

CONFIDENTIAL

CC 97-1



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Executive Vice President and
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January 2, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

SEARCHED
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FEDERAL BUREAU OF INVESTIGATION

Re: Application by Ameritech Michigan under
Section 271 of the Communications Act

Dear Mr. Caton:

Enclosed please find an original plus six copies of Ameritech Michigan's Application to Provide In-region, InterLATA services in the State of Michigan. In accordance with the requirements contained in the Commission's Public Notice regarding applications under Section 271 of the Communications Act (FCC 96-469, December 6, 1996), the attached Application is comprised of (i) a "Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan" and (ii) four volumes of supporting documentation. The supporting documentation includes the following:

- Approved Section 252 Interconnection Agreements (Volume 1);
- Affidavits and supporting documentation that demonstrate compliance with the requirements of Section 271(d)(3) (Volumes 2 and 3); and
- A copy of the complete, existing record of Michigan Public Service Commission's inquiry into Ameritech Michigan's compliance with Section 271 (Volume 4).

The Brief in Support contains each of the items required by the Commission's Public Notice dated December 6, 1996. However, consistent with the Commission's procedures, a statement describing the efforts made to narrow issues in dispute will be filed separately on or before January 7, 1997. Also, attached hereto are the required Anti-Drug Abuse certification and an affidavit signed by a duly authorized employee certifying that all information supplied in the Application is true and accurate.

This "public version" of Ameritech Michigan's application, in which confidential information has been redacted, can be made available for public inspection. We have enclosed a computer diskette containing the Brief in Support and electronically

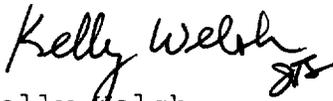
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available supporting documentation. Ameritech will also post this electronic filing on its internet home page. In addition, we have filed a complete copy of this Application with ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. Further enclosed are two additional copies of the Application, to be file-stamped and returned to Ameritech Michigan.

Please contact me if we can be of any further assistance.

Sincerely,


Kelly Welsh

cc: U.S. Department of Justice
Michigan Public Service Commission

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Application by Ameritech Michigan
Pursuant to Section 271 of the
Telecommunications Act of 1996 to
Provide In-Region, InterLATA
Services in Michigan

JAN - 2 1997
CC Docket No. _____

**BRIEF IN SUPPORT OF APPLICATION
BY AMERITECH MICHIGAN FOR PROVISION
OF IN-REGION, INTERLATA SERVICES IN MICHIGAN**

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by Ameritech Michigan
Pursuant to Section 271 of the
Telecommunications Act of 1996 to
Provide In-Region, InterLATA
Services in Michigan

CC Docket No. _____

**BRIEF IN SUPPORT OF APPLICATION
BY AMERITECH MICHIGAN FOR PROVISION
OF IN-REGION, INTERLATA SERVICES IN MICHIGAN**

Pursuant to Section 271(d) of the Telecommunications Act of 1996 ("the 1996 Act" or "the Act"), Ameritech Michigan submits this Brief in support of its Application to the Federal Communications Commission ("the Commission") for Ameritech Communications, Inc. ("ACI") to provide in-region, interLATA services, and services treated as such under Section 271(j) of the Act, in Michigan.^{1/}

^{1/} This Brief generally refers to Michigan Bell Telephone Company, d/b/a Ameritech Michigan, the "Bell operating company" ("BOC") providing service within the State of Michigan, as "Ameritech." The term "Ameritech" also encompasses Ameritech Corporation and all of its affiliates. However, Ameritech's wholly owned long distance affiliate, Ameritech Communications, Inc., is referred to as "ACI" where necessary to distinguish it from other Ameritech affiliates. Because Ameritech seeks authority on behalf of ACI, and any wholly owned subsidiaries it may later create or acquire, to provide interLATA services in Michigan, references to ACI also encompass any wholly owned affiliates of ACI. Accompanying this Brief are four volumes of interconnection agreements, affidavits and other supporting materials.

I. SUMMARY OF ARGUMENT

With the passage of the 1996 Act, Congress provided a detailed framework for expeditious implementation of its policy to expand competition for all telecommunications services. Indeed, the Conference Report begins by describing the purpose of the Act in these terms: "to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."^{2/} As the Commission has noted, one of the "principal" goals of the 1996 Act, therefore, is to "increase[] competition" in "long distance services."^{3/} And the wisdom of Congress' focus on the need to expand competition in long distance services was dramatically evidenced by the recent pre-Thanksgiving price increases by AT&T and MCI — their eighth increase since 1990.

The 1996 Act thus reflects Congress' judgment that entry into long distance by a Bell Operating Company ("BOC") that has fulfilled all of the requirements established by the Act will generate substantial benefits for all Americans. As we demonstrate in detail in this Brief and its attachments, Ameritech has fully satisfied these requirements. Specifically, Ameritech has

^{2/} H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996) (emphasis added).

^{3/} In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, ¶ 3 (Aug. 8, 1996) ("Local Competition First Report and Order").

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satisfied each of the conditions set forth in Section 271(d)(3) of the 1996 Act^{4/} — it has entered into agreements that meet the requirements of Section 271(c)(1)(A); it has fully implemented the competitive checklist in Section 271(c)(2)(B); it will comply with the separate affiliate and other requirements in Section 272; and its request to provide in-region long distance service satisfies the "public interest" requirement in Section 271(d)(3)(C).

First, Ameritech has entered into interconnection agreements with MFS,^{5/} Brooks Fiber,^{6/} and TCG^{7/}, and these agreements have been approved by the Michigan Public Service Commission ("MPSC") under Section 252 of the Act.^{8/} These agreements satisfy the

^{4/} All "Section" citations are to the 1996 Act, P.L. 104-104 (Feb. 8, 1996), which is codified in Title 47 of the United States Code.

^{5/} Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, dated as of May 17, 1996, by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc., on behalf of Ameritech Michigan, and MFS Intelenet of Michigan, Inc. ("Ameritech/MFS Agreement"). Similar agreements were entered into between Ameritech and MFS for the four other states of Ameritech's region — Illinois, Indiana, Ohio and Wisconsin.

^{6/} Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, dated as of August 5, 1996, by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc. on behalf of Ameritech Michigan, and Brooks Fiber Communications of Michigan, Inc. ("Ameritech/Brooks Fiber Agreement").

^{7/} Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, dated as of November 11, 1996, by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc. on behalf of Ameritech Michigan, and TCG Detroit ("Ameritech/TCG Agreement"). Similar agreements were entered into between Ameritech and TCG for the four other states of Ameritech's region.

^{8/} The Ameritech/MFS Agreement was approved on December 20, 1996, the Ameritech/Brooks Fiber Agreement on November 26, 1996, and the Ameritech/TCG Agreement on November 1, 1996.

requirement of Section 271(c)(1)(A) that they be with competing providers of telephone exchange services, offered predominantly over their own facilities, to residential and business customers. (These Interconnection Agreements, and the orders of the MPSC approving them, are contained in Volume 1 accompanying this Brief.) See Section III, infra.

Second, Ameritech has fully implemented each of the "competitive checklist" items contained in Section 271(c)(2)(B). The pricing and provisioning of each item fully complies with the Act's "checklist," ensuring that all entrants have an opportunity to compete for the provision of local exchange services. See Section IV, infra.

Third, the requested authorization will be carried out in accordance with the requirements of Section 272 and the Commission's regulations implementing that provision. Ameritech demonstrates in detail how it complies and will continue to comply with these statutory and regulatory requirements. See Section V, infra.

Finally, Ameritech's request for authorization to provide in-region, interLATA services in Michigan is consistent with the public interest, convenience and necessity. Ameritech's entry into long distance will provide additional competition in the provision of long distance services in Michigan and will lead to significant consumer benefits through more competitive pricing and the development of new and innovative service offerings. As we demonstrate, the consumer benefits associated with Ameritech's entry into long distance far outweigh any purported risk to the public. The ostensible source of that risk — the so-called local exchange "bottleneck" — has been eliminated: the local exchange in Michigan is open to competition. This has been

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accomplished by the Commission's interconnection regulations, reforms initiated by the State of Michigan, including the MPSC, and Ameritech's implementation of the Act's competitive checklist. Moreover, market, statutory, regulatory, and technological constraints provide ample protection against any residual concerns — typically voiced most vociferously by those whose oligopoly position would be challenged by new long distance competition — associated with Ameritech's entry into long distance. See Section VI, infra.

* * *

This Application represents the culmination of four years of hard work by Ameritech, in conjunction with state and federal regulatory authorities, to achieve two of this nation's principal telecommunications goals — increased competition in both local exchange services and long distance services. In its pioneering Customers First Plan, announced in March 1993, Ameritech initiated a major advance in telecommunications competition by proposing a framework for eliminating legal, economic and technical barriers to local exchange competition. This initiative to open local exchange services to competition was undertaken long before passage of the 1996 Act. In proposing to facilitate local exchange competition, Ameritech proceeded on the premise that competition means better service, more competitive pricing and greater customer choice. Ameritech also proceeded on the premise that eliminating any vestiges of the local exchange "bottleneck" would put to rest, once and for all, the contention that a BOC should not be permitted to compete in long distance in its region. Congress based the 1996 Act on these same procompetitive, deregulatory policies. Thus, Ameritech was well prepared for

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the new era of competition launched by the Act; indeed, it already had begun to implement much of what the Act required.

Ameritech now has taken the steps necessary to give all parties an opportunity to compete in local telecommunications services in Michigan. It has fully implemented the competitive checklist, and it has done so in a manner consistent with the Commission's local interconnection regulations — including those portions of those regulations and Order that have been stayed. Hence, one of the two principal goals of the 1996 Act has been achieved in Michigan — local exchange service is open to competition. It is now time to achieve the second goal — opening long distance service to increased competition. As noted above, the very purpose of the 1996 Act is to "accelerate rapidly" the deployment of telecommunication services "by opening all telecommunications markets to competition."^{9/} By granting this Application, the Commission can take a giant step toward achieving that goal and bring a healthy dose of additional competition to an industry that sorely needs it.

II. PRELIMINARY MATTERS

A. Statement Regarding Status of Interconnection Agreements Pursuant To Section 252. Ameritech has entered into the following agreements pursuant to negotiations and/or arbitration under Section 252 of the 1996 Act:

1. MFS Intelenet of Michigan, Inc. ("MFS") requested interconnection negotiations with Ameritech on February 8, 1996. The parties entered into a negotiated interconnection

^{9/} H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996).

agreement on May 17, 1996. This agreement was originally submitted to the MPSC for approval on May 28, 1996. The MPSC issued an order on August 22, 1996 requiring modifications of portions of the agreement. On October 8, 1996, the parties submitted a revised agreement, which the MPSC approved on December 20, 1996.

2. Brooks Fiber Communications of Michigan, Inc. ("Brooks Fiber") requested interconnection negotiations with Ameritech on April 12, 1996. The parties entered into a negotiated interconnection agreement on August 5, 1996. The MPSC approved the agreement on November 26, 1996.

3. TCG Detroit ("TCG") requested interconnection negotiations with Ameritech on March 11, 1996. After a period of negotiations between the parties, TCG filed a petition for arbitration on July 16, 1996. The MPSC entered a final arbitration decision, approving the agreement between the parties, on November 1, 1996. The parties filed their approved agreement with the MPSC on November 12, 1996.

4. AT&T Communications of Michigan, Inc. ("AT&T") requested interconnection negotiations with Ameritech on February 27, 1996. After a period of negotiations between the parties, AT&T filed a petition for arbitration on August 1, 1996. The MPSC entered a final arbitration decision, approving the agreement between the parties, on November 26, 1996. The parties filed their final approved agreement with the MPSC on December 26, 1996.

5. MCI Telecommunications Corporation ("MCI") requested interconnection negotiations with Ameritech on March 26, 1996. After a period of negotiations between the

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parties, MCI filed a petition for arbitration on August 30, 1996. The MPSC entered a final arbitration decision on December 20, 1996. We expect the parties to file with the MPSC in early January 1997 a final form of agreement consistent with that decision.

6. Sprint Communications L.P. ("Sprint") requested interconnection negotiations with Ameritech on April 15, 1996. After a period of negotiations between the parties, Sprint filed a petition for arbitration on September 20, 1996. The arbitration panel issued a proposed decision on December 16, 1996. The MPSC is expected to enter a final arbitration decision, approving the agreement between the parties, in early January.

7. USN Communications and Ameritech reached an agreement through negotiations. The parties filed with the MPSC a joint application for approval of the agreement on October 30, 1996. The MPSC's approval is pending.

8. WinStar Wireless requested interconnection with Ameritech on April 8, 1996. After reaching an agreement through negotiations, the parties filed with the MPSC a joint application for approval of the agreement on December 18, 1996. The MPSC's approval is pending.

There are no pending federal court actions with regard to any of the above arbitrations or interconnection agreements.

B. Statement of Status Regarding Michigan Public Service Commission Inquiry Into Compliance With Section 271. On June 5, 1996, the MPSC issued an Order initiating

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Docket No. U-11104, an inquiry into Ameritech's compliance with Section 271(c) of the 1996 Act. On August 28, 1996, the MPSC issued an order establishing procedures for this inquiry.

On November 12, 1996, Ameritech filed a Submission of Information in response to Attachment A to the MPSC's August 28 Order, which Attachment set forth questions concerning general telecommunications market conditions in Michigan. On December 4, 1996, other parties filed comments in response to Ameritech's Submission. On December 16, 1996, Ameritech filed its Submission of Information in response to the MPSC's Attachment B, which Attachment set forth questions concerning Ameritech's compliance with the competitive checklist in Section 271(c) of the Act. Other parties were ordered to file any comments in response to this Submission within fourteen business days. In accordance with the Commission's Public Notice 96-469, the entire file from this docket, as of the date of this filing, is contained in Volume 4 accompanying this Brief.

C. Statement of How Ameritech Meets the Requirements of Section 271(c)(1).

As described in detail in Section III of this Brief, Ameritech has met the requirements of Section 271(c)(1) by entering into interconnection agreements with MFS, TCG and Brooks Fiber, all of which have been approved by the MPSC under Section 252 of the Act. They satisfy the requirement of Section 271(c)(1)(A) that they be with competing providers of telephone exchange services, offered predominantly over their own facilities, to residential and business customers. Brooks Fiber serves both residential and business customers. MFS and TCG are certified by the MPSC to serve both residential and business customers; Ameritech

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Michigan is unaware whether any of the Michigan customers of MFS or TCG subscribe to residential service. The Interconnection Agreements with MFS, TCG and Brooks Fiber, and the orders of the MPSC approving them, are contained in Volume 1 accompanying this Brief.

III. AMERITECH IS PROVIDING ACCESS AND INTERCONNECTION TO COMPETING PREDOMINANTLY FACILITIES-BASED PROVIDERS OF TELEPHONE EXCHANGE SERVICE TO RESIDENTIAL AND BUSINESS CUSTOMERS.

Ameritech has met all the requirements of Section 271(c)(1)(A) of the Act. First, it has entered into three agreements — with Brooks Fiber, MFS and TCG — specifying the terms and conditions under which it is providing access and interconnection to its network facilities for unaffiliated competing providers of telephone exchange service. These agreements have been approved by the MPSC under Section 252(e) of the Act. Second, the competing providers, as discussed below in subsection (B), are offering telephone exchange service to residential and business subscribers. Finally, the competing providers are offering such service either exclusively over their own exchange facilities or predominantly over their own exchange facilities in combination with the resale of the telecommunications services of another carrier.

A. Ameritech Has Satisfied the Requirement of One or More Approved Agreements.

These comprehensive Agreements entered into between Ameritech and TCG, MFS and Brooks Fiber satisfy the first requirement under Section 271(c)(1)(A). The MPSC approved the Ameritech/TCG Agreement by order dated November 1, 1996, the Ameritech/Brooks Fiber Agreement by order dated November 26, 1996, and the Ameritech/MFS Agreement by order

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dated December 20, 1996. Pursuant to these agreements, Ameritech is providing access and interconnection to TCG, MFS and Brooks Fiber. Likewise, TCG, MFS and Brooks Fiber have implemented these Agreements and are offering telephone exchange service to their customers in competition with Ameritech.

B. Ameritech Has Satisfied the Requirement that the Competing Providers Serve Residential and Business Customers.

Section 271(c)(1)(A) states that the agreement or agreements entered into by the BOC must specify the terms and conditions under which access and interconnection is provided to "one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." Section 271(c)(1)(A). Ameritech has satisfied this requirement because TCG, MFS and Brooks Fiber are unaffiliated competing providers of telephone exchange service that together serve business and residential customers.^{10/}

^{10/} According to Brooks Fiber, approximately 30% of its lines in service provide service to residential customers and 70% provide service to business customers. See Ameritech Michigan's Submission of Information, In the matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance With the Competitive Checklist in Section 271 of the Telecommunications Act of 1996, Case No. U-11104, Attachment A, Response to Question No. 2, Exhibit 2.9, "Brooks Fiber Reports Results of Operation of Grand Rapids, Michigan Unit for Competitive Switched Services," released Oct. 24, 1996 (Mich. Pub. Serv. Comm'n) (dated Nov. 12, 1996) ("Ameritech MPSC Submission Attachment A"). MFS and TCG are certified by the MPSC to provide local exchange service to both business and residential customers. Ameritech is unaware whether, to date, any of MFS's or TCG's customers in Michigan subscribe to residential service.

C. Ameritech Has Satisfied the Requirement of a Facilities-Based Competing Provider.

The final requirement in Section 271(c)(1)(A) is that the competing carriers must offer service "either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier." A facilities-based provider is one that uses facilities and equipment to which it has title to supply service to its customers, or that purchases access to such facilities and equipment from any other entity, including Ameritech, and thereby obtains the use of such facilities and equipment for the purchase period. In using the "facilities-based" concept, Congress sought to distinguish between providers of telephone exchange services that control the facilities over which the services are provided ("facilities-based" providers) and resellers of telephone exchange services. See, e.g., Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996) ("the conference agreement includes the 'predominantly over their own telephone exchange service facilities' requirement to ensure a competitor offering service exclusively through the resale of the BOC's telephone exchange service does not qualify, and that an unaffiliated competing provider is present in the market") (emphasis added). TCG, MFS, and Brooks Fiber satisfy the facilities-based requirement because, as shown below, they offer telephone exchange service exclusively or predominantly over their own service facilities.^{11/}

^{11/} This conclusion would be unaffected even if the Commission were to take the position (continued...)

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Brooks Fiber provides local telephone exchange service to residential and business customers, primarily in the Grand Rapids area but also in other parts of Michigan (e.g., Detroit and Traverse City). Brooks Fiber's white page listings include substantial numbers of both residential and business customers. It offers a full array of local exchange services and enhanced telecommunications capabilities, including frame relay, LAN-to-LAN interconnection, high speed video conferencing and Internet access. Brooks Fiber is providing this telephone exchange service exclusively over its "own telephone exchange service facilities." Section 271(c)(1)(A). Brooks Fiber is not serving any local customer through resale. As of November 30, 1996, Brooks Fiber's local exchange service facilities over which such services are offered included:

- A Nortel DMS-500 switch providing dial tone located in Grand Rapids (Brooks Fiber is currently installing two more switches that will provide dial tone, one in Traverse City and another in Lansing);
- More than 300 miles of fiber connecting Brooks Fiber's switch to about 240 buildings in Grand Rapids and Lansing;
- Fiber optic networks in Lansing, Ann Arbor, and Traverse City, Michigan;

¹¹(...continued)

that facilities obtained from a BOC do not "count" as the competing provider's "own telephone exchange service facilities." As we show in the text that follows, none of the facilities used by TCG to offer its local service are acquired from Ameritech; all such facilities have been constructed and installed by TCG itself or acquired from a source other than Ameritech. And as we also show, the overwhelming majority of the facilities over which Brooks Fiber and MFS offer their local service were likewise constructed and installed by these carriers or otherwise acquired by these carriers from a source other than Ameritech.

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- Collocated equipment in XX Ameritech wire centers (this equipment is used to interconnect with Ameritech's network and gain access to its unbundled network elements);
- Approximately XXXXX trunk lines from Brooks Fiber's switch to Ameritech's tandem and end office wire centers;
- Approximately 6,000 loops that Brooks Fiber has constructed and installed itself; and
- Approximately XXXXXX unbundled voice-grade loops acquired from Ameritech.

Harris/Teece Aff., pp. 33-38 and Table IV.3; Dunny Aff., ¶¶ 9, 33.^{12/}

MFS has networks in more than 40 cities nationwide, including Detroit and the surrounding metropolitan area. In Michigan, MFS provides a full range of local telephone exchange service to business customers (and offers such service to residential customers) in the Detroit area. MFS is providing this telephone exchange service "predominantly over [its] own telephone exchange service facilities in combination with the resale of the telecommunications services of [Ameritech]." Section 271(c)(1)(A). As of October 1996, MFS was serving about 6,639 customers through resold (Centrex service) lines purchased from Ameritech. Harris/Teece Aff., Table IV.3. Of the total local service provided by MFS, this resale service is a far smaller

^{12/} The affidavits of Gregory J. Dunny ("Dunny Aff."), M. Ryan Julian ("Julian Aff."), Daniel J. Kocher ("Kocher Aff."), Paul V. La Schiazza ("La Schiazza Aff."), John B. Mayer ("Mayer Aff."), Warren L. Mickens ("Mickens Aff."), William C. Palmer ("Palmer Aff."), and Joseph A. Rogers ("Rogers Aff.") are in Volume 2 accompanying this Brief. The affidavits of Robert Crandall and Leonard Waverman ("Crandall/Waverman Aff."), Richard J. Gilbert and John C. Panzar ("Gilbert/Panzar Aff."), Robert G. Harris and David J. Teece ("Harris/Teece Aff."), Paul W. MacAvoy ("MacAvoy Aff."), and G. Mitchell Wilk and Steven M. Fetter ("Wilk/Fetter Aff.") are in Volume 3 accompanying this Brief.

part than the local service offered over MFS's own telephone exchange facilities. These facilities include:

- An Ericsson AXE switch providing dial tone located in Southfield, Michigan;
- An AT&T 5ESS switch providing dial tone located in Detroit;
- 120 miles of fiber optic cable connecting MFS's switches to more than 100 buildings in the Detroit area;
- Collocated equipment in XX Ameritech wire centers (this equipment is used to interconnect with Ameritech's network and gain access to its unbundled network elements);
- More than XXXXX trunk lines from MFS's switches to Ameritech's tandem and end office wire centers;
- Approximately 24,400 loops that MFS has constructed and installed itself; and
- Approximately XXX unbundled voice-grade loops acquired from Ameritech.

Harris/Teece Aff., pp. 48-50 and Table IV.3; Dunny Aff., ¶¶ 9, 33.

TCG provides local telephone exchange service in the Detroit/Southfield area. TCG provides this service "exclusively over [its] own telephone exchange service facilities." Section 271(c)(1)(A). TCG does not serve any customers through resale. TCG's facilities include:

- An AT&T 5ESS switch in the Detroit area providing dial tone;
- A 150-mile fiber optic network in Detroit and the surrounding suburbs;
- Connections from its fiber ring to more than 25 buildings in the Detroit area;
- Approximately 6,000 loops that TCG has constructed and installed itself;

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- Approximately XXXXX trunk lines running from its switch (or switches) to Ameritech's tandem and end office wire centers; and
- Equipment collocated in at least one Ameritech wire center.

Harris/Teece Aff., pp. 46-48 and Table IV.3; Dunny Aff., ¶¶ 10, 33.

* * *

In sum, Section 271(c)(1)(A) imposes only three requirements regarding agreements with competing providers of telephone exchange service. First, the BOC must provide access and interconnection to the competing providers. Second, such competing providers must offer service to business and residential subscribers. Third, that service must be offered exclusively or predominantly over the facilities of such competing providers. Ameritech's Agreements with Brooks Fiber, MFS and TCG satisfy each of these criteria.

IV. AMERITECH HAS FULLY IMPLEMENTED THE COMPETITIVE CHECKLIST.

Section 271(c)(2) requires that the access and interconnection that is provided under subsection (c)(1)(A),

- (a) "meet[] the requirements of subparagraph [(c)(2)](B)" (the competitive checklist) (see (c)(2)(A)(ii)),
- (b) by "includ[ing] each of the" checklist items ((c)(2)(B) (i)-(xiv)), and
- (c) thereby "fully implement[ing] the competitive checklist" ((d)(3)(A)(i)).

Thus, the agreement or agreements pursuant to which the (c)(1)(A) access and interconnection is being provided must "include" all of the checklist items. As the Department of Justice has recognized, for the agreement to include all checklist items in a manner that "fully

implement[s]" the checklist, it must be more than a mere "paper promise," "more than just being in an agreement on paper. . . . It means that the required elements and services must be available in a timely and reliable manner and in quantities that may be requested."^{13/} Thus, for the agreement or agreements to satisfy Section 271(c)(2), each checklist item must be truly available to the competing provider or providers, should they order it.

This approach is both consistent with and mandated by the language of the Act. Under the Act, the access and interconnection that "is provided" must "include each of the" checklist items. The verb "provide" means to "make available" or to "furnish." Random House Unabridged Dictionary 1556 (2d ed. 1993); see also Merriam Webster's Collegiate Dictionary, 940 (10th ed. 1993) ("supply or make available"). The Act's use of the language "provided . . . by" a BOC, therefore, means that the BOC must "furnish" the checklist item or make it "available." It does not require that the other contracting party actually put it to use. Therefore, a BOC satisfies Section 271(c)(2)(B)'s requirement that it "provide" the checklist items when its agreements with qualifying carriers make those items available upon order by the carriers, not when those carriers actually decide to take them.

Indeed, the 1996 Act clearly contemplates that competing providers may not actually require or take all 14 items on the checklist. For example, a telecommunications carrier that

^{13/} "Bell Operating Company InterLATA Entry under Section 271 of the Telecommunication Act of 1996: Some Thoughts," Remarks by David Turetsky, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, before the NARUC Communications Committee, Los Angeles, California, July 22, 1996, p. 11 (emphasis added).

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has purchased its own switches or leased switches from a third party may not require unbundled switching from a BOC under Section 271(c)(2)(B)(vi); an electric utility or cable TV firm providing competitive local telecommunications service may not need access to the BOC's poles and rights-of-way under Section 271(c)(2)(B)(iii); and a competing carrier that constructs a network, or supplements its network with unbundled elements purchased from the BOC, may not need resale under Section 271(c)(2)(B)(xiv). In fact, there may be some checklist item or items that no competing provider will ever want, need or order. Accordingly, if a single competing provider — or competing providers generally — had to actually take all 14 items on the checklist from the BOC, the BOC might very well never qualify to enter the long distance business.

The legislative history confirms that there is no requirement that competing providers order and take all 14 checklist items so long as they are available to be furnished if and when ordered. As the Conference Report notes, the "checklist" is the "minimum" to be provided by a BOC under its agreement with a competitor "assuming the other party or parties to that agreement have requested the items included in the checklist." H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 144 (1996) (emphasis added). See also id. at 121 ("The conferees note that the duties imposed under new section 251(b) make sense only in the context of a specific request from another telecommunications carrier or any other person who actually seeks to connect with or provide services using the LEC's network"). Thus, Congress recognized that a competing carrier — or all carriers taken together — might not need, and therefore might not actually take,

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all of the items on the checklist. Congress obviously could not have intended to require that all items actually be furnished for the BOC to comply with (c)(2)(B) when it knew that it was possible, through no fault of the BOC, that this would not in fact occur.

Finally, it is obvious that prohibiting a BOC from entering the long distance business simply because no competitor wants to take one or more items from the competitive checklist defies common sense and clashes with the design of the statute as a whole. The competitive checklist was Congress' ex ante prediction about what items relating to access and interconnection might be necessary to facilitate competition in the local exchange market. But the primary tool for opening the local market to competition was to be negotiated (and, if necessary, arbitrated) agreements between the BOCs and potential competitors. If no competitor needs or desires to actually use a checklist item, the competing providers must have concluded that that item will not facilitate successful competition with the BOCs in the local market. Put differently, those competitors would have concluded that they can compete more effectively by not accepting a BOC offer to provide them with the checklist item in question. Under those circumstances, it would be absurd to suggest that a competitor's business decision not to take a checklist item made available by the BOC constitutes a failure by the BOC to satisfy the requirements of Section 271.