

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)	Case No. U-12320
the Federal Telecommunications Act of 1996.)	
_____)	

**COMMENTS OF THE COMPETITIVE LOCAL EXCHANGE CARRIERS
ASSOCIATION OF MICHIGAN, ITS MEMBERS, LONG DISTANCE OF MICHIGAN,
INC., AND THE ASSOCIATION OF COMMUNICATION ENTERPRISES TO
AMERITECH MICHIGAN’S CHECKLIST INFORMATIONAL FILING**

On May 9, 2001, Ameritech Michigan filed its Notice of Intent to submit a Section 271 application to the FCC no sooner than the fourth quarter of 2001, and proposed a filing by Ameritech of a Checklist Informational Filing with a public comment period to follow with regard to whether Ameritech has met the checklist requirements subject to successful OSS testing. On May 15, 2001, pursuant to Ameritech’s request in the Notice of Intent and to a response to the Notice of Intent filed by several CLECs, the Commission issued an Opinion and Order establishing a filing schedule, with comments to the Checklist Informational Filing due 45 days after filing, and response comments due 30 days after the initial comments.

Ameritech filed its Checklist Informational Filing on May 15, 2001. Ameritech’s filing took the form of a proposed brief it would intend to file at the FCC, supported by proposed affidavits that were unsigned because they are not in final form. Ameritech indicated the proposed affidavits were “in substantially the form that Ameritech intends to subsequently file them at the FCC.”

Initial comments to Ameritech’s Checklist Informational Filing are due June 29, 2001. These comments are respectfully submitted by the Competitive Local Exchange Carriers

Association of Michigan (“CLECA”), its member CLECs, and, individually, Long Distance of Michigan, Inc. (“LDMI”) and the Association of Communication Enterprises (“ASCENT”). (Collectively “CLECA” unless specific members are referenced as to specific statements.).

Consistent with the format employed by Ameritech, these comments are supported by the attached proposed affidavit of Jerry W. Finefrock and Doug Reid of LDMI, and Mark Iannuzzi of Telnet Worldwide, Inc.

I. Interest of the Commenting Parties

The CLEC Association of Michigan, formed in December of 1999, is an association of competitive local exchange carriers (“CLECs”) providing telecommunications services in competition with the incumbent local exchange carriers in Michigan.

CLEC Association members currently include: Allegiance Telecom of Michigan, Inc., the Association of Communication Enterprises, AT&T Communications of Michigan, Inc., Buckeye TeleSystem, Building Communications, Inc., BullsEye Telecom Inc., CMC Telecom, Inc., Comcast Telecommunications of Michigan LLC, the Competitive Telecommunications Association (“CompTel”), CoreComm Michigan, Inc., Focal Communications Corporation of Michigan, Global Crossing Telemanagement, Inc., Great Lakes Comnet, Inc., KMC Telecom, Inc., Long Distance of Michigan, Inc., McLeodUSA Telecommunications Services, Inc., MichTel, Inc., Norlight Telecommunications, Inc., Range Telecommunications, Telnet Worldwide, Inc., USXchange, d/b/a Choice One, and XO Communications (formerly NextLink). The members of the CLEC Association of Michigan are all telecommunications services providers (or organizations comprised of providers) under the definitions established in Sections 102(cc) and (dd) of the MTA, MCL 484.2102(cc)-(dd).

Long Distance of Michigan, Inc. (“LDMI”) was incorporated in May 1990 as a telecommunications company. LDMI has grown to become the largest telecommunications company headquartered in Michigan: an integrated communications provider which supplies long distance, local, data and other services to many tens of thousands of business and residence customers in Michigan and throughout the Midwest. LDMI is a telecommunications services provider under the definitions established in Sections 102(cc) and (dd) of the MTA, MCL 484.2102(cc)-(dd).

ASCENT, formerly the Telecommunications Resellers Association, is the international trade organization representing the interests of advanced communications firms. ASCENT's more than 600 companies and individuals members provide voice and data services including Internet access, high-speed transport, local and long distance phone service, application services, and wireless products. Founded in 1992 and headquartered in Washington, D.C., ASCENT's mission is to open all communications markets to full and fair competition and to help member companies' design and implement successful business plans. ASCENT strives to assure that all service providers, particularly entrepreneurial firms, have the opportunity to compete in the communications arena and have access to critical business resources. Several ASCENT members are providers) under the definitions established in Sections 102(cc) and (dd) of the MTA, MCL 484.2102(cc)-(dd).

II. Section 271 Requirements

Ameritech has filed a draft brief with draft supporting affidavits claiming that its policies meet the requirements of Section 271, specifically the competitive checklist requirements,

subject only to the ongoing OSS testing. From a legal standpoint, Ameritech claims it has met the legal requirements under Section 271(c) for approval, which include:

1. Section 271(c)(1)(A) requires the presence of facilities-based competition in the local services market.

2. Section 271(c)(2)(B) requires that Ameritech's access or interconnection arrangements meet all of the following 14 checklist items:

- (i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1). That is, Ameritech must provide all legally required forms of interconnection, including interconnection trunking and collocation arrangements.
- (ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1). This includes individual UNEs and combinations of UNEs.
- (iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224.
- (iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. This includes both stand alone and xDSL capable local loops. ("Unbundled Local Loops")
- (v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services. ("Unbundled Local Transport")
- (vi) Local switching unbundled from transport, local loop transmission, or other services. ("Unbundled Local Switching")
- (vii) Nondiscriminatory access to-
 - 1) 911 and E911 services;
 - 2) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and
 - 3) operator call completion services
- (viii) White pages directory listings for customers of the other carrier's telephone exchange service.

- (ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.
- (x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.
- (xi) Until the date by which the Commission issues regulations pursuant to Section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations. ("Number Portability")
- (xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 252(b)(3). ("Local Dialing Parity")
- (xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).
- (xiv) Telecommunications services are available for resale in accordance with the requirements of section 251(c)(4) and 252(d)(3).

In addition to the checklist requirements themselves, Section 271(d)(3) of the Telecommunications Act provides that the FCC "shall not approve [a BOC application to provide in-region, interLATA services]. . . unless it finds that (A) the petitioning [BOC] has . . . fully implemented the competitive checklist . . . ; *and* (C) the requested authorization is *consistent with the public interest, convenience, and necessity.*" (Emphasis added.)

FCC decisions on Section 271 applications have made clear that the public interest inquiry must be a broad one, *and* that the public interest requirement is "a separate, independent

requirement for entry.”¹ In making a public interest assessment, the FCC has ruled that regulators cannot “conclude that compliance with the checklist alone is sufficient to open a BOC’s local telecommunications markets to competition”, because “[s]uch an approach would effectively read the public interest requirement out of the statute, contrary to the plain language of Section 271, basic principles of statutory construction, and sound public policy.”² Moreover, the public interest inquiry is not to be “limited narrowly to assessing whether BOC entry would enhance competition in the long distance market.”³ Rather, as articulated by the FCC:

“Although the competitive checklist prescribes certain minimum access and interconnection requirements necessary to open the local exchange to competition, we believe that compliance with the checklist will not necessarily assure that all barriers to entry to local telecommunications market have been eliminated, or that a BOC will continue to cooperate with new entrants after receiving in-region, interLATA authority. While BOC entry into the long distance market could have procompetitive effects, whether such benefits are sustainable will depend on whether the BOC’s local telecommunications market remains open after BOC interLATA entry. Consequently, we believe that we must consider whether conditions are such that the local market will remain open as part of our public interest analysis.”⁴

III. COMMENTS

CLECA’s position is that the Commission should deny Ameritech’s request for early checklist approval, and deny Section 271 approval entirely. The checklist filing is premature. Ameritech faces significant testing hurdles, and cannot seem to get its act together to provide access to UNEs for

¹ *In re Application by Ameritech Michigan to Section 271 of the Telecommunications Act of 1934, as amended, to Provide In-Region InterLATA Service in Michigan*, CC Docket 97-37, FCC 97-298 (August 19, 1997)(hereafter “*Ameritech Michigan Order*”), at paragraphs 385, 389.

² *Id.* at paragraph 389 (emphasis added).

³ *Id.* at paragraph 386.

⁴ *Id.* at paragraph 390.

CLECs. What limited competition that does exist is hampered by continual impediments not borne out by the statistics Ameritech loves to throw out. As a result, there is only minimal competition in the market, and Ameritech's sales practices and foot-dragging in dealing with CLECs promises to keep competition down.

It is imperative that for Ameritech's filing to be complete, the company must be in present compliance with the Act, and not merely promise that it will comply. The FCC must be able to find that Ameritech has satisfied four criteria including 1) compliance with Section 271(c)(1)(A) or 271(c)(1)(B); 2) full implementation of the "Competitive Checklist" pursuant to Section 271(c)(2)(B); 3) that the authorization will remain consistent with the separate affiliate safeguards of section 272; and 4) that Ameritech entry is consistent with the public interest, convenience, and necessity, otherwise the FCC "shall not approve" the requested authorization.⁵

The FCC has maintained that regional Bell operating companies ("RBOCs") must provide "actual evidence demonstrating ... *present compliance* with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior [emphasis supplied]."⁶ More recently, the FCC stressed that a(n) RBOC, under all circumstances, retains the burden of demonstrating that it has "fully implemented the competitive checklist in

⁵ *In the Matter of Application of SBC Communications Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65 (June 2000), para. 9, citing 47 U.S.C. §271(d)(3).

⁶ *In the Matter of the 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, Docket 97-137, ¶55 (August 19, 1997) "[w]e find that a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof.

subsection (c)(2)(B).”⁷ When a retail analog exists, Ameritech must provide access that is substantially the same as the level of access that it provides to “itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.”⁸ In the absence of a retail analog, Ameritech must show that the access it provides to competitors would offer competitors, a “meaningful opportunity to compete.”⁹

Present compliance has become the FCC's clear and established standard for review of regional Bell operating company compliance with the Act. To meet this established standard, Ameritech must demonstrate compliance with each element through a preponderance of evidence showing it actually provides each element at parity and under commercial levels, substantiated through established performance measures. Ameritech’s showing is woefully inadequate to show the required present compliance.

In addition to denying Section 271 approval, the Commission must take affirmative action to force Ameritech to eliminate the unlawful behavior and anti-competitive acts described in Mr. Finefrock’s affidavit. The Commission must take action *now* to order the illegal and anti-competitive actions to cease immediately. Competition is being thwarted in Michigan by Ameritech. The Commission must take action now, to assure the promise of true competition and fairness for Michigan consumers and business customers – competitive actions for which the

⁷ *In re: 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. 75 (December 22, 1999), *aff’d*, *AT&T Corp. v. FCC*, 220 F. 3d 607 (D.C. Cir. 2000) at para. 44.

⁸ *Id.*

⁹ *Id.*

Commission is charged to provide under Michigan law, and which the Commission has committed to provide to Michigan citizens.

1. Ameritech's Filing Is Premature

In its February 9, 2000 Order opening this proceeding, the Commission clearly contemplated that Ameritech Michigan would file a series of individual checklist documents over the course of time. *See February 9, 2000 Order*, p. 5 (¶ 14a). Ameritech has now filed its *entire* checklist filing at one time, prior to any of the testing prerequisites set forth in the February 9, 2000 Order.

Ameritech is essentially asking this Commission to pass it on the checklist based on policies, not results. It is too soon to have such an approval, even a conditional one. This early checklist filing now may very well be obsolete by the time the OSS test and the submission of performance measurement results occurs later this year. The legal requirements imposed upon Ameritech Michigan may be modified by FCC action or the decisions of various courts, or by this Commission's actions on existing or not-yet-filed complaints about Ameritech's policies. In addition, it may become necessary for supplemental filings during or after the testing stage.

It is also important to note that actual experience with the process, other than OSS testing alone, is necessary to determine checklist compliance. In other words, if the Commission puts its stamp of approval on a policy or method of meeting the checklist, and the method itself does not work out in actual practice, it doesn't help CLECs or competition in the state regardless of whether the OSS test on that policy checks out. Giving Ameritech an OK at this point reduces the urgency for Ameritech to open its network in actual practice. The Commission should therefore decline to issue the requested ruling at this time until it can be established that actual competition is thriving and that each of the checklist items works in practice. This includes OSS testing as well as a history that the policies themselves are working for competition. If the

Commission approves the policies up front, without a track record, one of the very purposes of this proceeding is circumvented.

Premature approval also begs the question of whether Ameritech is sincere in opening up its network to competitors, both now and in the future. SBC's veracity in other jurisdictions where it seeks Section 271 approval has been questioned. SBC's affiliate, SWBT, has been found to have provided false information to the Kansas and Oklahoma commissions and to the FCC to try to gain entry into those markets. The situation is currently part of an FCC investigation. SBC has also been forced to withdraw its Missouri application. Michigan should tread very carefully to not repeat the premature approvals in other states, and not approve Ameritech until all requirements have been met and verified. Granting approval of the checklist without all facts and actual practices being known would be premature and would invite disaster in Michigan.

2. Competition For Local Service In Michigan Is Not Thriving

Ameritech claims that local competition has taken root and is growing rapidly in Michigan. Ameritech identifies AT&T, WorldCom, and McLeodUSA (Phone Michigan), along with many other CLECs, as serving residential and business subscribers in Michigan, either exclusively or predominantly over their own facilities. Ameritech claims to have entered into MPSC-approved interconnection and resale agreements with approximately 70 wireline CLECs who have installed switching capacity that gives them the capability to serve 88% of the customers in Ameritech Michigan's service areas. Ameritech claims that existing collocation arrangements with Ameritech Michigan allow competitors to reach 84% of Ameritech Michigan's business customers and 78% of residential customers.

Would that this were true. Unfortunately, it just is not the case. As this Commission has already found, competition in the local market is not thriving. In the Commission's own *Annual Report and Annual Report of the Status of Competition in Telecommunication Services in Michigan*, the Commission concluded:

"The marketplace for local telecommunication services in Michigan continues to be dominated by Ameritech Michigan and GTE (now Verizon), and a truly competitive marketplace remains a goal, not a reality." [at page 15]

"The number of CLEC lines compared to total lines represents 3.99 percent; Ameritech's share is 80.77 percent (5,433,390 lines); GTE's share is 11.69 percent (786,541 lines); and the small independent telephone companies represent the remaining 3.55 percent (238,655 lines) of the total lines in Michigan. The survey responses indicate that the geographic areas covered by CLEC lines encompass primarily the Detroit, Grand Rapids, Lansing and Saginaw areas, with the majority of the competitive lines being provided in the Detroit vicinity." [at page 15]

"In conclusion, based on available data, there is minimal actual competition in the basic local exchange market, but the FCC has reported some signs of improvement in late 2000." [at page 16]

Even the "some signs of improvement" cited by the Commission indicated only an increase from 4% to 5% of the total lines in Michigan being served by CLECs. Indeed, 30% of the zip codes in the State are not served by a single CLEC. [See Report, at pages 15-16] These reports hardly show that competition is taking root and thriving in Michigan. Rather, the reports indicate a lack of real competition, and that giving a blanket approval to Ameritech's policies at this time would not meet the FCC's public interest test.

Ameritech then tries to turn the competition argument on its head in its public interest section of its proposed brief by focusing on the perceived benefits of its own entry into the interLATA toll market. This focus is misplaced. The focus here should be on the competition in the market in local services. It is not until the local services market is opened that additional entrants into the long distance market will benefit the public. If the local market was truly open

to competition, consumers for local services would today be enjoying the price reductions that they have already seen in long distance services. It is not the absence of Ameritech as a long distance competitor, but, rather, the fact that Ameritech has not yet truly opened its local market to competition that has limited local service rate reductions in the current market. Consumers do not lack adequate alternatives for long distance service; consumer do lack competitive alternatives for local service.

Thus, the lack of significant competition means that Ameritech has failed to establish compliance with the Section 271(c)(1)(A) requirement for the presence of facilities-based competition in the local services market. In addition, the paucity of current competition renders Ameritech's application contrary to the public interest.

3. Ameritech Has Failed To Comply With Checklist Item 2

(a) Quality of Service to CLECs is Lacking

The service quality of Ameritech Michigan on local telephone services in the year 2000 was extraordinarily poor, as noted in the testimony of carriers, customers, and in the MPSC's own studies. Ameritech claims that its local service levels in the year 2001 are now satisfactory. But at least with respect to the service level which Ameritech Michigan provides to its CLEC customers, this is not true.

1) Quality of Service In General

To illustrate the quality of service problems CLECs experience with Ameritech, the Commission should refer to the attached proposed affidavits of Jerry W. Finefrock and of Doug Reid of LDMI. LDMI is the largest Michigan-headquartered CLEC that deals with Ameritech, so its experience should be instructive.

Despite Ameritech's claims of improved service, LDMI's experience shows otherwise. Mr. Reid reports that, in April 2001, the number of LDMI trouble tickets submitted to Ameritech Michigan regarding customer CLEC repair problems was nearly three times as high as in April 2000. The May 2001 Ameritech Michigan trouble tickets submitted by LDMI were over three times the May 2000 level, and in June 2001, they were trending even higher. The quantity of LDMI's Ameritech trouble tickets in May 2001 was 38 percent higher than April 2001, and, based on June 1-22 results extrapolated to a full month, June 2001 tickets are 30% higher than for May 2001.

Ameritech Michigan's best performance in the last year, with respect to customer trouble tickets submitted by LDMI, was the month of November 2000, when the mean time to repair (MTTR) was 41.0 hours. In recent months, the trend has become progressively worse: from 62.3 hours in April 2001, to 64.6 hours in May, and to 80.8 hours MTTR for June 2001, month-to-date.

Mr. Reid also provides several examples of Ameritech's poor service, ranging to service outages during migration to UNE combinations, improper re-writing of electronically submitted orders that result in LDMI customers being put out of service, misrepresentations as to the cause of out-of-service events, and extremely slow restoral of service.

In addition, Ameritech continually fails to address problems that occur when the order is still pending on Ameritech's records. In such a case, a CLEC cannot submit a proper trouble ticket on the customer. Mr. Reid reports that in these instances LDMI must submit a trouble ticket to the Ameritech Michigan Local Service Center (LSC), rather than the Local Operations Center as would be the case when there is no pending order activity -- and LDMI's experience shows that this contributes to substantial delays on Ameritech's part in getting the customer back

in service. The problem of “pending order activity” generally results from shortcomings in Ameritech’s OSS systems and OSS management. For in fact, the order to migrate to UNE-P service has already been completed, but not all of Ameritech’s systems correctly reflect that fact.

The result is that a CLEC starts off on a bad foot with its customer. Right off the bat, the CLEC has to explain to the customer that he’s out of service, and the CLEC and the customer are both frustrated by how long it takes Ameritech to resolve the problem, and get the customer back in service. Some customers become angry with the CLEC, saying that they never had this problem before, when they were “with Ameritech”.

Perhaps the most serious problem in customer service is Ameritech’s efforts to shift inappropriately the blame for outages to the CLECs, and the apparent lack of urgency in dealing with any problems that arise with service to CLECs. Mr. Reid, for example, details how Ameritech’s knee-jerk reaction is to blame the CLEC, and will in fact tell LDMI’s customers it is LDMI’s failure when the problem is actually with Ameritech. Then, when the problem is identified, Ameritech takes its sweet time correcting the problem, while all the while the CLEC customer is out of service. Even where Ameritech can verify that service problems exist on the Ameritech side of the interface, Ameritech will demand unnecessary meetings before correcting the problems.

2) Ameritech May Be Manipulating Its Data on Trouble Reports

Mr. Reid of LDMI also details where Ameritech may manipulate trouble reports. Mr. Reid details several Ameritech practices. These practices include simply closing trouble tickets without any action being taken, requiring delays (since trouble ticket reports won’t be found because they have been closed) and starting over with new trouble tickets.

Mr. Reid indicates that each step in the trouble report process is extremely time-consuming, and can involve waiting on hold for Ameritech people, and waiting for Ameritech people to respond to a call. The Ameritech attitude is lackadaisical at best, and can actually prevent a CLEC from establishing its own reputation with a customer due to Ameritech's actions. Ameritech will do nothing to solve a customer's problem until the CLEC can prove that it is an Ameritech problem strictly using the Ameritech language and codes, and define and prove the problem in Ameritech's terms and rules.

3) Delays in Completing Ameritech Michigan OSS Reporting May Amplify The Effects of Ameritech Customer Outages

Mr. Finefrock and Mr. Reid also indicate that Ameritech's own procedures can exacerbate and lengthen outages. For example, when an Ameritech local phone line customer comes over to LDMI, their line has to be coded in Ameritech's systems as an LDMI line. Otherwise, if problems on the line develop, LDMI cannot open a trouble ticket with Ameritech on it. But frequently, Ameritech does not get that code change made on a timely basis, even though the customer is now LDMI's. So the customer is caught in a catch-22 situation: they can't call in a trouble as an LDMI customer, and Ameritech says they can't electronically open an "Ameritech" ticket, because it's now an LDMI customer.

On a typical day, LDMI has about 80 open trouble tickets with Ameritech Michigan on problems like these. Ameritech will write orders wrong, such as by including Caller ID when it was not ordered, and then installing it wrong so there is noise on the line. Ameritech will not provide personnel with information to solve Centrex problems, then blame the CLEC for the problems. In this way, Ameritech's own procedures increase delays.

4) Ameritech Fails to Meet Acceptable Standards In Cooperating With LDMI on OSS Data Transmission Issues

Mr. Finefrock and Mr. Reid also report on Ameritech's problems meeting standards. For example, a T1 circuit that connects between LDMI and Ameritech, which is the critical pathway used for passing all DUF files, all DAF files, and all CABS files from Ameritech towards LDMI, and all order activity and billing information. As volumes of traffic on the T1 have increased, LDMI has discovered that, although the circuit is capable of 1.544 megabit speed, in the direction of Ameritech towards LDMI, transmission is only taking place at 56 kilobit speed, or one twenty-fourth the capacity of the circuit. LDMI conducted studies, from which it concluded that within 30 or so days, the physical capacity of the T1 – operating just at the 56 kilobit speed – to handle all of a day's transmissions within a 24 hour period would be exhausted. This meant that beginning in 30 days or so, based on volumes of traffic exceeding 56 kilobit capacity, billing data would be lost.

After significant investigation by LDMI, Ameritech informed LDMI that there is no guaranteed throughput rate on its T1s, despite the listed rating, and no guarantee of the service quality. The Ameritech Network manager said that 56 kbps might be as good as it gets: that if they found no constraints in their network, and yet observed that this was as fast as it worked, that this was just the way life was sometimes.

Mr. Reid indicates that he has daily repair problems involving Ameritech. Customers want to know exactly what is being done, and frequently Ameritech will not tell LDMI this information.

(b) UNE Combinations are Inadequate

1) Ameritech Unduly Restricts Tariffed UNE Combinations

On January 4, 2001, the Commission issued an order relating to several issues as to the availability of UNE combinations. Ameritech had divided UNE combinations into two categories: existing and new combinations. Only the existing combinations were to be made available under tariff. New combinations were to be made available only under an interconnection agreement, the Mi2a, and would be available for only a limited time and with more restrictions than a purchase of elements under tariff.

The Commission's January 4, 2001 Order discussed two opposing theories as to when the UNE combinations should be considered existing. Ameritech claimed a combination can only be considered "existing" when it is "currently combined" or does not require manual work on Ameritech's part to provide physical connections at the central office, at an outside plant location, or at the customer's premises. Ameritech had admitted that, under its definition, a CLEC ordering UNE combinations under tariff would not be able to provide service to a new residence or to install second lines at existing locations.

The CLECs, including CLECA, argued that the definition of existing UNE combinations should include any combinations that Ameritech "ordinarily combines" in providing service to its own retail customers. Under this definition, new lines or additional lines would be an existing UNE combination.

After discussing these approaches, and noting that the issue was important because existing combinations have to be offered by tariff, the Commission stated:

"The Commission determines that defining existing UNE-P and EEL combinations to include those configurations that Ameritech Michigan "ordinarily combines" is more persuasive than Ameritech Michigan's definition. Ameritech Michigan's position would permit it to withhold from CLECs the types of UNE

combinations that it routinely assembles to provide service to its own retail customers. To accept a definition as restrictive as this would confer an unfair advantage on Ameritech Michigan by allowing it to leverage its control of telephone network facilities in competing with CLECs to fulfill routine requests for retail service. As a matter of policy, the objective of promoting local competition in Michigan would not be well served by this definition. The Commission finds that Ameritech Michigan should define and provide for existing combinations in both its tariff and the M2A to include the types of situations encompassed by the CLECs' "ordinarily combined" standard. [Order of January 4, 2001, at pages 9-10 ; emphasis added.]

Thus, under the Commission's order, the standard for when a UNE combination is considered existing is clearly the ordinarily combined standard.

Ameritech filed a motion for rehearing challenging this issue. The CLECs also filed a motion seeking to have the Commission clarify certain listed situations.

The Commission issued an Order on Rehearing on March 19, 2001. In the rehearing order, the Commission stated that it found it unnecessary "at this time" to resolve the "precise demarcation point" between new and existing combinations. The Commission also noted that Ameritech's revised pricing schedule made both new and existing UNE-P combinations available at TSLRIC pricing, and then stated:

"There continues to be considerable dispute among the parties relating to the intent of FCC and court orders regarding the incumbent local exchange carriers' (ILECs) obligations to provide UNE combinations. Further, it is now anticipated that a number of additional determinations may be reached in the near future that may clarify the obligations of ILECs in this regard. Because the scope and price of the combinations offerings are not initially dependent upon their classification as new or existing, and because further guidance may become available prior to the time when these determinations affect the scope or price of available combinations offerings, the Commission adopts, for the present, Ameritech Michigan's revised proposal as consistent with the present combinations requirements of Section 271 of the FTA. Should further court decisions or FCC orders be issued on this subject prior to Ameritech Michigan's federal application for Section 271 authorization, this Commission will revisit these determinations. Neither this Commission nor the CLECs who agree to enter into an M2A agreement with Ameritech Michigan waive any rights to revisit these Section 271 product determinations should such circumstances arise. In addition, this determination is made solely with regard to the scope of the product offering for

combinations as approved here and subject to the revisions and considerations discussed below. Further determinations regarding the actual provisioning of these services, compliance with operations support systems (OSS) testing, and performance measurement results will be made at a future date as Ameritech Michigan has recognized, and the Commission, the CLECs, and other interested parties may revisit these matters when the time is appropriate.” [March 19, 2001 Order on Rehearing, at pages 4-6, Footnotes omitted]

Since Ameritech is now seeking Section 271 approval, the time is now appropriate to revisit this matter, and specifically Ameritech’s conduct with regard to existing combinations. The Order on Rehearing did not reverse the clear finding in the January 4, 2001 Order clarifying that ordinarily combined UNE combinations are in fact existing combinations that must be provided under tariff. The Order on Rehearing merely approved the revised Mi2A, subject to revisiting the issue. The Order on Rehearing order does not announce any changes in the Commission’s prior findings as to the test to use to differentiate existing from new combinations, it only states that it will not define precise demarcation points.

At a minimum, Ameritech operates at its own peril by using its own rejected definition of existing combinations at this point, with a denial of Section 271 approval being the appropriate response to Ameritech’s refusal to comply with the Commission’s January 4, 2001 Order. As the Commission stated at page 8 of that order:

“Conceivably, the finding called for by Section 271(c)(2)(B)(ii) could require an inquiry that is broader than the issues explored in this order. When the time comes for the Commission to address compliance with the checklist, the Commission will assess whether Ameritech Michigan has in fact met its obligations to provide or offer nondiscriminatory access to UNEs. The Commission further notes that a prospective failure to make new combinations freely available to potential competitors may impede or preclude a favorable Section 271 recommendation.” [Emphasis added]

It is very important that Ameritech incorporate the “ordinarily combined” standard in its tariffs and in interconnection agreements approved pursuant to the Federal Act, and to establish that it is providing such access in actual practice. The Commission has rejected Ameritech’s

overly narrow definition of existing combinations and approved an approach whereby Ameritech is obligated to provide those UNE combinations that it ordinarily combines in its network for itself. This also means that the Commission has rejected Ameritech's proposal to limit its UNE combination offer based upon whether the UNEs that CLECs order are – at the time they are ordered from Ameritech – actually physically combined.

Before checklist compliance can be found, Ameritech must amend its tariffs (and agree to comparable contractual language) accordingly by using the ordinarily combined standard approved by the Commission. With the correct definition of the required UNE combinations (*i.e.*, based upon “ordinarily combined”) established, it is important that Ameritech make this option available immediately, and that the “ordinarily combined” existing combinations are to be tariffed at TSLRIC rates. In addition, those types of EELs which are defined as “existing” combinations need to be clearly defined in the tariff using the same standard and TSLRIC pricing.

Since March 19, 2001, Ameritech has flagrantly violated the Commission's order, and has reverted to its rejected “connected through” definition of existing combinations, despite the Commission's January order adopting the “ordinarily combined” standard.

In the attached affidavit of Jerry W. Finefrock of LDMI, Ameritech's reversion to the rejected physically combined standard is set forth. LDMI, as the largest Michigan-headquartered CLEC, has more experience with UNE combinations than most carriers, and can provide a ready example. On or about June 7, 2001, Ameritech refused to honor an LDMI order for an addition UNE combination line for a customer who had recently been turned up as an LDMI UNE-P customer by Ameritech. Mr. Finefrock spoke with Ameritech personnel, who informed him that Ameritech will only process orders for such additional lines if the CLEC has signed the Mi2A agreement. Since new or additional

lines are situations where Ameritech ordinarily combines elements to serve its own customers, it is clear that Ameritech has reverted to the previously rejected physically combined approach.

As such, the Commission should now assess whether Ameritech has in fact met its obligations to provide or offer nondiscriminatory access to UNEs. By unduly restricting that access, Ameritech has clearly not complied with its legal requirements, and should be found out of compliance by the Commission.

2) New Combinations Should Also Be Offered By Tariff

Ameritech has limited the tariffed availability of what it calls new UNE combinations to those CLECs that agree to the Mi2A Agreement, and thereby agree to limiting themselves to all terms of a contractual agreement and delaying availability of needed UNE combinations. This is not proper, and the Commission's prior orders in this case have indicated that Ameritech must tariff all UNE combinations. The Commission did approve the Mi2A approach for the purpose of making the Mi2A available, but made clear that it considered that the finding called for by Section 271(c)(2)(B)(ii) could require an inquiry that is broader than the issues explored in allowing the Mi2A to take effect.

Ameritech flatly refuses to comply with Commission orders to tariff new combinations, based solely on Ameritech's reading of court decisions indicating that new combinations cannot be required under the FCC's authority, and that these decisions prevent state law from requiring new combinations. Ameritech essentially argues that, as a matter of law, where the Federal Court has ruled that the FTA prohibits the FCC from imposing certain requirements, the state commissions are also prohibited from doing so. However, that logic only applies if the state commission were to determine new combinations were required under the Federal law; it does not prevent state action under state law unless a stricter state requirement than what the FCC can require is prohibited.

Requiring additional unbundling and recombinations is not inconsistent with the FTA, and a decision that the FCC itself lacks authority to order new combinations or recombining of elements does not make the FTA in any way inconsistent with the state requirement.

This Commission's February 9, 2000 Order, which found that the MPSC has independent authority under state law to require combinations of UNEs in a UNE-Platform, was within the Commission's authority, and should be enforced by the Commission. Section 271 approval should not be granted until Ameritech complies and provides new combinations of UNE Platform and EELs to all CLECs under tariff at the required TSLRIC-based rates.

3) Ameritech's Mi2A Agreement Unduly Restricts Service To Business Customers In Certain Central Offices

Ameritech's Mi2A Agreement, at part 2.2.5.3, provides that Ameritech can choose not to provide CLECs with new combinations of UNEs in central offices at which at least four CLECs have collocated. Ameritech can at that time delay the CLEC for some time while it requires a 1-year forecast and construction of a secure frame room.

As a condition of Section 271 approval, the Commission should disallow this provision in its entirety. The provision violates the concept of an unrestricted UNE combinations offering and has never been justified by Ameritech other than as something peculiar to the Texas agreement terms. The limitation brings uncertainty into the process that is not necessary. The provision essentially places CLECs in a position of not knowing when or where the business UNE-P offering will be withdrawn, and places additional obstacles on new entrants to the market or on CLECs that may later wish to switch from one form of provisioning to the UNE-P method.

The limitation also presumes the existence of a wholesale market for unbundled local switching that does not exist. Even if four CLECs have collocated, that does not mean that additional competitors will not need the capacity to compete in the market. The mere existence

of four collocators in a central office does not ensure that a CLEC moving from UNE-P to using collocation with unbundled loops would be able to gain access to the central office; in fact it would imply otherwise.

Finally, UNE-P is designed to assist in giving competitive access to residential and small business customers. There is no guarantee that the four collocated companies will be extensively serving the residential and small business market to the extent that those CLECs using UNE-P would serve those customers. Therefore, the limitation could limit competition for residential and small business customers.

Even if the provision is allowed to remain, clarification is necessary. The provision as written pertains only to “new” combinations obtained under the M2A. The provision presumably would not apply to “existing” UNE-P purchased under tariff or under the M2A. However, the provision as written presumes Ameritech’s narrow definition of “existing” UNE-P, which this Commission has rejected. At a minimum, therefore, the Commission should clarify that the four or more collocators provision does not apply to any UNE-P combination that is existing” using the “ordinarily combined” standard adopted by the Commission, whether the CLEC orders the UNE-P out of tariff or out of the M2A.

4) The “Flow-Through” Problem

Executives and managers of Ameritech Michigan have assured CLECs that the great majority of UNE-P orders “flow-through”: that is, the great majority of UNE-P migration orders which the CLEC submits via EDI (electronically) will be handled in a fully-automated manner, without requiring manual intervention by Ameritech personnel.

As Mr. Finefrock’s affidavit makes clear, however, that is not the case. LDMI is experiencing serious problems with SBC/Ameritech OSS systems: in particular, provisioning issues on UNE-P.

Rather than improving, however, the difficulties are growing more serious. Ameritech delayed meeting with LDMI personnel to attempt to solve problems, and written answers to questions were delayed.

Mr. Finefrock notes that, at the meeting on May 11, 2001, Ameritech indicated that only 42% of LDMI orders “flow-through”. The great bulk of the orders, or 58%, therefore involve manual handling by Ameritech, and the potentiality of Ameritech-induced errors during re-keying or other such manual processing at the Ameritech end. LDMI asked Ameritech to put the percentages of LDMI orders that flow-through in writing; but in its written response of June 22, Ameritech did not do so. Ameritech has been consistently noncooperative in attempting to improve this percentage, refusing to answer written questions and delaying or canceling meetings.

Mr. Iannuzzi indicates that Telnet Worldwide is having similar problems with UNE-P. He indicates a lack of progress due to the lack of support by Ameritech to even advise as to what is available, ordering issues, and pricing.

Before the Commission can approve the Section 271 application, the Commission must determine that Ameritech can adequately process UNE-P orders, and show an attitude adjustment in dealing with CLECs. Now is the time to do this, as enforcement will become more difficult if Section 271 approval is granted prematurely.

5) Unavailability of Voice Mail With UNE Combinations

This Commission has brushed aside competitive concerns about Ameritech Michigan voice mail, saying it is an unregulated service, and not a matter for CLEC concern on UNE-P. This is not the case. Voice mail is an important feature for customers, and if it is not made available with UNE-P, the potential customer base for CLECs is drastically reduced. Moreover,

Ameritech makes the feature available if a higher cost resale approach is used, but will not provide the feature with UNE-P (or at a greatly increased price) despite the lack of a technical reason for doing so.

LDMI's findings are that roughly 20% of the potential UNE-P business market in Michigan is unavailable due to LDMI's current inability to obtain an acceptable and reasonably priced Ameritech Michigan UNE-P voice mail product, or to get access under any reasonable terms to the SMDI links and stutter dial tone to be able to deploy our own voice mail platform via UNE-P in Michigan. LDMI specifically raised the subject of voice mail on UNE-P in meetings with the MPSC Commissioners and key telecom staff in December 4, 2000, and March 5, 2001.

As Mr. Finefrock indicates, Ameritech initially agreed to proceed with a trial involving LDMI and then subsequently indicated that all plans to offer voicemail with UNE-P were on hold. The reason is simple. Ameritech Voice Mail is a service which Ameritech has heavily and successfully marketed to Michigan businesses and consumers, through an aggressive program with its authorized distributors, sales agents, direct sales organization, business offices, and telemarketing representatives. The issue is not whether Ameritech Voice Mail is the best product for customers. The issue is not whether it is a "regulated" or "unregulated" service. The issue is that a substantial fraction of the business and residential customer base of Ameritech Michigan has selected Ameritech Voice Mail as their method of voice mail, and those customers expect that if LDMI is to become their local telephone provider, LDMI must be able to provide the same or virtually identical voice mail service, *including* the "stutter dial tone" and/or lamp indicator that they receive on the local phone line, indicating they have a message waiting.

Throughout 2000, LDMI actively marketed Ameritech local resale service. Under local resale, Ameritech Michigan offered its voice mail product to LDMI, including “stutter dial tone”. LDMI noted major gaps in coverage of the resale Ameritech Michigan voice mail platform. In particular, that on the West side of Michigan, Ameritech Michigan was offering voice mail coverage to resellers only in the greater metro area of Grand Rapids, but not in Kalamazoo, Benton Harbor, Zeeland, Three Rivers and St. Johns. Ameritech does provide voice mail with stutter dial tone to its retail customers in those areas, but has refused to provide it there to resellers such as LDMI.

LDMI brought this issue to Ameritech’s attention, but without success. LDMI also asked Ameritech to provide to it the “Personal Receptionist” feature in the Lansing and Grand Rapids areas, but again without success.

In the Fall of 2000, during the Michigan Tariffs Collaborative, LDMI asked about the availability of voice mail, with stutter dial tone, on the Ameritech UNE-P offering in Michigan. The answer from the Ameritech attorneys was that this *is* an available service, and one which is available under the UNE-P tariff in Michigan. Mr. Finefrock goes on to discuss the give and take between LDMI and Ameritech on this issue.

The bottom line of Mr. Finefrock’s testimony is that what is needed, under UNE-P, is this: the ability of a CLEC-provided voice mail system, once it recognizes that the customer has one or more messages in their mail box, to communicate with the Ameritech local central office switch, and turn on the “stutter dial tone” feature on their phone line, alerting that customer that they have messages.

Ameritech claims that there are “many companies” who could provide voice mail, but that misses the point. Many CLECs have voice mail systems. But none of those can access the

vitality required “stutter dial tone” of Ameritech in its central office that serves the local UNE-P customer, unless Ameritech Michigan cooperates to make it available. And Ameritech Michigan has not done so. This issue was sent to the Commission along with other UNE-P issues in the Fall of 2000. Unfortunately, the Commission did not resolve the issue.

In order to get an access method which would allow an LDMI-provided voice mail platform to communicate with the stutter dial tone in numerous Ameritech central office switching machines around the state, some effective method of interconnection would need to be specified. Since Ameritech Michigan was not willing to take the lead to develop this, LDMI undertook to specify a workable arrangement, and order the service connected. But on December 6, 2000, Ameritech rejected LDMI’s Bona Fide Request for voice mail, saying in part, “Product Management [Ameritech] has reviewed your request and we are confused about why this avenue was taken when these services fall under retail.”

Ameritech’s refusal to accept the LDMI BFR (Bona Fide Request) was improper. The Telecommunications Act of 1996 requires that ILECs provide CLECs access to network elements on an “unbundled” basis and the Commission has established stringent pricing standards for unbundled network elements. Retail rates as charged by Ameritech for voice mail do not comply with the rules set forth by the Michigan Commission. Ameritech had told the Michigan Tariffs Collaborative that access to SMDI links was an available UNE-P service.

Ameritech then announced a wholesale voice mail offering by Ameritech in Accessible Letter CLECAM01-052, saying in part, “We have heard you! Ameritech is pleased to announce that we will be voluntarily making available Voice Mail as an add-on Ameritech CPO (UNE-P) service to CLECs... this offer will be an interim solution to UNE-P CLECs... and in no way commits Ameritech to providing a permanent Voice Mail UNE-P add-on service.”

But as LDMI briefed the Commissioners and key telecom staff on March 5, 2001, that voicemail offering was *not* priced in a way that any CLEC could or would take advantage of it. It was priced dramatically higher than Ameritech Michigan's corresponding voice mail product under local resale. The monthly recurring charges for the resale voice mail platform ranged from \$6.00 down to \$3.65. For the UNE-P product, Ameritech Michigan was demanding \$10.95 per month, flat. Sub mailboxes under resale were priced at \$1.00 monthly recurring charge, up to 8; for UNE-P, they were priced at \$4.00 monthly recurring charge, up to two. The available greeting length under the resale Ameritech voice mail product was 5 minutes; under the UNE-P offering, only 45 seconds. The message length under the resale product was 1, 2, 3, 4 or 5 minutes; under UNE-P, just 2 minutes, no option. The nonrecurring charge on the resale product was zero; on the UNE-P product, \$19.95. The "page urgent" feature under resale costs \$1.00 MRC; under UNE-P, \$4.00 MRC.

The Commission needs to take effective action now, to resolve these issues for the citizenry of Michigan.

6) Using Its Monopolistic Powers of Extortion, Ameritech Michigan Is Working To Force CLECs to Sign the Mi2A

As Mr. Finefrock testifies, beginning on June 26, 2001, Ameritech Michigan began to reject all LDMI "change" orders on UNE-P, saying that it did not have to, and would not, process any such UNE-P "change" orders for LDMI until and unless LDMI had signed the Mi2A agreement.

Change orders are for actions such as a change of locations or features for a customer. In order to get around this unlawful action which had not previously been disclosed, LDMI has had to do the following: (1.) establish a new Ameritech Michigan BTN (billing telephone number)

for the involved telephone lines; (2.) place an order with Ameritech Michigan to convert those lines from UNE-P to local “resale”; (3.) complete the “change” order activity; (4.) place another order, to convert the lines back to UNE-P; (5.) take action to eliminate the temporary new BTN, restoring the lines to the proper BTN under UNE-P.

This Commission has repeatedly held that UNE-P is to be available by tariff, and that the Mi2A is voluntary. Ameritech is seeking to turn the Mi2A into a requirement by such practices as this and by refusing to accept the ordinarily combined standard for providing existing UNE combinations via tariff. The Commission must assure that these practices cease before even considering Section 271 approval.

(c) EELs, Private Lines, And Ameritech Michigan Discriminatory Behavior

Ameritech is a master at devising multiple names for what is essentially the same service, and restricting CLEC competition based on semantics. As Mr. Finefrock’s affidavit illustrates, Ameritech uses various discriminatory methods to block competition from CLECs.

LDMI purchases DS1s (T1s) or DS3s that it needs to connect to locations of its customers, out of Tariff F.C.C. No. 2 of the Ameritech Operating Companies. These are referred to as “Special Access” facilities. While the M.P.S.C. has the ability to prescribe more favorable rates or terms than are contained in that Tariff F.C.C. No. 2, it has not done so.

LDMI serves small and medium-sized businesses, and residential users. Such small customers do not cost-justify the kind of investments required for TCG or other alternative providers to build fiber optic facilities direct to the customer location. So just as LDMI is dependent on Ameritech for the “last mile” to get to such a customer, so is TCG or other competitive local providers. And just as is the case with LDMI, TCG and other such local

providers are asked to purchase their “last mile” DS1s to customer locations out of Ameritech’s Tariff F.C.C. No. 2 tariff, at similarly exorbitant rates.

Mr. Finefrock gives an example of pricing, and demonstrates a monthly total cost of \$1,129.16 for the T1, from LDMI to the customer location eighteen miles away, when purchased as special access from Ameritech. He also shows that the similar price under EELs is \$90.23 per month, for exactly the same circuit, in exactly the same circumstances. So the Special Access price is twelve and a half times the cost-based price.

Obviously, customers won’t buy DS1 service from a CLEC at \$1,129.16 per month (assuming a pass through only of direct facility cost, with no administrative handling charge or profit). Such a price is uneconomic. A customer can obtain the same service directly from Ameritech for a third that cost in a typical arrangement. The only way to get a lower price is to commit to a 60-month arrangement, which reduces the price somewhat and, inexplicably, reduces the installation charge to an almost insignificant amount.

Meanwhile, while Ameritech and the Commissions have insisted carriers such as LDMI should purchase DS1s for customers out of Ameritech Tariff F.C.C. No. 2 at ridiculously inflated prices, Ameritech has taken quite another tack with customers and users who it does not view as competitors. Ameritech, in the last few years, has quietly signed various private ICB (Individual Case Basis) contracts with ISPs, individual large customers and others, at prices dramatically lower than the prices which Ameritech charges a CLEC.

Under ICB terms, an ISP or Ameritech 5-star distributor or other favored Ameritech customer can get a DS1 that costs LDMI \$1,129.16 under month-to-month terms, or \$502.86 under a 60 month OPP commitment, for about \$195.00 per month. And instead of a \$1,493.00

installation charge, or \$75.00 under 60 month OPP terms, the favored customer under ICB terms often has an installation charge from Ameritech of zero.

Certain ISPs and others are thus able to quote their customers *retail* prices for DS1s which are well below LDMI's underlying *costs* for DS1s. Some have even entertained reselling such capacity to LDMI with a markup, only to back off when they realize Ameritech would probably not allow such an arrangement.

Part of the problem could be alleviated if the Commission required Ameritech to provide an EEL directly under tariff, as the CLECs have repeatedly requested in the collaborative. Until EELs can be provided, a significant hurdle to effective competition for local service will remain.

4. Using Unconscionable Financial Incentives to Its Sales Channels, Ameritech Has Locked Up the Michigan Local Services Market For Business, Rendering Competition Impossible

Ameritech uses its considerable size and customer base to tie-up small business customers in Michigan to protect its market share after CLECs begin to compete using the combinations Ameritech must make available under this proceeding. As Mr. Finefrock testifies as to his company, LDMI:

LDMI has an excellent reputation among Michigan businesses for its great low long distance prices, its integrity, the quality of its customer service, simple and accurate billing, and its friendly face to face approach. But in attempting to market local telephone service to its customers and customer prospects in the territory of Ameritech Michigan, LDMI has run into a stone wall.

Of the Michigan businesses within Ameritech Michigan territory which LDMI approaches, fully 80% of them are unavailable to LDMI or other CLECs, having been locked into long-term contracts with Ameritech. Those contracts, operating under the name of CompleteLink and several similar arrangements, have been marketed to customers by Ameritech

or its agents under questionable circumstances, and under compensation arrangements which are suspect and which could not be attainable by companies which operate in the free enterprise system, where monopoly cash flow does not exist.

These programs are not simple volume discounts, which are used in the already-competitive long distance industry. Ameritech systematically uses these contracts to tie-up the market to prevent local service competition where significant competitors do not yet exist, and will not be able to if Ameritech has tied up the market. In the long distance market, where numerous competitors exist, term contracts for volume discounts can exist because the market is open. In the local service market, Ameritech is using term contracts to prevent an open market from originating in the first place.

To tie up the market, Ameritech pays excessive commissions, special incentives, ICB pricing discounts, and use of a large sales force in a concerted effort to tie up small business customers. The discounts are such that a business, that will have competitive alternatives if competition opens but has no viable options now, is given the choice of signing up long term with Ameritech now or paying exorbitant rates until a competitor can arrive at the scene. Not surprisingly, many choose to sign up long term, thereby becoming unavailable as customers for CLECs. The problem is exacerbated by the enormous penalties for terminating a contract, which can be several times the entire savings the customer would obtain under the contract.

The Commission should put an end to this practice, and force a “fresh look” period as a condition of Section 271 approval, or this Commission’s approval will give Ameritech what it wants without opening the local competition market at all.

5. Ameritech Michigan Has Sold Incredible Amounts of Centrex Service To Michigan Business Customers, Locking Them up Under Long Term Contracts And In Attempting to Sell LDMI UNE-P Service To Such Customers, LDMI Has Learned that UNE-P on Ameritech Michigan Centrex is Uneconomic

Mr. Finefrock also reports on discriminatory actions regarding Ameritech's use of Centrex. Ameritech today bills LDMI and other IXC's interstate PICC charges for all the business multi-line, Centrex, ISDN, and several other categories of "business" telephone line service. That billing is received by LDMI from Ameritech in the form of an electronic file, which contains, among other things, the involved telephone number, and the category of service (Centrex, Business Multi-line, etc.) as that line is classified and identified in Ameritech Michigan's billing records.

Currently, the number of "business" telephone lines within Ameritech's geographic territory and for which Ameritech is billing LDMI for interstate PICCs is in the vicinity of 100,000 business telephone lines. LDMI has conducted a study of that Ameritech PICC billing data for May, 2001, and determined of the total, an incredible 32.03% – or approximately one-third of the total -- are reflected in Ameritech Michigan's billing records as Centrex lines.

Centrex service was originated by the Bell System in the early 1960s. It resulted from concerns that the Bell System-provided PBX systems in America could not obtain modern telephone features such as direct inward dialing, call transfer, detailed billing by extension number, least cost routing, and a uniform nationwide dialing plan for calling from office to office. Those modern features were beginning to be offered on PBX systems manufactured in Europe, but Bell had nothing similar to offer. Mr. Finefrock discusses the history of Centrex in depth in his affidavit.

With the way that Centrex billing was set up by the Bell System, another important advantage was created for businesses or governments with “campus” type environments; that is, employees located in multiple buildings in the same telephone exchange. A particular feature of Centrex was to give the Bell System a huge advantage when it became permissible for a company or government entity to purchase its own PBX systems. The feature: there were no expensive “mileage” charges to interconnect the various offices together into one common system, using Centrex, as there were with all PBX systems.

By contrast, if a company or government entity wanted to install a large PBX system at its main location, and link all the other offices together with PBX extensions off the main PBX, the costs of doing so were prohibitive under Bell System pricing. Such “off-premise” extensions (OPXs) were initially priced at dozens of dollars more per month, per PBX extension, than was the case with regular telephone lines.

As the Bell companies began to realize the advantage this gave them over competitors who wanted to sell competitive PBX systems, they moved the mileage charges for OPXs out of their PBX tariffs, and put them into their “private line” (or “special access”) tariffs. Under private line pricing, the cost of the mileage charge for just a single OPX line was from a hundred to several hundred dollars per month (and still is today, despite dramatic reductions in the cost of the involved electronics and transmission facilities). The Bell System got away with this maneuver, and still gets away with it today, in Michigan and all across the country. Centrex came to dominate the multi-campus environment. But at the time, it was only available to large corporations.

Following Divestiture, Ameritech determined that since Centrex was the only “PBX”-like service it could offer, it would promote it to the hilt, and even offer it to very small business

customers. With Centrex, a small business could avoid “OPX” costs; it could get dial transfer, conference calling, direct inward dialing, 4-digit (etc.) dialing among phone users, identified billing by Centrex extension, all for a fraction of the cost that these features were available to other Ameritech “business line” customers. And importantly, these Centrex customers, small and large, could get “least cost routing”.

In the meantime, “Feature Group A” service had been introduced by the Bell Companies to the IXC’s. Feature Group A was essentially just an ordinary business line for outgoing calling, but one on which the cost of outbound toll calls to the home LATA was only about three cents per minute, rather than the 25 cents or more per minute for intraLATA toll which Ameritech business customers had to pay. And uniquely among the five Ameritech states, Ameritech Michigan quietly let it be known that it would market Feature Group A service to individual business customers, not just to IXC’s like LDMI.

Feature Group A gave the distributors and agents a huge opportunity, when coupled with the “least cost routing” they could get on Centrex. With any other phone system, the Feature Group A line would have to be terminated on a separate point on the customer’s phone system, and they would have to push a different button, or dial a different access code on the phone system, to get access to the Feature Group A line, which then might be busy when they tried to reach it. With Centrex’s automatic alternate routing, the user didn’t have to dial anything different to get the F.G. A line(s) – this is done automatically by the Centrex, and for those instances when the F.G. A line or lines is/are in use, calls automatically “route advance” to the next least expensive route.

LDMI’s average business customer has from 5 to 7 local business or Centrex telephone lines, precisely the customers that would have the Feature Group A/Centrex advantage described

above. LDMI serves small and medium sized businesses, who in the past were not likely to be candidates for Centrex service. But with the huge sales campaign waged by Ameritech, huge numbers of small businesses have been locked into the service on long-term contracts. And, as Mr. Finefrock points out, of the LDMI business lines covered by those pesky PICC charges, over 32% of them are Ameritech Centrex customers. LDMI serves customers in every exchange in the State of Michigan, from Adrian to Zeeland, and from the bottom of the state to the top of the U.P. As such, LDMI's should be representative of the Ameritech business base at large. For larger businesses than the average size of businesses in Michigan served by LDMI, the percentages on Centrex service are probably even larger than LDMI's 32%.

Currently, a small study by LDMI shows that of Centrex contracts reviewed for current LDMI customers or customer prospects in Ameritech territory, which are currently in effect, 53% of them have a term of seven years, 27% have a term of five years, and 20% have a term of three years. When these contracts expire, there is in theory the opportunity for LDMI or another CLEC to convert them over to Centrex service under UNE-P. However, Ameritech adds a monthly recurring charge called the "Centrex common block" charge, which is \$354.86 per month per Centrex common block. Studies by independent telecom consultants hired by LDMI have shown that this renders UNE-P Centrex from Ameritech Michigan uneconomic for Centrex customers who have fewer than about 100 telephone lines. Thus, Ameritech has structured it such that it can provide Centrex to smaller users, but CLECs effectively cannot.

The "Centrex common block" charge is a charge for the use of software in the Central office – software which was created many years ago, and has not been significantly updated in well over ten years. The software exists whether one more Centrex customer is added or not.

There is no possibility that Ameritech could cost-justify its UNE-P Centrex monthly common block charge. It would fail the test of TSLRIC, and even fail the test of “market based” pricing.

The Centrex common block charge under UNE-P is a charge designed specifically to thwart local telephone competition in Michigan. It is a barrier to competitive entry. It is an affront to all that the Commission is trying to do to support expanded local competition in Michigan. The Commission must order the “Centrex common block charge” to be eliminated immediately, both for tariffed UNE-P service, and for UNE-P service under the “Mi2A.” This is yet another barrier to competition that must be eliminated before Ameritech can be considered in compliance with Section 271.

6. Other Checklist Items

While Checklist Item 2 and service issues abound, there are indications that Ameritech has not complied with other checklist items as well.

Item 1 of the checklist requires that Ameritech provide interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1). That is, Ameritech must provide all legally required forms of interconnection, including interconnection trunking and collocation arrangements. As Mr. Iannuzzi indicates, that is not consistent with Telnet’s experience. Although Telnet has an interconnection agreement with Ameritech, that agreement recently had to be renegotiated. This successor interconnection agreement took over 15 months to complete. Ameritech changed its lead negotiator four times, which consumed the vast majority of this time. Each instance it was like starting over again. The last individual assigned was clearly incompetent and over burdened in this task. The result – heavy penalty to Telnet in lost time and money. Ameritech continues to deliver the necessary network access in a slow manner. Quite

often capacity limitations are sited. Overall, this protracted interconnection has cost TelNet dearly in market penetration, momentum and income.

Item 10 of the checklist requires Ameritech to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Item 12 requires nondiscriminatory access to allow for local dialing parity. As Mr. Iannuzzi reports, Telnet has experienced problems with Ameritech on both of these fronts, and has been a difficult and protracted process. It took 6-months to establish a-links to the SS7 database, which were required to allow TelNet to commence operations in additional Michigan LATAs. At times we have had to go through great pains to determine “local dialing parity”. Ameritech withdrew tools used to determine this information, making it much more difficult and error prone to determine it. Mr. Iannuzzi states that there is no indication that these problems have been solved.

Item 14 of the checklist requires that services be available for resale. Ameritech technically makes resale available, but Mr. Iannuzzi indicates that the process of beginning resale is laborious. He reports that difficulties abound, from incorrect guidance on ordering and pricing to expensive methods for order and service transaction processing. Ameritech provides no access to the electronic records necessary for TelNet to bill its customers. Ameritech provides no advance notice of changes to their ordering system. Telnet has lost time and money sending staff to training classes, only to be told the class was canceled.

IV. RELIEF

Clearly, Ameritech has significant problems several checklist items, contrary to its own testimony. The Commission should require a proven track record in actual practice on each of the checklist items before approving Ameritech under Section 271. Ameritech is not there yet in many

instances. As a result, there is only minimal competition in the market, and Ameritech cannot be found to be in compliance with the checklist.

Also, as indicated earlier in these comments, the Commission, in addition to denying Section 271 approval, must take affirmative action to force Ameritech to eliminate the unlawful behavior and anti-competitive acts described in Mr. Finefrock's affidavit. The Commission must take action *now* to order the illegal and anti-competitive actions to cease immediately. Competition is being thwarted in Michigan by Ameritech. The Commission must take action now, to assure the promise of true competition and fairness for Michigan consumers and business customers – competitive actions for which the Commission is charged to provide under Michigan law, and which the Commission has committed to provide to Michigan citizens.

Respectfully submitted,

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