

Ameritech Michigan  
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Michigan

cap regulation, which applies to Ameritech, there is nothing to be gained by doing so.<sup>50/</sup> Price cap regulation "eliminates the incentive to shift costs to regulated services from nonregulated services,"<sup>51/</sup> because any "increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling."<sup>52/</sup> As the Commission recently explained, "federal price cap regulation reduces a BOC's incentives to allocate costs improperly."<sup>53/</sup> See Gilbert/Panzar Aff., ¶¶ 64-66.

In sum, there is no credible basis for a claim that Ameritech could use cross-subsidization to impede competition in long distance services.

**b. Safeguards Against Discrimination**

As with cross-subsidization, there are numerous barriers to any attempt by Ameritech to impede competition in long distance services by discriminating against competing providers of

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<sup>50/</sup> The Commission's interim rules permit local exchange carriers such as Ameritech to choose "pure" price cap regulation. In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1 (March 30, 1995). Ameritech has elected pure price cap regulation under the revised Commission rules. Ameritech described its election in its Petition for Clarification or Waiver, In the Matter of Annual 1995 Access Tariff Filing (FCC May 9, 1995).

<sup>51/</sup> In re Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order, 4 F.C.C.R. 2873, 2924 (1989).

<sup>52/</sup> United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir. 1993). See also National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993) (explaining that under price cap regulation there is no longer "any reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices").

<sup>53/</sup> Non-Accounting Safeguards First Report and Order, ¶ 181.

long distance services. These include statutory and contractual safeguards, as well as numerous technical barriers to anticompetitive discrimination.

**(1) Statutory and Contractual Safeguards**

Even prior to the 1996 Act, the Commission required all local exchange carriers to provide interexchange carriers and competitive access providers with unhindered, fairly-priced access both to end user customers and to the local exchange network.<sup>54/</sup> The Commission also has issued a series of expanded interconnection orders that dramatically increase competition for access services between local exchange carrier central offices and interexchange carrier points of presence.<sup>55/</sup> And the 1996 Act dramatically expands the protections against any risk that

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<sup>54/</sup> The Commission's equal access rules apply to all carriers, including local carriers affiliated with interexchange carriers. See In re Assignment of Licenses and Transfer of Control of Certain Subsidiaries of GTE Corp. and United Telecommunications to U.S. Sprint Communications Co., 1986 FCC LEXIS 3223, ¶ 16 (June 18, 1986); In re Puerto Rico Tel. Co. Equal Access Conversion Schedule, 5 F.C.C.R. 118 (1989) (entry of local carrier into long distance market). Under the 1996 Act, such regulations remain in force until superseded by the Commission.

<sup>55/</sup> Under these rules, local carriers must permit alternative access competitors, interexchange carriers, and high-volume end users "virtual collocation" for special access and for switched access, allowing competitors to terminate their lines in equipment of their own choosing. See In re Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 F.C.C.R. 7369 (1992), on reconsideration, 8 F.C.C.R. 127 (1992), on further reconsideration, 8 F.C.C.R. 7341 (1993), vacated in part and remanded sub nom. Bell Atlantic Co. v. FCC, 24 F.3d 1441 (D.C. Cir.), on remand, 9 F.C.C.R. 5154 (1994) (special access); In re Expanded Interconnection with Local Telephone Company Facilities, 8 F.C.C.R. 7374 (1993), vacated and remanded on joint motion, 1995 WL 311741 (D.C. Cir. Apr. 17, 1995), reconsidered, 9 F.C.C.R. 5154 (July 25, 1994) (switched access). Local carriers also must provide signaling information needed for tandem switching, so that a competitive access provider, interexchange carrier or end user can carry traffic for multiple interexchange carriers to  
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Ameritech might impede competition in long distance services by discriminating against other long distance providers, such as AT&T, MCI and Sprint.

Section 272(c)(1) provides that, in its dealings with its separate long distance affiliate, Ameritech "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards." In addition, Section 272(e) imposes detailed nondiscrimination requirements on Ameritech — safeguards that require Ameritech to make exchange service and access, as well as facilities, services, and information,<sup>56/</sup> available on a nondiscriminatory basis. Furthermore, additional detailed nondiscrimination requirements are imposed on Ameritech by the Michigan Telecommunications Act. See Wilk/Fetter Aff., ¶ 66.

Moreover, Sections 251 and 252 of the Act mandate nondiscriminatory access and interconnection to all providers of telecommunications services. Indeed, Ameritech cannot enter the long distance business unless it satisfies the "nondiscriminatory access" requirements of the competitive checklist. See Section 271(c)(2)(B). As the Commission has observed, these safeguards "are designed to ensure that incumbent LECs do not discriminate in opening their

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<sup>55/</sup>(...continued)

its own tandem from the local carrier, transferring the switching to the appropriate interexchange carrier. In re Expanded Interconnection with Local Telephone Company Facilities, Third Report and Order, 9 F.C.C.R. 2718 (1994).

<sup>56/</sup> The Commission already has issued regulations governing the sharing of information regarding network changes between BOCs and their long distance affiliates. See 47 C.F.R. §§ 51.325-51.335.

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bottlenecks to competitors."<sup>57/</sup> And there is every reason to expect that these safeguards will be effective. See Gilbert/Panzar Aff., ¶ 35.

Perhaps most important, Ameritech's statutory nondiscrimination obligations are not abstractions. The contractual interconnection obligations that Ameritech has undertaken, pursuant to both Section 252 negotiations and arbitrations, require it to provide network interconnection, unbundled network elements, resold services, local transport and termination, collocation and access to rights-of-way on the same terms and conditions to all carriers, including the incumbent long distance carriers, and, significantly, on the same terms and conditions that it provides to itself and its affiliates. These agreements embody concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and impose penalties for noncompliance. See Mickens Aff., ¶¶ 8-23. These agreements also require Ameritech to maintain performance records and to generate monthly reports that enable competing carriers, as well as regulatory authorities, to monitor Ameritech's compliance with these standards and benchmarks. Id., ¶¶ 23-24. These reporting requirements "will collectively minimize the potential for anticompetitive conduct by the BOC." Non-Accounting Safeguards First Report and Order, ¶ 327. Moreover, these standards, benchmarks and reporting requirements have been carefully reviewed and approved by the

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<sup>57/</sup> Non-Accounting Safeguards First Report and Order, ¶ 205. It should be noted that, even before the 1996 Act, the courts had recognized that the Commission's enforcement of regulatory safeguards had proven effective in detecting and deterring any anticompetitive conduct by the BOCs. See United States v. Western Elec. Co., 993 F.2d 1572, 1580-81 (D.C. Cir. 1993).

MPSC. Any attempt by Ameritech to deviate from its nondiscrimination obligations to long distance carriers in the local exchange sector would be readily detected by those carriers and regulators. See Wilk/Fetter Aff., ¶¶ 64-72, 84-89.

(2) **Technical Barriers to Discrimination**

Technical constraints reinforce the statutory, regulatory and private contractual barriers to discriminatory conduct by Ameritech. Even if Ameritech were otherwise inclined to discriminate against one or more unaffiliated carriers, it does not possess the technical capability to engage in a systematic pattern of discrimination. The assigning, provisioning, maintenance and repair of local exchange facilities today are almost totally automated. Ameritech's mechanized systems are blind to the identity of the customer because they assign circuit components based on one factor only — whether the components meet the technical requirements of the service. See Kocher Aff., passim.

For example, discrimination on the basis of loops would be especially difficult to accomplish — and, given the performance reporting to which Ameritech has agreed, very easy to detect. Moreover, creating a deficient class of loops for competitors to use would be impossible as a practical matter because competitors usually lease loops from Ameritech that are part of its large, pre-installed base of physically identical loops and because Ameritech plans and engineers new loops without knowledge of whether they will be used by competitors. Moreover, a program of discrimination using defective loops would have to be capable of instantaneous adjustment — a virtual impossibility because the same loop that is leased to AT&T on one day

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may return to Ameritech the next day and be leased to MCI the day after that. Finally, because loops are provided through "feeder" cable that binds together large numbers of loops, it would be very difficult to single out for degradation loops leased to a competitor without harming other loops in the feeder cable. See Kocher Aff., ¶¶ 41-46.

Equally unavailing would be any attempt by Ameritech to discriminate against long distance competitors in connection with local switching. In order to give a competitor a poorer grade of service, there would have to be substantial switch reprogramming. However, Ameritech's switches are purchased from unaffiliated entities that control the generic software that governs the switch functionality. To orchestrate such discrimination, therefore, Ameritech would need the full cooperation of its switch vendors. It is not conceivable that those vendors would participate in an illegal scheme against the incumbent long distance providers or others. See Kocher Aff., ¶¶ 12-16. Similar technical barriers preclude discrimination with regard to the remaining major components of the public switched network — interoffice transport and signaling. See id., ¶¶ 29-36, 47-51.

Finally, even if Ameritech could discriminate against competing long distance carriers, the likelihood that it would benefit from such discrimination is remote. There is simply no reason to assume that the end user customers victimized by the resulting service problems would switch their long distance services to ACI. A customer dissatisfied with AT&T, for example, would be just as likely to switch to MCI, Sprint or one of the other carriers serving Michigan as it would to Ameritech's affiliate. Thus, if any discriminatory practice were so subtle as to

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defy detection by customers, it would not be effective in increasing Ameritech's market share — for the customer would not know that he or she could receive better long distance service only by moving to Ameritech's long distance affiliate. At the same time, however, if the source of the discriminatory practices were obvious to consumers, it would be even more obvious to Ameritech's competitors and to regulators. This point is critical, because discrimination could succeed in impeding competition only if it caused large numbers of customers to switch from the other long distance carriers to Ameritech's long distance affiliate.

c. **Private and Public Enforcement Reinforces the Safeguards Against Any Risk to Competition in Long Distance Services.**

As demonstrated above, there are numerous market, statutory, regulatory and technical barriers to any attempt by Ameritech to impede competition in long distance services. These restrictions prevent Ameritech from engaging in undetected anticompetitive behavior, thereby depriving Ameritech of any incentive to undertake such conduct in the first instance. Any suggestion that Ameritech's entry into long distance be delayed notwithstanding full compliance with the statutory safeguards against competitive risks because such entry might create competitive risks defies logic. More important, it flies in the face of Congress' intent — the 1996 Act imposed those safeguards precisely for the purpose of facilitating Bell Company entry into long distance.<sup>58/</sup>

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<sup>58/</sup> Thus, an inquiry based on such a "public interest" provision may not become an excuse "to embark on a fishing expedition for any anticompetitive practices in some way arguably related" to the issues at hand. Equipment Distributors' Coalition, Inc. v. FCC, 824 F.2d 1197, 1202 n.2 (D.C. Cir. 1987).

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In any event, were Ameritech to engage in futile anticompetitive conduct, detection and punishment of that conduct would be both swift and inevitable. To begin with, the long distance carriers use aggressive "vendor management" programs to monitor with great precision virtually every aspect of the access services provided to them, including circuit failure rates, installation intervals and repair intervals. AT&T, for example, uses an "Access Supplier Assessment" report to measure in precise detail the performance of Ameritech as a supplier to AT&T and to compare that performance to both AT&T's expectations and the performance of other Bell companies. See Gilbert/Panzar Aff., ¶ 32. And, as noted above, the interconnection agreements into which Ameritech has entered in Michigan set forth concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and require Ameritech to maintain performance records and to generate monthly reports that enable competing carriers, as well as regulatory authorities, to monitor Ameritech's compliance with the standards and benchmarks. See Mickens Aff., ¶¶ 8-24.

These private monitoring programs, of course, are enhanced by regulatory reporting requirements. BOCs must file with the Commission, inter alia, Standards of Service Reports, Nondiscrimination Installation Reports, and Nondiscrimination ONA Parity Reports, all of which are available for review by AT&T, MCI and other competitors. See Gilbert/Panzar Aff., ¶ 34. In addition, BOCs now will have to file the separate affiliate audit reports prescribed by Section 272(d)(2) of the 1996 Act. Taken together, these safeguards ensure that any attempt by Ameritech to engage in cross-subsidization or systematic discrimination against its long distance

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competitors would be "highly conspicuous" and therefore destined to fail.<sup>59/</sup> As the Commission has concluded, the BOCs' disclosure requirements "will facilitate the detection of anticompetitive behavior" by their "vigilant" competitors.<sup>60/</sup>

Moreover, the 1996 Act ensures that such conduct, once detected, will be promptly sanctioned. Section 271(d)(6)(A) of the Act gives the FCC the power to order a Bell Company to "correct [any] deficiency" in its conduct, to impose civil penalties, and to "suspend or revoke" the Bell Company's approval to provide long distance service — the death penalty for a long distance provider. And the FCC must act upon any complaints about a Bell Company's behavior within 90 days, ensuring that a BOC cannot reap even short-term rewards for any anticompetitive behavior. Section 271(d)(6)(B). Moreover, the BOCs will bear the burden of production in any enforcement proceeding, which "will facilitate the detection of anticompetitive behavior."<sup>61/</sup>

In sum, if Ameritech were to engage in systematic misconduct so pervasive as to impede competition in long distance services, it would be obvious to its competitors and to regulatory authorities. As the Court of Appeals noted in United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir. 1993), the "giants operating throughout the country . . . will notice any discrepancies in treatment by the various BOCs and will have the capacity and incentive to bring

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<sup>59/</sup> See United States v. Western Elec. Co., 12 F.3d 225, 235 (D.C. Cir. 1993).

<sup>60/</sup> Non-Accounting Safeguards First Report and Order, ¶¶ 323, 328.

<sup>61/</sup> Id., ¶ 347.

anticompetitive conduct to the attention of regulatory agencies." If, on the other hand, Ameritech's conduct were so subtle as to evade detection by competitors that have every incentive to complain about any perceived deviation from statutory, regulatory or contractual requirements, that conduct could have no impact on competition in the long distance business.

Finally, any hypothetical gains from discrimination by Ameritech in the long distance sector likely would lead to a significant loss of exchange access revenues from Ameritech's local exchange business. As Gilbert and Panzar explain, given the increasing availability of exchange access from alternative providers and the relatively easy entry and exit conditions in the local exchange business, any such discrimination would enhance the opportunities of Ameritech's local exchange competitors to increase their share of exchange access revenues at Ameritech's expense. See Gilbert/Panzar Aff., ¶¶ 71-79. The prospect of losing such a significant source of Ameritech's revenues will further reduce any incentive that Ameritech might otherwise have to discriminate.<sup>62/</sup>

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<sup>62/</sup> The remoteness of any risk of discriminatory conduct by a BOC competing in long distance is confirmed by the historical record. The evidence from the integration of local and long distance services in other countries, and the success of Ameritech's competitors where Ameritech itself competes in the provision of cellular, intraLATA toll, WATS, 800 and information services, counter any speculation about the inevitability of discrimination. Gilbert/Panzar Aff., ¶¶ 48-59.

**C. The Actions Taken by Ameritech to Open the Local Exchange to Competition are Irreversible.**

As demonstrated above, there are effective statutory, regulatory, technological and market safeguards against any attempt by Ameritech to use its position in local exchange services to impede long distance competition. At the same time, these safeguards ensure that Ameritech cannot possibly reverse the trend toward local exchange service competition in Michigan.<sup>63/</sup>

By moving expeditiously to satisfy all of the statutory preconditions for entry into long distance services, Ameritech has moved irreversibly to promote competition in local exchange services. Ameritech has fully implemented the competitive checklist, including its nondiscrimination requirements. It has entered into numerous negotiated and arbitrated agreements — each of which incorporates the statutory mandate that access and interconnection be provided on a nondiscriminatory basis. The agreements contain provisions that guarantee nondiscrimination in the provision of network interconnection, unbundled network elements, resold services, local transport and termination, collocation and access to poles, ducts, conduits and rights-of-way; and each of these also must be provided on the same terms and conditions on which Ameritech provides the item to itself and its affiliates. Moreover, pursuant to the most favored nation clauses in these agreements, competing providers have available to them all elements, products and services made available under any agreement at the rates and on the

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<sup>63/</sup> For a detailed discussion of this trend, see generally the Harris/Teece Affidavit, Parts II-IV, which contains an extensive analysis of the state of competition and the absence of entry barriers in the local exchange market segment in Michigan, along with substantial supporting documentation.

terms and conditions specified in that agreement. See Dunny Aff., ¶ 13. In short, these agreements constitute facts that illustrate and underscore the competitive nature of the local exchange environment in Michigan.

Moreover, to ensure Ameritech's compliance, each agreement embodies concrete, detailed performance standards and benchmarks, with significant penalties imposed for noncompliance. See Mickens Aff., ¶¶ 8-23. For example, Ameritech's Agreement with AT&T (Volume 1) provides that "[i]nterconnection shall be equal in quality" to that provided by Ameritech to itself, its affiliates, or any other carrier, defining "equal in quality" to mean "the same technical criteria and service standards" that Ameritech uses within its own network. § 3.6. Moreover, satisfaction of this "equal in quality" standard is measurably objective: Ameritech must maintain separate interconnection records of the performance it provides to itself, to its affiliates and subsidiaries, to AT&T and to other carriers. § 3.8.2. These records must show, for example, trunk provisioning intervals, trunking grades of service and trunk restoral, for which the agreement details specific performance benchmarks. § 3.8.1, Sch. 3.8. Ameritech must provide to AT&T on a monthly basis not only its own performance records, but those of all connecting carriers, so that AT&T can measure Ameritech's level of compliance with the performance standards. § 3.8.3. If those records show that Ameritech has breached its interconnection obligations, AT&T may invoke a dispute resolution mechanism, sue in federal district court, file a complaint with the Commission pursuant to Sections 207 or 208 of the Act, seek a declaratory ruling from the Commission, file a complaint with the MPSC or seek other

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available relief. § 3.8.5. See also Mickens Aff., ¶¶ 8-23 (discussing similar benchmark, recordkeeping and reporting requirements with regard to Ameritech's provision of unbundled network elements, resale, customer services and maintenance and repair).

Of course, even without the extensive reporting requirements imposed by the agreements, AT&T and Ameritech's other competitors would monitor Ameritech's performance with microscopic rigor. For example, their own Operations Support Systems provide them with the necessary statistical breakdown of Ameritech's performance, which they can easily compare with the public regulatory reports that Ameritech must file and thereby assess the relative parity of Ameritech's service performance. See Mickens Aff., ¶ 23. The reporting requirements simply make monitoring Ameritech easier and any noncompliance more obvious. Thus, any discrimination by Ameritech would be exposed to its competitors. Under these circumstances, Ameritech would have no incentive to engage in any discriminatory misconduct — much less a pattern of conduct on the scale necessary to impede competition in local exchange services.

Moreover, there will be extensive oversight by the Commission and the MPSC with regard to Ameritech's provision of local exchange services. The Commission's responsibility to ensure Ameritech's satisfaction of the requirements for long distance operations does not end with its approval of the 271 application. To the contrary, the Commission may sanction Ameritech "at any time." Section 271(d)(6)(A). And the Commission's enforcement powers are not limited to the long distance sector; if Ameritech fails to meet "any of the conditions" required for approval, which include nondiscrimination against competitors in the provision of

local exchange services, the Commission is empowered to act. In addition, the MPSC has continuing authority to enforce compliance with the nondiscrimination provisions and other requirements imposed on Ameritech by the Act, and any complainant would be able to seek sanctions from that State body, as well as from the Commission. See Wilk/Fetter Aff., ¶¶ 45-48, 72, 77-83.

Finally, Ameritech can compete in this new competitive environment only by maintaining a reputation among its customers for quality and dependability — a reputation that would be severely damaged by any attempt to manipulate the quality of its services. For that reason, Ameritech has tied the compensation of its network managers to their success in meeting performance benchmarks, providing them with an incentive to ensure that all customers receive the highest possible quality service. Mickens Aff., ¶ 14.

In short, any attempt by Ameritech to avoid its legal or contractual obligations would be futile and (from both a business and legal perspective) self-defeating.

**D. The Benefits to Consumers of Ameritech's Entry into Long Distance Far Outweigh Any Perceived Risks.**

As demonstrated above, the risk that Ameritech's entry into long distance might impede competition in any telecommunication service sector is, at most, remote. In any event, any noncompetitive behavior could escape neither detection nor remedial sanctions. At the same time, the benefits to consumers from invigorated competition in the long distance business, including competitive prices, expanded service offerings and responsive customer service, are

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enormous. Any rational cost-benefit analysis can lead to only one conclusion — Ameritech should be permitted to compete in long distance.

Moreover, the potential benefits of Ameritech's entry into long distance are not confined to the long distance sector. Ameritech's entry into long distance unquestionably will induce the long distance carriers to hasten their entry into the local exchange business. In short, far from endangering competition, Ameritech's entry will promote competition that is certain to be lively and robust — a significant boon to consumers and precisely what Congress envisioned in passing the Telecommunications Act of 1996.

## **VII. CONCLUSION**

There is only one effective strategy for achieving Congress' goal of invigorating competition in long distance: unleash qualifying Bell companies, such as Ameritech, that have satisfied the requirements of the 1996 Act to compete in long distance. Ameritech has entered into agreements that meet the requirements of Section 271(c)(1)(A); has fully implemented the competitive checklist in Section 271(c)(2)(B); complies with the separate affiliate and other requirements in Section 272; and satisfies the "public interest" requirement in Section 271(d)(3)(C). Because Ameritech has done all that Congress required it to do, and because its entry will advance the procompetitive objectives of the 1996 Act, the Commission should grant Ameritech's Application.

Respectfully submitted,

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