

II. ANALYSIS

A. Ameritech Michigan's Filing Of Its Application For Approval Of A Statement Of Generally Available Terms And Conditions Is Procedurally Defective

On August 28, 1996, this Commission issued an "Order Establishing Procedures," in the competitive checklist case, Case No. U-11104. That Order established a detailed procedure to allow the Commission to orderly review whether Ameritech Michigan had satisfied a checklist item. In this regard, Ameritech Michigan was to provide notice to the parties five business days before a filing and Ameritech Michigan was to complete the necessary protective arrangements prior to filing, so that parties would receive possession of the claimed confidential material immediately upon Ameritech Michigan's filing with the Commission. The Commission's Order Establishing Procedure, in relevant part, stated:

"2. . . . the company should file with the Commission and serve on the interested parties a notice of intent to file information five business days prior to the actual filing.

3. Ameritech Michigan should file the information following established Commission procedures. It should serve the filing on all parties who have filed a notice of interest in this proceeding. In the event Ameritech Michigan believes that the information required to support its position is of a confidential nature, the company shall complete the necessary protective arrangements prior to filing the information." (Page 3, emphasis supplied.)

Thus, Ameritech Michigan was required to give five business days notice prior to its filing and complete the necessary protective arrangements before its filing.

Here, Ameritech Michigan directly violated the Commission's Order in at least three respects:

- 1) Ameritech never provided interested parties the required five business days notice prior to its actual filing.

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- 2) Ameritech Michigan failed to complete the necessary protective arrangements prior to filing its application. In fact, it was only after Ameritech Michigan made its filing that Ameritech Michigan ever sent a proposed protective agreement to the interested parties.
- 3) Ameritech has withheld service of the cost studies which constitute an integral part of its filing.

Ameritech's procedural violations are substantial and have created significant impediments to review because they have deprived the parties of the advance notice which would have enabled them to make the necessary preparations to review Ameritech's voluminous filing. For example, the parties could have used this time to retain the necessary experts to review this voluminous filing. Moreover, if the Commission were to treat the application as properly filed and then apply the 14 day response time set forth in the Order Establishing Procedure, Ameritech's violations of the order will have substantially reduced the time for the parties to prepare a meaningful response to this lengthy filing. If this were to occur, then critical preparation time will have been lost. Indeed, by withholding the underlying cost studies, Ameritech Michigan would have completely frustrated the parties' ability to prepare meaningful comments to this critical aspect of its filing. Ameritech Michigan's failure to provide proper notice and its failure to complete the necessary protective arrangements for its purported confidential information cause extreme prejudice to the interested parties. For these reasons alone, the filing should be rejected.

B. Approval Of Ameritech's Application Should Not Be Heard In This Docket Because It Is Not A Competitive Checklist Item

In filing its application, Ameritech Michigan is seeking affirmative relief from this Commission. Specifically, Ameritech Michigan is seeking approval of its Statement of

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Generally Available Terms and Conditions pursuant to Section 252(f) of the Telecommunications Act of 1996, which states:

"(f) Statements of Generally Available Terms.--

(1) In general.--A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.

(2) State commission review.--A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 and the regulations thereunder. Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) Schedule for review.--The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission--

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review.--Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2)."

Section 252(f) specifically allows the Commission a minimum of 60 days to review the reasonableness of a statement. If the review is not completed within 60 days, then the statement becomes effective only until the Commission's review is completed.

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In filing its application in the competitive checklist case, Ameritech Michigan ignores the fact that approval of a Statement of Generally Available Terms and Conditions pursuant to Section 252(f) is not a checklist item under Section 271(c)(2)(B). Therefore, there is no reason to consider Ameritech Michigan's request for approval under Section 252(f) in a docket established to determine if Ameritech Michigan has met the criteria of Section 271(c)(2)(B). Consideration of whether the terms of a Statement of Generally Available Terms and Conditions are just and reasonable under Section 252(f) should be decided in a separate docket, where parties will be able to more fully address the reasonableness of the proposal.

Finally, if providers have sought to interconnect with Ameritech Michigan as described in Section 271(c)(1)(A), then any approval of this Statement of Generally Available Terms and Conditions will have no bearing on whether Ameritech has satisfied the competitive checklist items set forth in Section 271(c)(2)(B). Only in the limited circumstances where no provider has sought such interconnection with Ameritech Michigan, may an approved Statement of Generally Available Terms and Conditions be used to determine if Ameritech Michigan has complied with each competitive checklist item. Section 271(c)(2)(A) of the federal Act states:

"(2) Specific interconnection requirements.--

(A) Agreement required.--A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought--

(i) (I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or

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(II) such company is generally offering access and interconnection pursuant to a *statement described in paragraph (1)(B)*, and

(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph [i.e. *Section 271(c)(2)(B) - the competitive checklist*] ." (Emphasis added.)

The general statement described in (1)(B), which is referred to above, may be used only if no providers have sought interconnection as described in Section 271(c)(1)(A). Section 271(c)(1)(B), in relevant part, states:

"Failure to request access.-- A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f)."

At this time, this section is inapplicable because 10 months has not elapsed from the enactment of the federal Act, which occurred on February 8, 1996. Even after this 10 month period lapses, this section may only apply if no "provider has requested the access and interconnection described in [Section 271(c)(1)(A)]." If a provider does, in fact, seek such interconnection with Ameritech Michigan, then the Statement of Generally Available Terms and Conditions will have no bearing on the competitive checklist case.

C. The Timing For Parties' Responses To This Filing Must Be Conditioned Upon A Full Disclosure Of All Information Relied Upon By Ameritech Michigan

Before the Commission considers Ameritech's application, in this or any other docket, Ameritech Michigan must first be required to give interested parties an opportunity to review

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and analyze all the materials, including those filed as being confidential. Then, the parties must be given an adequate opportunity to review the hundreds of pages of documents in order to meaningfully participate. Since the federal Act provides a minimum of 60 days to review the Statement of Generally Available Terms and Conditions, MCTA requests that parties should be given 30 days from receiving the complete filing, including confidential materials, to submit their comments.

III. CONCLUSION

Ameritech Michigan's application seeking approval of its Statement of Generally Available Terms and Conditions filed in the competitive checklist case must be rejected. Ameritech Michigan in no way complied with the procedural schedule established by the Commission. Ameritech Michigan did not provide notice to the parties five business days before its intended filing. Ameritech Michigan did not make arrangements to provide parties with the confidential information prior to its filing and withheld studies critical to the evaluation of the application. Further, the approval of a Statement of General Available Terms and Conditions under Section 252(f) is not a competitive checklist item. Finally, even if approved, the Statement of Generally Available Terms and Conditions may have no bearing on whether Ameritech Michigan has complied with the competitive checklist, if a provider has sought to interconnect with Ameritech Michigan as described in Section 271(c)(1)(A).

IV. RELIEF REQUESTED

WHEREFORE, the Michigan Cable Telecommunications Association respectfully requests that this Commission 1) reject the filing of Ameritech Michigan's application for approval of its Generally Available Terms and Conditions filed in this docket; 2) re-docket Ameritech Michigan's application in a separate case; and 3) allow interested parties to

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respond to Ameritech Michigan's filing within 30 days after they have received the complete filing, including the purported confidential material relied upon by Ameritech Michigan in support of its application.

Respectfully submitted,

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Date: October 11, 1996

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Via Overnight Delivery

14 October 1996

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
Mercantile Building
6545 Mercantile Way
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RE: Case No. U-11104

Dear Ms. Wideman:

Enclosed for filing are an original and fifteen (15) copies of the Telecommunications Resellers Association's *Notice of Interest* in the above-referenced proceeding.

Sincerely,

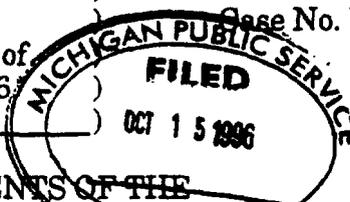
Telecommunications Resellers Association


Andrew O. Isar

Enclosures

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter, on the Commission's)
own motion, to consider Ameritech)
Michigan's compliance with the)
competitive checklist in Section 271 of) Case No. U-11104
the Telecommunications Act of 1996.)



COMMENTS OF THE
TELECOMMUNICATIONS RESSELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA")¹, on behalf of its members and pursuant to the Michigan Public Service Commission's ("Commission") August 28, 1996 *Order Establishing Procedures* in the above-captioned proceeding, hereby responds to the Statement of Generally Available Terms and Conditions ("General Statement") submitted by Ameritech Michigan ("Ameritech") on September 30, 1996.²

TRA briefly addresses those significant issues raised by Ameritech's General Statement which may have an immediate impact on TRA's members and which warrant Commission review. Absence of comment on any specific provision of the General Statement does not implicitly or otherwise indicate TRA's agreement with the proposed rates, terms and conditions contained therein.

¹TRA is a national organization representing nearly 500 telecommunications service providers and their suppliers, who offer a variety of competitive telecommunications services throughout the U.S. today. The Association's members play a vital role in providing desirable, competitive, value-added telecommunications products and services. TRA members anticipate providing, or already provide, local services in Michigan.

²TRA supports AT&T Communications of Michigan, Inc.'s ("AT&T") Procedural Objections to Application of Ameritech Michigan for Approval of a Statement of Generally Available Terms and Conditions, filed on October 4, 1996. Clearly Ameritech did not follow the Commission's Order Establishing Procedures in providing advanced notice or completing necessary protective arrangements prior to filing, thus limiting the ability of parties to make more meaningful comment.

I. AMERITECH'S FILING OF A GENERAL STATEMENT DOES NOT, IN AND OF ITSELF, CONSTITUTE FULFILLMENT OF ITS OBLIGATIONS UNDER OF THE TELECOMMUNICATIONS ACT.

Ameritech's summary representation that its General Statement demonstrates compliance with the applicable provisions of Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act")³ and Federal Communications Commission's ("FCC") local competition rules⁴ should not be construed to mean that Ameritech has *fulfilled* its obligations under the Act nor that it has fully complied with the FCC's Rules. While Section 252(f)⁵ permits a regional Bell operating company to submit a Statement of Generally Available Terms and Conditions as a means of demonstrating the company's compliance with the Act, the mere submission of a general statement can not constitute actual fulfillment of its obligations any more than a tariff filing demonstrates that tariff provisions are fair, just and reasonable without Commission review.

Moreover, the true test of Ameritech's compliance with the Act's obligations and FCC Rule guidelines will not reside in the simple existence of a its General Statement or even a handful of agreements with competitive local exchange carriers ("CLECs"). Rather, compliance will depend primarily upon whether meaningful competition develops as a result of the *ability* of competitors to reasonably enter into agreements with Ameritech and/or obtain needed interconnection, network elements and services under the terms of the Company's General Statement, in a

³Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Federal Communications Commission, First Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (released August 8, 1996, hereinafter "FCC's Rules").

⁵47 U.S.C. §252(f).

manner consistent with the Act, the FCC's and Commission's local competition rules.

In reviewing Ameritech's General Statement, the Commission should first ensure that the General Statement's rates, terms and conditions do, in fact, fully comply with the provisions of the Act and FCC's rules.⁶ Ameritech must clearly demonstrate, for example, that its proposed pricing satisfies the pricing guidelines established by the Act and FCC.⁷ Ultimately, the critical factor in determining Ameritech's compliance with the provisions of the Act and FCC Rules will be whether CLECs are able to secure Ameritech agreements under the provisions of its General Statement. Although it may be too early to conclusively determine whether agreements based on Ameritech's General Statement will satisfy both the letter and spirit of Section 251 of the Act, the Commission should continually monitor the progress of CLECs seeking to enter into agreements with Ameritech. Subsequent CLEC agreements will provide a more meaningful measure of whether Ameritech is truly in compliance with its obligations under the Act and should assist the Commission in its determination of whether Ameritech's Petition for in region interLATA market entry under Section 271 of the Act should appropriately be granted.

⁶The FCC's Rules continue offer effective guidelines for implementation of the Act, despite recent appeals.

⁷ TRA urges the Commission to review with particular attention Ameritech's attempted imposition of nonrecurring and recurring charges under Section 10.4 of the General Statement, the net effect of which could ostensibly negate discounts which might otherwise technically comply with the FCC's default discounts or pricing guidelines. Application of surcharges could further act to impede local service resale, contrary to the the Act and FCC's Rules. Other charges bear review as well. Ameritech's demands for special construction charges claimed to be necessary as a result of insufficient network capacity to serve a reseller could, for example, represent a major obstacle to resale while appearing to be legitimate. Ameritech must be obligated to provide specific justification for imposition of such additional charges. Moreover, it should not be allowed to impose any such charges or fees on resellers that it does not impose on itself, its subsidiaries or its own high volume retail subscribers.

Unless and until it becomes clear that CLECs are able to compete under the provisions of the General Statement, Ameritech's actual compliance with the Act will be remain suspect, despite its representations. "The proof of the pudding is in the eating".

A lingering concern remains over Ameritech's ability to amend, alter or revise its General Statement in the future. While Ameritech's right to do so is not in question, its ability to make subsequent revisions which are inconsistent with the Act or FCC and Commission rules and which might act to impede competition, remain unresolved. The provisions of Ameritech's General Statement must remain consistent with all governing regulations accordingly, and Ameritech should be bound by its obligations on an ongoing basis.

II. SPECIFIC ISSUES RAISED BY AMERITECH'S GENERAL STATEMENT.

A. All Ameritech Promotional Offerings Should Be Available for Resale Consistent With the Act and FCC's Rules.

Ameritech's General Statement reflects the FCC's requirements that all promotional offerings, with the exception of those having a duration of 90 days or less, should be available for resale.⁸ Ameritech notes that Section 357 of MTA does not require Ameritech to make discounted offerings available for resale. Yet despite the MTA's lack of explicit obligation to require Ameritech to make promotional offerings available for resale, Ameritech should be bound to its obligation to make promotional offerings of more than 90 days in duration available for resale, pursuant to the Act and FCC's Rules, as Ameritech's General Statement currently proposes. The FCC's Rules rules arose from concerns that failure to make longer term promotional offerings available to CLECs could

⁸47 C.F.R. §51.613(a)(2).

result in anticompetitive behavior on the part of incumbent LECs.⁹ Yet Ameritech's ability to impose future restrictions on resale of promotional offerings should continue to be governed by these guidelines. Otherwise Ameritech could engage in the very anticompetitive pricing behavior which the FCC's Rules are aimed to prevent.

B. Claims of "Technical Infeasibility" Should be Scrutinized by the Commission.

Section 9.3 of Ameritech's General Statement makes extensive reference to limiting Ameritech's obligation to combine network elements to the extent that such combinations are technically feasible. Claims of technical infeasibility should be closely scrutinized by the Commission. Should a Requesting Carrier seek to combine network elements which have been previously combined by Ameritech or other entities, for example, Ameritech should not be permitted to claim that such a combination is technically infeasible. Any other interpretation would allow Ameritech to limit the ability of competitors to combine elements further at will. Nor should Ameritech be simply allowed to suggest that new or unique network element combinations are technically infeasible without supporting evidence. CLECs will look for new, innovated service offerings based on unconventional network element combinations and new technology. Development of new innovative services should not be hampered by Ameritech's unfounded claims of technical infeasibility of new network element combinations at every turn because these combinations may be untried.

⁹The FCC concludes that the ability of an incumbent LEC to preclude resale of longer term promotional offerings could, "... permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the provisions of the 1996 Act." (FCC First Report and Order, para. 948 at 452.)

Ameritech should be precluded from simply raising the specter of technical infeasibility any time it objects to provide a requested network element combination. By claiming that certain network element combinations are technically infeasible, Ameritech could force a CLEC to bring the matter into mediation or arbitration. This would create unnecessary burdens on CLECs which would delay or even prevent CLEC local market entry. Ameritech should be required to justify any claims of technical infeasibility, subject to CLEC verification, if denying requests for network element combinations, and the Commission should remain vigilant over repeated Ameritech claims of technical infeasibility.

C. Tariff Restrictions Should Not Have the Effect of Limiting the Resale of Retail Services.

The Commission should also carefully evaluate proposed Ameritech tariff restrictions which could act to limit resale. Recent efforts by Ameritech Wisconsin, for example, to require resellers to obtain separate number blocks for each Centrex customer, coupled with a three fold increase in the non-recurring charge for each number block, would effectively render Centrex services economically unviable for resale.¹⁰ Although these proposed requirements were portrayed as necessary restrictions, purportedly to prevent intercom calling between unaffiliated Centrex subscribers, the requirements were nonetheless imposed exclusively on resellers. These types of tariff amendments should be seen for what they are -- unlawful resale restrictions. Unless Ameritech is prevented from imposing unlawful tariff resale restrictions, Ameritech could fashion a General Statement which only outwardly is in compliance

¹⁰See, e.g. Investigation of Tariff Provisions Affecting Resale of CENTREX Services and CENTREX-Like Services, Wisconsin Public Service Commission, Docket No. 05-TI-143.

with the Act's resale provisions but which, through tariff restrictions, would in effect severely limit resale of certain retail services.

D. Ameritech Should be Obligated to Notify Resellers of Its Intent to "Sunset" Services.

Ameritech should be required to inform its local service resellers of its intent to "sunset" services within a reasonable period of time prior to the sunset taking effect. Sunsetting services will certainly have a material effect on subscribers and on a reseller's ability to serve certain subscribers. As a general matter, Ameritech should agree to provide reasonable advanced notice of sunsetting services no less than 90 days prior to the effective date, allowing subscribers and resellers sufficient time to make alternative arrangements. These notice provisions could appropriately fall under Section 10.6 of the General Statement.

E. Ameritech's Prohibition on the Purchase of Resold Services by Requesting Carriers Should be Clarified To Apply Only if the Requesting Carrier Does Not Resell to End Users.

Section 10.5.5 of Ameritech's General Statement would preclude Requesting Carriers from purchasing resold services unless such services are resold to a person other than a Requesting Carrier. It is unclear whether Requesting Carriers and/or their subsidiaries and affiliates could subscribe to Ameritech's resold services if such services are also resold to non-affiliated end-users. Section 10.5.5 should not result in the imposition of a prohibition on a CLEC self-subscribing to resold services which are also resold to unaffiliated subscribers. Such a prohibition would be without basis in the Act or the FCC's Rules. A Requesting Carrier or its affiliates reselling to unaffiliated subscribers should not be prohibited from utilizing resold local service for internal purposes as a subscriber of its own services any more than Ameritech should be prohibited from utilizing its

facilities for its own internal communications. Section 10.5.5 should be clarified accordingly.

F. Ameritech Should Provide Alternative Preordering, Ordering, Provisioning, Maintenance and Repair Interfaces for Smaller CLECs Unable to Utilize Electronic Interfaces.

At Section 10.8 of its General Statement, Ameritech indicates that it will provide CLECs with access to Operations Support Systems ("OSS") for ordering¹¹, provisioning¹², repair maintenance¹³ and billing, equal in quality to that provided to itself or any subsidiary.¹⁴ No mention is made, however, of whether CLECs who do not necessarily require access to OSS would nonetheless be compelled to interface with Ameritech pursuant to Section 10.8; a potentially prohibitively expensive and complex requirement.¹⁵

Ameritech should not be permitted to use the requirement that CLECs interface with the Company exclusively through its OSS as a method of limiting the ability of smaller companies to obtain provisioning, maintenance and repair services from Ameritech. While manual systems are arguably less desirable, smaller CLECs should have the option of utilizing manual systems if their level of interaction with Ameritech will be minimal, or if they are unable to use OSS system to system interfaces.

An attractive alternative to manual interfaces is access to Ameritech through graphic user interfaces ("GUI"). GUIs have become a standard, simplified method for ordering products and interacting with

¹¹Also addressed in the General Statement at Section 10.11.1 as a means of notification to Requesting Carriers of Requesting Carrier Customer changes in primary local exchange carrier.

¹² General Statement at Section 10.13.2.

¹³General Statement at Section 10.13.3.

¹⁴OSS functions are also addressed in Schedule 9.2.6.

¹⁵It is also unclear whether OSS and associated training would be provided to Requesting Carriers without charge, pursuant to Schedule 10.13.2.

companies over the Internet. Customers are prompted for necessary data which can be easily entered and transmitted electronically directly to the companies computerized systems. Business find such GUIs to be an effective method for customer interfacing which require only that the customer have a computer and Internet access. GUI's have opened a commercial "on ramp" to the information super highway. Were Ameritech to develop such GUI's, smaller users could similarly interface with Ameritech through the Internet utilizing their existing computer systems. A GUI interface has already been developed by NYNEX in New York.

Regardless of what alternative(s) to Ameritech's OSS interfaces may be used, Ameritech should not demand that CLECs be limited to interact with Ameritech exclusively through its OSS unless it is willing to provide OSS access at a minimal cost or no charge to CLECs. CLECs should otherwise have access to manual interfaces if other economic alternatives are unavailable.

G. Ameritech's Agreements Should Allow for Shorter Agreement Terms.

Section 2.1 of Ameritech's General Contract Terms and Conditions would impose a three year term on all parties. Parties would further be precluded from renegotiating terms until one hundred and twenty days prior to agreement expiration. Given the dynamic nature of today's telecommunications market, a three year term will potentially lock parties into an agreement which may be unworkable and potentially ruinous to a CLEC over a three year period. These provisions alone, could mitigate any benefit of entering into an agreement under the General Statement. The significant risk imposed by a three year term in today's

emerging local market on CLECs, and smaller CLECs in particular, could effectively drive off many potential CLECs.

Alternatively, CLECs should be able to negotiate shorter term contracts, i.e. one and two year contracts, or have the flexibility to seek renegotiation of the agreement at any time during the life of the agreement as market conditions may dictate.¹⁶ CLECs should also be able to opt for a negotiated carrier-specific interconnection agreement with Ameritech at any time, without penalty.¹⁷

H. Pricing Discounts Should Vary With Contract Terms and Volumes.

Ameritech's agreement pricing is currently fixed, based on the proposed three year contract term. Yet as agreement terms should be flexible, so too should pricing. Pricing should be commensurate with the agreement's term -- pricing under a three year term would be lower than pricing under a two year term, *etc.* Pricing should reflect a CLEC's commitment and willingness to assume greater risk under a longer term. Ameritech's proposed pricing affords no incentive for longer term commitments because its proposed agreement offers no alternatives, unlike most competitive agreements.

Ameritech's pricing is void of volume discounts as well. Ameritech would require that parties negotiate to establish a "binding forecast" which would commit the CLEC to purchase forecasted volumes

¹⁶CLECs should also be able to seek agreement renegotiation should Ameritech designate an affiliate to fulfill Ameritech's obligations under the General Statement, pursuant to Section 11.1 of the General Contract Terms and Conditions as a change in provider could adversely affect service delivery.

¹⁷Presumably Section 11.8, Section 252(i) Obligations, of the General Contract Terms and Conditions affords CLECs the opportunity to enter into new agreements which reflect rates, terms and conditions available to other CLECs under carrier-specific agreements. No mention is made of whether CLECs holding General Statement-based agreements could, however, enter into carrier-specific agreements without penalty.

without the flexibility to renegotiate the term or conditions of the agreement until 120 days before the end of the three year terms. There is no indication that Ameritech would offer volume purchase pricing discounts for larger commitments. Clearly Ameritech would have CLECs assume the entire risk, without affording any benefit for assuming greater risk associated with a longer commitment. Like term discounts, volume discounts should reflect CLEC commitments and the risk of accepting higher volume purchases. The current inflexibility created by Ameritech's fixed term and pricing may materially affect the ability of many CLECs to enter into agreements with Ameritech under its General Statement, unless it adopts term and volume pricing flexibility and the ability to seek renegotiation as market conditions change.¹⁸

H. Ameritech's Proposed Consequential Damage Provisions Unfairly Absolve Ameritech of Responsibility.

Ameritech would be indemnified for any damages incurred by a CLEC under section 7.5 of the General Contract Terms and Conditions. Under such broad indemnification provisions, Ameritech would ostensibly have no responsibility to CLECs for meeting installation dates, service turn up or other scheduling commitments which could severely affect CLEC subscribers if missed, and which would ultimately affect the CLEC's ability to serve its subscribers. Notwithstanding Ameritech's Performance Standard responsibilities (Section 10.9 of the General Statement), CLECs would have no recourse if Ameritech chose to intentionally delay provisioning or maintenance functions. Such a blanket indemnification raises significant concern over Ameritech's ability to engage in

¹⁸Ameritech's intent to offer a fixed term agreement with no volume discounts is indicative of its position as the dominant local carrier currently facing a negligible competitive threat.

anticompetitive behavior by impacting CLEC subscriber service without penalty. Ameritech's proposed Consequential Damages provisions should not preclude action against the Company where instances of intentional negligence which adversely impacts the CLEC's ability to serve subscribers can be demonstrated.

III. CONCLUSION.

Ultimately, the ability of CLECs to enter into agreements with Ameritech under the General Statement's rates, terms and conditions, will be the determining factor of whether Ameritech has met its obligations under the Act. Several proposed provisions including an inflexible term and lack of term and volume pricing, raise concerns over CLECs' ability to successfully obtain General Statement-based agreements. Potential resale-limiting tariff provisions, issues of network element "technical feasibility", a lack of economic alternatives to OSS, and total indemnification of Ameritech, among others, further give rise as to whether Ameritech's General Statement is, or would remain, in actual compliance with the Act and FCC's Rules. TRA urges the Commission to carefully scrutinize Ameritech's General Statement compliance with the Act and FCC's Rules, and require Ameritech to amend questionable provisions, as addressed herein. In so doing, the Commission can ensure that CLECs may obtain reasonable interconnection, network elements and service agreements under Ameritech's General Statement, as is Congress', the FCC's and the Commission's intent, before Ameritech can be granted authority to enter its in region interLATA market.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew O. Isar", written over a horizontal line.

Andrew O. Isar
TELECOMMUNICATIONS
RESELLERS ASSOCIATION
P. O. Box 2461
Gig Harbor, WA 98335-4461
206.265.3910

14 October 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October 1996, copies of the foregoing Comments of the Telecommunications Resellers Association in Case No. U-11104 were sent via first class U.S. mail, postage prepaid, to all parties as indicated on the attached service list.

Mary Jan Hicks
Mary Jan Hicks



SERVICE LIST

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