach, the CLEC is performing the work, and therefore, it is not necessary to add this scenario to the Master Test Plan (MTP)." While physically true that a cross connection must be made in one or more CLEC collocation cages, Ameritech's position misses several important points. First, Ameritech's view would not be true if more than one competitive carrier (a DLEC and a CLEC) were involved. Second, even if only one carrier were involved (or one cage were involved), the suggestion that the CLEC is performing work to combine elements is inaccurate (or at least, inapplicable). If the CLEC elected to maintain the cross connection in the collocation cage, in most cases, the CLEC would only be removing a splitter card that had been inserted to separate the high frequency portion of the loop from the voice frequency. After the removal of the splitter card by the CLEC, the same elements previously used to provide both voice and data would still be connected, but now would

⁴⁸ The importance of this cannot be understated. For example, whether elements are considered combined by Ameritech in its network will impact Ameritech's view of whether it is required to maintain, test and repair such elements: “[W]hen an end user reports trouble and the UNEs serving that end user are cross-connected in the CLEC's collo, Ameritech Michigan may only respond to the trouble on the individual UNEs, it cannot address how the cross-connects are maintained by the CLEC in its collo. In contrast, for a UNE-P, the cross-connect is maintained in Ameritech Michigan's network and Ameritech Michigan can address it in the event of trouble.” June 25, 2001 email by Kelly Fennell, of Ameritech Michigan, to collaborative participants in Case U-12320.

provide only voice. In other words, no disconnection would be effected. Yet, Ameritech persists in refusing to identify this combination of elements as UNE-P.

40. Ultimately, more time and collaboration will be needed to work these issues out. As things stand now, CLECs do not know what exact process and pricing is in place to allow line splitting over UNE-P. Ameritech has promised to provide additional information in July. This record should be supplemented at that time to allow the Commission the ability to review and approve (or reject) Ameritech's processes. In any event, before Ameritech's suggested process (i.e., the CLEC maintaining cross connections in its collocation cage) can be judged appropriate, Ameritech must provide assurances that the UNE-P/Line Splitting Arrangement and the UNE-P/post Line Splitting arrangement are treated as UNE-P, i.e., ordered as UNE-P, maintained as UNE-P, tested as UNE-P, repaired as UNE-P, and charged for as UNE-P. The Commission should ultimately reject Ameritech's position that line splitting is predicated on the disassembly (or as it has described it, "disconnection") of previously combined elements, reassembled as a line splitting-only arrangement.

V. AMERITECH MICHIGAN HAS NOT DEMONSTRATED THAT IT PROVIDES LINE SHARING TO CLECs ON FIBER-FED LOOPS.

41. The FCC has ruled that the ILECs' statutory obligation to provide access to unbundled network elements includes the duty to furnish line sharing on both standard copper and fiber-fed DLC configured loops.⁴⁹ In addition, the FCC held that the requirement to provide line sharing, as established in the *Line Sharing Order*, entitles CLECs to access line-shared loops at the central office if they choose, "even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal)."⁵⁰

⁴⁹ *Line Sharing Reconsideration Order*, ¶ 10.

⁵⁰ *Id.* (emphasis added). The term "line sharing" refers to the provision of xDSL-based service by a CLEC and voiceband service by an ILEC on the same loop.

42. Despite this requirement, Ameritech Michigan has made no representation that it provides access to line sharing over fiber-fed loops at the central office as set forth in the *Line Sharing Reconsideration Order*. In fact, Ameritech provides explicit indications that Ameritech Michigan does *not* support line sharing over fiber-fed loops.⁵¹ In the *Line Sharing Reconsideration Order*, however, the FCC stated that it did not intend to limit an incumbent LEC's obligation to provide CLECs with access to line-shared loops at the central office by using the word "copper" in the rules implementing the *Line Sharing Order*.⁵² Accordingly, Ameritech's restrictive interpretation of line sharing is inconsistent with the *Line Sharing Reconsideration Order*, because it would effectively eliminate Ameritech's obligation to line share to communities that are served by a combination of fiber and copper facilities.⁵³

43. Elsewhere in its draft filing, Ameritech Michigan states that it will permit a CLEC to collocate a DSLAM at the remote terminal and provide subloops to allow the CLEC to access the copper wire portion of the loop.⁵⁴ Collocation by CLECs at remote terminals "is likely to be costly, time consuming and often unavailable,"⁵⁵ however, and Ameritech Michigan has provided no assurance that it intends to comply with the obligation to provide access to line-shared loops at the central office - - much less that it is complying with that obligation today. The mere fact that subloop unbundling -- which is an *option* available to CLECs -- may be offered has no impact on Ameritech's obligation to provide access to line sharing functionality

⁵¹ See, e.g., Silver Statement, ¶ 14.

⁵² *Line Sharing Reconsideration Order*, ¶ 10. The Commission also indicated that the use of the phrase "transmission facility" in the definition of the local loop, "rather than [the term] 'copper' or 'fiber,' [was] intended to ensure that the definition was technology-neutral." *Id.*

⁵³ See *Line Sharing Reconsideration Order*, ¶ 10; letter from The Honorable Terry S. Harvill (Commissioner, Illinois Commerce Commission) to the Honorable J. Dennis Hastert, dated March 29, 2001 (Attachment 6 hereto).

⁵⁴ See, e.g., Draft Application at p. 57; Deere Statement, ¶¶ 95-98.

⁵⁵ *Line Sharing Reconsideration Order*, ¶ 16.

over “the entire loop . . . even where the incumbent’s voice customer is served by DLC facilities.”⁵⁶ As the FCC clearly held:

If our conclusion in the *Line Sharing Order* that incumbents must provide access to the high-frequency portion of the loop at the remote terminal as well as the central office is to have any meaning, then competitive LECs must have the option to access the loop at either location, not the one that the incumbent chooses as a result of network upgrades entirely under its own control.⁵⁷

44. Similarly, Ameritech Michigan cannot satisfy its obligation to provide access to line sharing over a DLC-equipped, fiber fed loop at the central office by permitting CLECs to access spare copper facilities that extend between the central office and the customer’s premises, *i.e.*, “spare copper” or “all-copper loops”. While spare copper loops are available at a competitor’s request, Ameritech Michigan cannot force CLECs to accept access to spare copper in lieu of the right to an entire line-shared loop equipped with fiber and a DLC. Such an “exchange” would not provide CLECs comparable access to Ameritech’s improved network capabilities. Spare copper is not a substitute that assures CLECs will have access to the full capabilities made possible by the use of shorter copper runs and fiber-fed, DLC-equipped loops from remote terminals to Ameritech Michigan’s central offices.

45. When Ameritech Michigan deploys fiber-fed, DLC-equipped loops, it is virtually impossible for a CLEC to obtain spare copper that will support transmission rates equivalent those obtained on the shorter copper run that terminates in the remote terminal. As indicated in the table below,⁵⁸ DSL electrical signals necessarily lose their strength over distance. Thus, the longer the loop, the weaker the signal strength (and the greater the impact of noise) on

⁵⁶ *Line Sharing Reconsideration Order*, ¶ 10 (emphasis added).

⁵⁷ *Id.*, ¶ 11; see also *id.*, ¶ 10 (“[w]hen we concluded in the *Line Sharing Order* that incumbents must provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, we did not intend to limit competitive LECs’ access to fiber feeder subloops for line sharing”).

⁵⁸ See *General Introduction to Copper Access Technologies*, at http://www.adsl.com/general_tutorial.html.

that loop. The corollary condition is also clear: the shorter the loop length, the higher the feasible transmission rates. For example, ADSL technologies provide network-to-subscriber data transfer rates as a function of the length of the copper facility employed, as follows:

Data Rate	Distance
1.544 Mbps	18,000 ft.
2.048 Mbps	16,000 ft.
6.312 Mbps	12,000 ft.
8.448 Mbps	9,000 ft.
12.960 Mbps	4,500 ft.
25.920 Mbps	3,000 ft.
51.840 Mbps	1,000 ft.

46. As a result, spare copper will invariably provide transmission speeds, data rates or bandwidth (the terms are synonymous for present purposes) that are slower than those delivered on the shorter copper subloops that terminate at the ILEC's remote terminal. This reduces transmission capacity that competitors can provide to customers. As the above chart indicates, a 4,500-foot copper segment allows for the transmission of data at a rate more than 8 times faster than an 18,000-foot copper loop.⁵⁹ This, in turn, limits the type of services that customers can purchase and imposes a severe marketplace disadvantage on competitors. For example, very high data rate DSL ("VDSL") technology has the potential to offer upstream transmission rates in excess of 1.5 Mbps and downstream rates of 12.96 Mbps. Such rates, however, are only obtainable when the copper segment is shorter than 4,500 feet. Thus, a shorter copper segment will allow Ameritech Michigan (or its affiliate) to offer its DSL customers not

⁵⁹ Of course, to the extent that the spare copper loop is over 18,000 in length, a CLEC likely will be unable to provide any ADSL service at all.

only a significantly faster rate, but also emerging services that require very high transmission rates, such as video streaming.

47. For all of these reasons, CLECs will invariably be unable to provide a DSL service that operates with “the same level of quality” as that provided by Ameritech Michigan or ASI employing fiber-fed, DLC-equipped loops if the CLECs are constrained to use only the aged, all-copper plant that Ameritech finds inadequate for its own purposes.

48. Finally, Ameritech Michigan’s “broadband services offering” does not provide competitors with unbundled access to the line sharing in the manner contemplated by the Line Sharing Reconsideration Order.⁶⁰ Ameritech Michigan claims that competitors can use the “broadband services offering” to provide advanced services to end users.⁶¹ Ameritech’s willingness to offer these services is essentially an admission that CLECs need access to the functionalities of the entire unbundled loop in the NGDLC architecture, but access via a “broadband service” does not comport with the mandate of Section 251(c)(3) to provide unbundled network elements on a nondiscriminatory basis.

49. The FCC has long recognized that the 1996 Act provides several methods for competitors to enter the local telecommunications marketplace. All of these mechanisms must be available to competitors. The availability of one entry mechanism such as a resold “service” is not an alternative to a UNE.⁶² Indeed, the FCC has explicitly held that “allowing incumbent LECs to deny access to unbundled elements solely, or primarily, on the grounds that an element is equivalent to a service available at resale would lead to impractical results; incumbent LECs

⁶⁰ Draft Application at p. 66; Silver Statement, ¶¶ 79-81.

⁶¹ Silver Statement, ¶ 79.

⁶² *Local Competition Order*, ¶ 12; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696 (1999), ¶¶ 5, 67 (“*UNE Remand Order*”); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, ¶ 14 (rel. Mar. 31, 1999). See also *Iowa Utils. Bd. v. FCC*, *supra*, at 809.

could completely avoid section 251(c)(3)'s unbundling obligations by offering unbundled elements to end users as retail services.”⁶³

50. The differences between resold “services” and unbundled network elements are significant. For example, there is no ongoing statutory obligation to provide access to a “broadband service.” Thus, there is no assurance that Ameritech Michigan would not withdraw this service, even if CLECs would be impaired without it. In addition, pricing for a “broadband service” (absent vigorously enforced “voluntary commitments”) would not be governed by forward-looking cost principles associated with unbundled network elements. A service that can be withdrawn at will, and which is not subject to all of the rules that attend unbundled network elements, cannot satisfy Ameritech Michigan’s statutory obligations.

51. In addition, unlike unbundled network elements, “broadband service” must be taken “as is” – meaning that a CLEC will be unable to add new features and functions that Ameritech Michigan does not already include in that service. Thus, a CLEC purchasing “broadband service” will be unable to differentiate the “broadband service” that it offers from that offered by other LECs in the competitive marketplace. This will put CLECs at a distinct competitive disadvantage.

52. Ameritech Michigan’s failure to provide access to line sharing over fiber-fed, DLC-equipped loops at the central office is a serious competitive issue. The inability of Ameritech to provide line sharing over fiber-fed loops on a nondiscriminatory basis places CLECs at a competitive disadvantage, as competing carriers cannot offer advanced services to compete with the offerings of Ameritech Michigan and its affiliate, ASI. Consumers are

⁶³ *UNE Remand Order*, ¶ 67; *Iowa Utils. Bd. v. FCC*, 120 F.3d at 809 (“[w]hile subsection 251(c)(4) does provide for the resale of telecommunications service, it does not establish resale as the exclusive means through which a competing carrier may gain access to such services. We agree with the FCC that such an interpretation would allow the incumbent LECs to evade a substantial portion of their unbundling obligation under subsection 251(c)(3)”).

increasingly demanding reasonably-priced, high-speed services.⁶⁴ SBC's ILECs, including Ameritech Michigan, are already satisfying that demand today by aggressively marketing packaged voice and data offerings to their customers. Critically, SBC has made it clear that it considers the ability to offer bundled voice and advanced services over a single loop a significant competitive advantage.⁶⁵ SBC's ILECs have also responded to consumer demand for bandwidth-rich DSL services through the deployment of fiber-fed, DLC-equipped loops, which greatly enhances both the transmission functionality and the economies of its local loop plant.⁶⁶

53. Ameritech Michigan has the ability to team with its advanced services affiliate to provide a package of voice and high-speed data services over the same fiber-fed, DLC-equipped loop to a substantial and growing number of customers. To remain competitive (if UNE pricing ever allowed entry), AT&T and other CLECs must have the ability to access line sharing over fiber-fed DLC-equipped loops at the central office that the *Line Sharing Reconsideration Order* provides. Indeed, the FCC has recognized that carriers such as Ameritech Michigan can use their control over the local loop both to "perpetuate their monopolistic dominance of existing" voice markets and to dominate "emerging" advanced services markets, thus reducing the short-term and long-term viability of CLECs such as

⁶⁴ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146, Second Report, FCC 00-290, ¶ 186, released August 21, 2000 ("[a]n equally significant factor driving infrastructure investment is the rapidly rising demand for high-speed services").

⁶⁵ See SBC Investor Briefing, *SBC Outlines Action Plans for 2001*, at 3, dated Dec. 19, 2000 ("SBC expects in 2001 to begin leveraging its DSL growth platform to introduce value-added voice and data services beyond fast Internet access over its broadband connections").

⁶⁶ See SBC Investor Briefing, *Growth in Data, Wireless and Long Distance Highlights SBC's Fourth Quarter Results*, dated Jan. 25, 2001, at 4 (Exhibit SF- 4 hereto) ("[t]hrough Project Pronto, SBC continues to make progress in building its high-efficiency, high-capacity broadband local network -- a growth platform for DSL and a host of next-generation services. At year's end [2000], more than half of SBC's wireline customer locations -- 18.3 million -- were DSL-capable"); SBC Investor Briefing, *SBC Updates Progress in Major Growth Drivers, Reaffirms Target of 11-14 Percent Earnings Per Share Growth in 2001*, dated March 1, 2001, at 2 ("[a]t the end of February, 21 million of SBC's customer locations were DSL-capable").

XXXXXXXXXXXXXXXXXXXX. More troubling, this document evidences Ameritech's intent to
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. It appears that the methods and procedures
Ameritech's service representatives use to fulfill CLEC DSL loop requests included (or perhaps
still include in some instances) XXX
XX. I can think of no proper reason
why Ameritech would XXX
XX. I urge the
MPSC to investigate the facts surrounding this document and particularly to focus on the
apparently XXX. I would be
interested in learning why Ameritech's OSS XXX
XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. If nothing else, the document puts at issue whether
Ameritech XXX
XX
XXXXXX. In sum, to the extent that Ameritech's OSS discriminate in *any* fashion against CLECs
and in favor of its affiliates, then Ameritech clearly is in violation of its Section 271 obligations.

CONCLUSION

55. Ameritech Michigan falls far short of demonstrating compliance with its obligations relating to advanced services. Notwithstanding Ameritech's attempt to portray ASI as largely a wholesaler of DSL transport, it is clear that Ameritech Michigan and ASI have failed to comply with the requirements of Section 251(c), including their obligation to offer for resale at a wholesale discount under Section 251(c)(4) the DSL services that Ameritech Michigan itself

currently makes available as a stand-alone service at retail to business and residential end-users. Moreover, Ameritech Michigan has not shown that it is providing line sharing to CLECs on fiber-fed loops, as required by the *Line Sharing Reconsideration Order*. Finally, Ameritech's ongoing failure to meet its obligations relating to line splitting and apparent discrimination in favor of its data affiliate further demonstrate that Ameritech Michigan has failed to meet its obligations under 47 U.S.C. 271(c) (2) (B).