and the state commissions to consider, and consequently the petitioners cannot make a showing that the harm is certain and imminent, as required in Packard Elevator, 782 F.2d at 115. As we explained above, we are persuaded that, absent a stay, the proxy rates would frequently be imposed by the state commissions and would result in many incumbent LECs suffering economic losses beyond those inherent in the transition from a monopolistic market to a competitive one. We are mindful of the precedents that declare that "economic loss does not, in and of itself, constitute irreparable harm," Wisconsin Gas, 758 F.2d at 674, and that "revenues and customers lost to competition which can be regained through competition are not irreparable." Central S. Motor Freight Tariff Ass'n v. United States, 757 F.2d 301, 309 (D.C. Cir. 1985), cert. denied, 474 U.S. 1019 (1985). Both of these propositions, however, rest on the assumption that the economic losses are recoverable. The threat of unrecoverable economic loss, however, does qualify as irreparable harm. See Baker Elec. Coop., Inc. v. Chaske, 28 F.3d 1466, 1473 (8th Cir. 1994); Airlines Reporting Co. v. Barry, 825 F.2d 1220, 1227 (8th Cir. 1987). In this case, the incumbent LECs would not be able to bring a lawsuit to recover their undue economic losses if the FCC's rules are eventually overturned, and we believe that the incumbent LECs would be unable to fully recover such losses merely through their participation in the market. Moreover, the petitioners' potential loss of consumer goodwill qualifies as irreparable harm. See

Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co., 22 F.3d 546, 552 (4th Cir. 1994) (holding that the possibility of permanent loss of customers to a competitor or the loss of goodwill satisfies the irreparable injury prong). For the foregoing reasons, we believe that the petitioners have adequately demonstrated that they will be irreparably harmed if a stay of the FCC's pricing rules is not granted.

C.

In assessing whether others will be harmed if the court grants the stay, we acknowledge that our decision, either way, will unavoidably adversely affect the interests of either the incumbent LECs or their potential competitors. If we decide to grant the stay, we recognize that the companies seeking entry into the local telephone markets will have to negotiate and arbitrate their agreements without the added leverage of the FCC's pricing rules, and assuming that the FCC's rules were later upheld, they would likely renegotiate the terms of their agreements. The inconvenience of this scenario, however, is outweighed by the harm and difficulties of its alternative, discussed in the previous section. In other words, we think that it would be easier for the parties to conform any variations in their agreements to the uniform requirements of the FCC's rules if the rules were later upheld than it would be for the parties to rework agreements adopted under the FCC's rules if the rules were later struck down. Consequently, we conclude that any harm that other parties may endure as a consequence of imposing a stay is outweighed by the irreparable injury that the petitioners would sustain absent a stay.

D.

The FCC argues that a stay would not promote the public interest because it would not maintain the status quo and it would

block the road to competition in local telephone service markets. We reject both contentions. Before the FCC published its regulations pursuant to the Act, several incumbent LECs, potential competitors, and state utility commissions were all working together to implement the local competition provisions of the Act. The Act's system of private negotiation backed by state-run arbitration was operating without the input from the FCC. A stay would preserve the continuity and stability of this regulatory system -- a system that has initially proved to be successful. The FCC asserts that without its pricing regulations in effect, the incumbent LECs will be able to exert their superior bargaining power over their potential competitors and impose unreasonable rates for their services. This argument ignores the empirical success that private parties and the state commissions have had in implementing the local competition provisions of the Act.(7) It also denigrates the proven ability of the state commissions to prevent incumbent LECs from charging excessive rates for their services. The Act requires rates to be just and reasonable and it authorizes state commissions to enforce these requirements. Presently, we have no reason to doubt the ability of the state commissions to fulfill their duty to promote competition in the local telephone service markets and thus conclude that the public interest weighs in favor of granting a stay.

III.

Having concluded that the petitioners satisfy the four

(7) We note that some states, Connecticut, Florida, and Iowa in particular, have already established rates based on local conditions and are already involved in opening up their local markets to competition under both the federal Act and state statutes which foreshadowed the new federal law. Moreover, the FCC-imposed rate for Iowa is substantially higher than the state-set rate which was based on the full record from a contested case proceeding, while in Florida, the FCC proxy rate is substantially

lower than the state-set rate.

requirements for granting a stay, we grant the petitioners' motion to stay the FCC's pricing rules and the "pick and choose" rule contained in its First Report and Order(8) pending a final decision on the merits.

Upon the filing of this order, the stay imposed by our order of September 27, 1996, is dissolved, and is replaced by the stay imposed by the terms of this order.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

(8)The stay pertains only to §§§§51.501-51.515 (inclusive), 51.601-51.611 (inclusive), 51.701-51.717 (inclusive), §§ 51.809,

and the proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration, dated September 27, 1996.

Ameritech Michigan Pole Rate

CALCULATION OF MAXIMUM POLE ATTACHMENT RATE	
Ameritech Michigan	
Year End 1993	
State of Michigan	
Calculated:6/14/95	
Calculated by: Paul Glist	
Net Investment Per Bare Pole	$25.57
Gross Investment in Pole Plant	$71,533,000.00
-Depreciation Reserve for Poles	$53,097,000.00
-Accumulated Deferred Taxes	$6,556,679.07
=Net Investment in Pole Plant	$11,879,320.93
-Net Investment in Appurtenances (5%)	$593,966.05
=Net Investment in Bare Pole Plant	$11,285,354.88
/Number of Poles	441,271
=Net Investment per Bare Pole	$25.57
Carrying Charges	
Maintenance	
Chargeable Maintenance Expenses	$598,000.00
/Net Investment in Pole Plant	$11,879,320.93
=Maintenance Carrying Charge	5.03%
Depreciation	
Annual Depreciation Rate for Poles	5.60%
Gross Investment in Pole Plant	$71,533,000.00
/Net Investment in Pole Plant	$11,879,320.93
=Gross/Net Adjustment	602.16%
Deprec Rate Applied to Net Pole Plant	33.72%
Administrative	
Administrative Expenses	$259,919,000.00
Total Plant In Service	$7,411,343,000.00
-Depreciation Reserve for TPIS	$3,110,713,000.00
-Accumulated Deferred Taxes	$679,320,000.00
=Net Plant in Service	$3,621,310,000.00
Administrative Carrying Charge	7.18%
Taxes	
Normalized Tax Expense	$281,125,000.00
Total Plant In Service	$7,411,343,000.00
-Depreciation Reserve for TPIS	$3,110,713,000.00
-Accumulated Deferred Taxes	$679,320,000.00
=Net Plant in Service	$3,621,310,000.00

Ameritech Michigan Pole Rate

Tax Carrying Charge	7.76%
Return	
Return Authorized by State	13.83%
Total Carrying Charges	67.53%
Allocation of Annual Carrying Costs	
Space Occupied by Cable	1.0
/Total Useable Space	13.5
Charge Factor	7.41%
Maximum Rate	
Net Investment Per Bare Pole	$25.57
*Carrying Charges	67.53%
*Charge Factor	7.41%
=MAXIMUM RATE	$1.28
DATA ENTRY AND SOURCE (ARMIS)	
Gross Investment in Pole Plant	$71,533,000.00
Gross Investment in Total Plant	$7,411,343,000.00
Depreciation Reserve for Pole Plant	$53,097,000.00
Depreciation Reserve for TPIS	$3,110,713,000.00
Pole Maintenance Expense	$598,000.00
Depreciation rate for Poles (FCC)	5.60%
Administrative Expense 1	$246,656,000.00
Administrative Expense 2	$13,263,000.00
Taxes	$281,125,000.00
Accumulated Deferred Taxes	$679,320,000.00
Accumulated Deferred Taxes (Prorated to Poles)	$6,556,679.07
Overall Rate of Return (Last Rate Case)	13.83%
Number of Poles	441,271

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 the Telecommunications Act of 1996.	)	Case No. U-11104

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHYAM)

The undersigned, being first duly sworn, deposes and states that he served papers as follows:

1. Document(s) served: Michigan Cable Telecommunications Association's Comments with Proof of Service for same

2. Served upon: See Attached List

3. Method of service: U.S. First Class Mail, unless noted as Hand Delivery

4. Date served: October 18, 1996

Connie S. Pyle

Subscribed and sworn to before me this 18th day of October, 1996.

Cathy L. Frazee, Notary Public
Eaton acting in Ingham County, Michigan
My Commission Expires: 7/12/97

FRASER TREBILCOCK DAVIS & FOSTER, P.C.
LAWYERS
LANSING, MICHIGAN 48933

SERVICE LIST FOR U-11104

Counsel for MPSC Staff
(hand delivery)
David Voges
Assistant Attorney General
6545 Mercantile Way, Suite 15
Lansing, MI 48911

Counsel for Michigan Attorney General
Mr. Orjiakor N. Isiogu
Assistant Attorney General
Special Litigation Division
630 Law Building
P.O. Box 30212
Lansing, MI 48909

Counsel for Brooks Fiber Communications
Todd J. Stein
Brooks Fiber Communications of Mich., Inc.
2855 Oak Industrial Drive, N.E.
Grand Rapids, MI 49506-1277

Counsel for Ameritech
Craig A. Anderson
Ameritech
444 Michigan Ave., Room 1750
Detroit, MI 48226-2517

Counsel for Teleport
Roderick S. Coy
Stewart A. Binke
Clark Hill, P.L.C.
200 N. Capitol Ave., Suite 600
Lansing, MI 48933

Counsel for MECA
Glen A. Schmiege
Mark J. Burzych
Foster, Swift, Collins & Smith
313 S. Washington Square
Lansing, MI 48933

Counsel for MCI
Albert Ernst
Dykema Gossett
800 Michigan National Tower
Lansing, MI 48933

Counsel for WorldCom
Norman Witte
115 W. Allegan
Lansing, MI 48933

Counsel for Climax Telephone Co.
Harvey J. Messing
Sherri A. Wellman
Loomis, Ewert, Parsley, Davis &
Gotting, P.C.
232 S. Capitol Avenue, Suite 1000
Lansing, MI 48933

Counsel for Michigan Consumer Federation
Richard D. Gamber, Jr.
Michigan Consumer Federation
115 W. Allegan, Suite 500
Lansing, MI 48933

Counsel for AT&T
Larry Salustro
AT&T Communications, Inc.
4660 S. Hagadorn Road, 6th Floor
East Lansing, MI 48823

Counsel for Continental Telecommunications
Timothy P. Collins
Continental Cablevision, Inc.
26500 Northwestern Hwy #203
Southfield, MI 48076

Counsel for Sprint
Richard P. Kowalewski
Sprint Communications Company, L.P.
8140 Ward Parkway, 5-E
Kansas City, MO 64114-8417

Counsel for Telecom. Resellers
Andrew O. Isar
Telecommunications Resellers Assn.
4312 92nd Ave., N.W.
P.O. Box 2461
Gig Harbor, WA 98335-4461

Counsel for U.S. Department of Justice
Katherine E. Brown
U.S. Dept. of Justice
Antitrust Division
555 4th Street, N.W.
Washington, DC 20001

Counsel for FCC
Gayle Teicher
Federal Communications Commission
Policy Division, Common Carrier Bureau
1919 M Street, N.W., Room 544
Washington, DC 20554

Ms. Linda L. Oliver
Hogan & Hartson
555 13th Street. N.W.
Washington, DC 20004

39

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 the Telecommunications Act of 1996.	)	Case No. U-11104

MICHIGAN PU
FILE
1996

MOTION FOR SUMMARY DISPOSITION

AT&T Communications of Michigan, Inc. ("AT&T"), Competitive Telecommunications Association ("CompTel"),[1] MCI Telecommunications Corporation ("MCI"), Sprint Communications Company L.P. ("Sprint") (hereinafter collectively "Movants") hereby move, pursuant to Rule 323 of the Rules of Practice and Procedure before the Commission, for summary disposition of the Application of Ameritech for approval of its Statement of Generally Available Terms (the "Statement" or "SGAT") filed with the Commission on September 30, 1996 for the reasons set forth herein. The Statement clearly does not conform to the provisions of the federal Telecommunications Act of 1996 (the "Act"), nor could it serve any legitimate purpose under which it purportedly is filed. Moreover, the Statement is contrary to Michigan law and specific rules and orders of this Commission, and there is no other authority under Michigan law to approve such a Statement in lieu of the currently effective tariffs and pending arbitration agreements that cover similar terms and are currently before the Commission; and the document fails to meet the

[1]CompTel on October 17, 1996, filed its Notice of Interest in these proceedings. CompTel is a national industry association representing the interests of competitive telecommunications service providers, including many smaller carriers.

requirements for filing in this case. Thus, neither federal law, state law, nor the Commission's prior orders authorize the Commission to grant the relief requested by Ameritech.

Ameritech's filing of the Statement at this time serves only to create confusion and to further burden and distract already stretched resources from the pressing matter at hand: resolution of pending arbitrations. On its face, the Statement cannot be found to satisfy the requirements of Sections 251 and 252 of the federal Act (47 USC 251 and 252); it does not even purport to make an unconditional general offering, but instead indicates only what Ameritech may elect to offer in the future depending on various unsettled contingencies. Ameritech's Statement also has no relevance and serves no purpose under Section 271 (47 USC 271), because a Statement may serve as one of the necessary preconditions to in-region interLATA relief under Section 271(c)(1)(B) only when no entrant has requested access and interconnection pursuant to the negotiation and arbitration provisions of Section 252. As numerous entrants have made such requests in Michigan and are vigorously pursuing them, the preconditions for application of Section 271(c)(1)(B) are not satisfied. Nor does the Statement have any relevance or serve any other purpose under Sections 251 and 252 at this time. The Commission will soon be completing its arbitrations and reviews of actual interconnection agreements that will cover all of the issues purportedly addressed in the Statement -- and other prospective entrants will then be able to obtain services and facilities under the provisions in those agreements, pursuant to Section 252(i) of the 1996 Act, without regard to Ameritech's Statement.

Ameritech's Statement is therefore nothing more than a patently inadequate collection of Ameritech's current views on certain issues, and it has no actual legal significance. Further review

of this filing would thus constitute a pointless waste of the Commission's and the parties' resources at this important and busy time in the implementation of the Act.

I. THE STATEMENT MUST BE DISAPPROVED AS IT IS INCONSISTENT WITH THE PROVISIONS OF THE TELECOMMUNICATIONS ACT AND MICHIGAN LAW

While Movants are still completing their review of the Statement, and thus do not propose to set forth herein all the deficiencies of the Statement, it is clear, on even a cursory review, that the Statement fails on several fundamental grounds to satisfy the pro-competitive requirements of Section 251 of the Federal Act, and otherwise falls well short of the requirements of federal and state law. As demonstrated below, there is ample basis for the Commission summarily to disapprove the Statement.

A. The Statement Is Defective Because It Does Not Contain The Terms And Conditions That Ameritech "Generally Offers Within A State."

As a threshold matter, the SGAT is deficient under Section 252(f) in that it is not a compilation of terms that Ameritech "generally offers" in Michigan. Authorization for the SGAT is as follows:

> (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 <u>generally offers within the State</u> to comply with the requirements of Section 251 and the regulations thereunder and the standards applicable under this section.

Assuming that the Statement would otherwise have some relevant statutory function (which Movants do not concede), this particular SGAT is plainly defective because a number of its key components are not yet offered by Ameritech generally throughout the state. Ameritech's SGAT

includes key network elements, services or features that are not currently available. The Statement and its Supporting Schedules are replete with Statements -- too numerous to attempt a listing -- as to what Ameritech "will" provide or "will" offer.[2] The testimony submitted by Ameritech in Support of its Statement confirms that its use of the future tense is not casual, but deliberate in view of the current unavailability of numerous services and offerings. For example, as is evident from the Verified Statement of Mr. Paulitz filed in support of SGAT, Operations Support Systems in support of resale as well as unbundled network elements will not be available, unbundled and at parity with the Systems offered to Ameritech and its affiliates, until at least December of 1996. Ameritech does not even contend that these Operations Support Systems are actually available now, and its December 1996 date is a prediction -- not an accomplished fact. In other words, Ameritech's Statement is not a true "offer" that can be "accepted" by a carrier and implemented.

Indeed, in its legal Memorandum filed in support of SGAT, Ameritech states: "As a general offering, the General Statement does not itself constitute a binding agreement (or function as the equivalent to a tariff). Furthermore, page 1 of Ameritech's document contains a provision stating that requesting carriers will be required to enter into an agreement with terms "similar" to the statement, as well as "additional" terms and conditions the parties deem appropriate. This provision gives Ameritech the opportunity to refuse any interconnection agreement unless the requesting carrier agrees to additional terms demanded by Ameritech which are not contained in the SGAT filed with the Commission. Thus, this SGAT does not fit the definition of what is generally offered.

[2]See, e.g., Schedule 9.2.6 concerning Operational Support Systems functions, indicating that Ameritech "will provide" certain interfaces for pre-ordering, ordering and provisioning and "will provide" an electronic interface for transmission of data necessary for maintenance and repair functions.

Furthermore, what Ameritech has done here has caused a great time pressure and massive resource problems: Ameritech is attempting to compress into a 60-day period 1) tariff review activity, 2) tariff implementation activity, 3) complex contract review, and 4) initial authorization of tariff and contract terms, each of which may take much longer than 60 days, and each of which the Commission will be reviewing under separate proceedings.[3]

B. The SGAT Is Defective Because It Fails To Contain Ameritech's Commitment Concerning What It Will Actually Offer.

This SGAT should also be disapproved because Ameritech has not presented the specific generally available terms that it fully intends and is committed to offer. Instead, Ameritech has presented generally available terms which may or may not be available, at Ameritech's option, depending upon its success in persuading a court to overturn the FCC's implementation Order. Thus, the Commission is unable to judge whether this SGAT is appropriate because the terms presented do not carry Ameritech's commitment that these are the terms it will implement.

Ameritech has petitioned for review of the Order issued by the Federal Communications Commission on August 8, 1996, in a case now docketed in the 8th Circuit Court of Appeals in St. Louis. Its Statement contains Ameritech's specific reservation of the alleged right to change the terms of its SGAT based on the outcome of that proceeding. Again, there is no way of predicting the outcome of the proceeding or when the judicial review process will be completed. At this point, we simply do not know, and Ameritech explicitly refuses to commit that the terms now before the Commission, are, in fact, the terms that will be generally available to competitors over the long term.

[3] The time and resource considerations, coupled with uncertainty created by challenges to the FCC rules were acknowledged by one RBOC withdrawing its SGAT.

Certainly, Ameritech is entitled to seek review of any and all orders that it believes are legally defective. However, Ameritech is here representing that certain terms will be at some future point (but not at present) be generally available to competitors. Ameritech cannot have it both ways. If it seeks review of the FCC's Order, then it should include in its SGAT the terms that it is willing to provide regardless of the outcome of the appeals. Those, at least, will be terms which will be available to competitors in the market.

This uncertainty as a result of Ameritech's refusal to make commitments in its Statement makes it impossible for the Commission to determine what additional terms it should establish under federal <u>or state law</u> in the SGAT review process beyond what Ameritech has proposed to do in the SGAT. Such additions are specifically authorized by Section 252(f)(2), which provides in part that "Nothing in this Section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement . . . ." Because Ameritech has not committed to any particular SGAT terms, the Commission is left with no basis on which to build the additional terms, if any, it would consider appropriate. As a result, the Commission cannot perform its function under the statute.

C. On Its Face, The Statement Does Not Meet Statutory Requirements For Approval Under 47 USC §252(f).

The terms of the Statement filed by Ameritech do not, under any circumstances, comply with the specific statutory requirements of the Federal Act, or Michigan law and the rules, orders and policies of the Commission. In that respect, and based only on a preliminary review, it appears that in a number of areas the SGAT is a "take back" vehicle which Ameritech is attempting to use to avoid existing legal obligations. Under 47 USC §252(f)(2), a state commission <u>may</u> <u>not</u> approve such a Statement <u>unless</u> it complies with §251 of the Act, the

§252(d) pricing standard, and the FCC rules.[4] Moreover, under the same provision, the state commission need not approve the Statement unless it complies with all state laws, rules and policies except to the extent they are barriers to entry prohibited by §253 of the Act. Because the terms of Ameritech's Statement meet neither federal nor state requirements, it cannot be approved and summary disposition of this matter is warranted.

1. The Statement Fails to Comply with the Requirements of the Federal Act.

Without attempting a comprehensive inventory of its deficiencies, it is apparent from even an initial review that the Statement is not in compliance with many requirements under the federal Act as well as numerous provisions of the FCC Order. Examples are as follows:

Wholesale Services Discounts

Ameritech's wholesale pricing methodology departs from the methodology prescribed by the Act. Ameritech's method, for example, includes a speculative, predicted maintenance cost increase as well as a vaguely defined category of "new costs that will be incurred to service resellers." It results in discount levels far below any reasonable standard.

Interconnection and Unbundled Network Elements Pricing

Ameritech's cost methodology for interconnection and unbundled network elements does not comport with either the federal or this Commission's requirements. For example, Ameritech's studies utilize lower "fill factors" which increase costs for competitors--

[4] Although the pricing and the "pick and choose" provisions of the FCC Order have been stayed pending appeal by the Eight Circuit Court of Appeals, there is nothing to prevent a state commission from applying those or like provisions on its own authority, and the remaining portions of the FCC Order remain in full effect.

without any indication that the same factors will be used for studies of Ameritech's own retail services as ordered by the Commission in Case Nos. U-10860/11155/11156.

Ameritech also has included joint and common costs which should not properly be included in prices under the Act. These joint and common costs were developed from an analysis of 1997 budget data. Far from being "forward-looking economic costs" as required under the Act, these are accounting-type costs which reflect the unusual transitional activities associated with the development of operational support systems and implementation of the Telecommunications Act. Furthermore, Ameritech has not allocated these costs in a manner which recognizes the competitive sensitivity of these critical network elements. Finally, these costs do not conform to a TSLRIC analysis of costs. On September 17, 1996, in MPSC Case No. U-10860, the MPSC ruled that TSLRIC based pricing is consistent with the federal Act.

Interconnection

Under §251(a), every telecommunication carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. The Statement submitted by Ameritech does not provide any process for establishing interconnections with other telecommunications carriers who wish to interconnect to Ameritech through indirect means. In the absence of any contract provision or process for Ameritech to meet its duty to offer indirect interconnection, the statement is deficient and cannot be approved by the Commission.

Moreover, not only does the document fail to address indirect interconnection, it appears to grant Ameritech the right to insist upon direct interconnection to the facilities of the other carrier, which is clearly contrary to a non incumbent's duty under §251(a). Specifically, Section

3.5 of the document gives Ameritech the right to demand interconnection under the same terms and conditions as are set forth in the SGAT whenever Ameritech deploys additional switches. Since only direct interconnection methods are provided for in the SGAT, this section imposes obligations on non-incumbent carriers beyond those required under §251(a) of the Act. The FCC has specifically determined that non-incumbent LECs have no obligation to provide for direct interconnection. They may, based upon their own considerations of network efficiency and economics, elect to limit interconnection to indirect methods. (FCC Order ¶997) Moreover, the FCC made it clear that state commissions have no authority to impose the obligations of incumbent LECs (which does include a duty to provide direct interconnection under 47 USC §251(c)) upon non-incumbents. Thus, the document submitted by Ameritech does not comply with §251 of the Act.

The Statement contains numerous other provisions which are inconsistent with the interconnection requirements of §251. The Act requires the incumbent LEC to permit interconnection at any technically feasible point. Section 251(c)(2)(B) of the Act. Furthermore, the rules now in effect expressly provide that "an incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible." 47 CFR §51.305(f). It is clear that this rule was intended to preclude an incumbent from unilaterally declaring that a request for interconnection is technically not feasible and placing the onus of challenging that determination upon the requesting carrier. Instead, the Rule places the burden on the ILEC to go to the state commission and prove that it is not technically feasible to meet the request for interconnection. The difference is significant.

Ameritech's SGAT does not require that Ameritech comply with 47 CFR §51.305(e) if it denies a request for interconnection due to technical infeasibility. Instead, under Ameritech's "Bona Fide Request" process (Schedule 2.2), Ameritech will simply provide "a detailed statement that access to such interconnection ... is not technically feasible." Providing a "detailed statement" is clearly not the same as proving to the state commission that the request is not technically feasible. Moreover, the SGAT does not even require Ameritech to institute a proceeding to establish technical infeasibility before the state commission where the requesting carrier does not concur with Ameritech's unilateral determination of the issue. Thus, by permitting Ameritech to deny a request without proving the issue of technical infeasibility to the state commission, the SGAT is not in compliance with 47 CFR §51.305(e) and cannot be approved by the Commission.

Unbundled Network Elements

Similarly, the Statement is deficient on the subject of combinations of unbundled network elements. Ameritech's document permits Ameritech to deny a request for a combination of unbundled network elements by simply providing a detailed statement that the request is not technically feasible. (SGAT Section 9.3.5). The FCC rules, on the other hand, require an incumbent LEC which denies such a request to prove to the state commission that the requested combination is not technically feasible. 47 CFR §315(e). By permitting Ameritech to deny a request without proving the technical issue to the state commission, the SGAT again fails to comply with applicable rules issued under §251 and, therefore, it may not be approved by the Commission.

Other Shortcomings

The Ameritech Statement also includes other provisions which are also inconsistent with §251 and the FCC rules. These provisions include, at a minimum, the following:

Section 4.2 of the SGAT restricts the requesting carrier's ability to efficiently manage its own network traffic by precluding the termination of exchange access traffic over local or intraLATA trunks. This limitation is inconsistent with 47 CFR §51.321 which mandates the use of any technically feasible method for obtaining interconnection or access to unbundled network elements.

Section 4.3 of the SGAT addresses trunk group architecture. It fails to include a provision requiring Ameritech to provide two-way trunking upon request, as is required by 47 CFR §51.505(f).

Section 9.4.2 of the Statement addresses operations support systems. It fails to include a provision requiring electronic interfaces to be made available by January 1, 1997 as is required by 47 CFR §51.319(f).

Sections 10.3.1 and 10.3.2 of Ameritech's Statement address grandfathered and sunsetted services. The provision as drafted appears to preclude a customer who switches from Ameritech to another LEC from retaining the service if the customer then switches his or her local service to a third LEC. Such a provision is contrary to the FCC Order at ¶968 which requires grandfathered services to be made available for resale without the limits Ameritech seeks to impose.

Section 10.4 of the SGAT provides for certain additional fees for provisioning of resale service. Such fees fail to meet the pricing standards for wholesale services. Under the federal

Act the price is limited to the retail rate less avoided costs. There is no provision for additional provisioning costs under this standard.

Section 10.10.5 of the Statement provides that Ameritech employees servicing customers of another LEC will identify themselves as Ameritech employees. This provision is clearly anti-competitive, ignores that Ameritech's employees will be servicing customers on behalf of other carriers, and is intended to enhance Ameritech's "brand." As such it is inconsistent with the policy underlying 47 CFR §51.613(c) which requires the unbranding of operator, call completion or directory assistance services.

Section 10.6 of the SGAT provides that notice of any new services or changes in terms and conditions under which Ameritech offers resold services will be provided to resellers via tariff filings. It is clear that if Ameritech withholds notice of new services or changes in existing services from resellers until tariffs are filed, Ameritech will have a competitive advantage over resellers in that it can plan marketing strategies and advertising campaigns well in advance of its tariff filings. Resellers will not have the same opportunity to plan for the introduction of new services or changes in existing services. Failing to provide the same notice to resellers that Ameritech provides to its own retail units is a clear violation of the provisions of §251(c)(4)(B) of the Act and 47 CFR §51.603(a) which requires a LEC to make its telecommunication services available for resale on terms and conditions that are reasonable and non-discriminatory.

Section 13.2 of the SGAT requires both parties to use RCF (Remote Call Forwarding) or DID (direct inward dialing) for local number portability. 47 USC §251(b)(2) and 47 USC §153(a)(30) require LECs to provide, to the extent technically feasible, number portability without impairment of quality, reliability or convenience and in accordance with the

requirements prescribed by the Commission. To the extent the SGAT limits interim number portability to RCF and DID, it is not consistent with the requirements of the Act.

Section 16.2.3 of the Statement permits Ameritech to withhold access to poles, ducts, conduits or rights-of-way beyond 45 days without giving any reason for refusing to grant access. This provision is contrary to 47 CFR §1.403(b) which expressly requires a utility which does not grant access to respond in writing within 45 days of the request by providing confirmation that access is denied and setting forth with specificity the information and evidence supporting the denial. Thus, Ameritech is under a legal obligation to take affirmative action granting or denying a request within 45 days of the request and, in the case of a denial, Ameritech must give specific reasons for the denial in writing within that time period. Ameritech's proposal to extend the time period for a response under the theory that Ameritech might not know why it is withholding access is to turn the entire process upside down. It gives Ameritech the right to delay any response to a request for access and to thereby create an enormous barrier to entry by competitors.

Section 16.21 of Ameritech's SGAT precludes access via interconnection of ducts or conduits owned by a carrier in Ameritech manholes where modification to Ameritech's own structures is possible to permit access. This provision essentially negates the right of another carrier to use Ameritech's rights-of-way to place its own conduit and/or cable. As such, it does not comply with §224 of the Federal Act or with 47 CFR 1.1403(a). The rule requires non-discriminatory access to Ameritech's right-of-way. If Ameritech can install a conduit in its right-of-way, a requesting carrier has the legal right to install its conduit in the same right-of-

way (assuming there is adequate room to do so) irrespective of whether Ameritech finds it inconvenient or desires to limit such use of its right-of-way.

D. Ameritech's General Statement Fails to Conform to Michigan Law or the Regulations, Orders and Policies of the Commission.

In determining whether to approve a Statement of Generally Available Terms under §252(f) of the Federal Act, a state commission is not limited in its review to an analysis of whether the minimum requirements of the Federal Act have been satisfied. Congress has expressly given the state commission discretion to establish or enforce "other requirements of state law in its review of such statement." 47 USC §252(f)(2). Similar provisions contained in §251(d)(3) of the Act reinforce the right of the state commission to enforce any regulation, order or policy of the state commission that is consistent with the requirements of §251. Thus, it is clear that Ameritech's proposed SGAT need not, and should not, be approved by the Commission if it fails to conform to Michigan's pro-competitive laws and the Commission's regulations, orders and policies. Ameritech's proposed SGAT contains provisions which do not conform to either the letter or the policy underlying the Michigan Telecommunications Act (MTA), or the Commission's orders implementing the MTA.

First, as noted in the Procedural Objections filed on October 4, 1996, the application submitted by Ameritech does not qualify as a filing permitted or even contemplated by the Commission's August 28, 1996 Order establishing Case No. U-11104. The purpose of the proceeding is to "analyze Ameritech Michigan's compliance with the checklist." The checklist is contained in Section 271(c)(2)(B) of the Act. Nothing in the Commission's Order, either expressly or by necessary implication, authorizes Case No. U-11104 to be used as a vehicle for

submitting an SGAT for review by the Commission under §252(f) of the Act, or as a procedure for determining if there has been a failure to request access under §271(2)(1)(B) of the Act. The Order set up a procedure for Ameritech to make a filing whenever it felt it had met one of the items on the competitive checklist under §271(B) of the Act. Prior to making each filing, Ameritech was to give interested parties five days' notice of its intent to file. Moreover, because interested parties were given only 14 business days to comment on Ameritech's filing, Ameritech was required to have protective arrangements in place to preserve the confidentiality of its information before it made the filing.

Ameritech's Statement and the supporting documents filed with it do not address or explain why Ameritech believes it has complied with a particular item on the competitive checklist set forth in 47 USC §271. Furthermore, Ameritech did not give the required five days' notice to interested parties or have protective arrangements in place prior to making its September 30, 1996 filing. Therefore, the "application" in this proceeding is defective in that it fails to conform to the Commission Order establishing MPSC Case No. U-11104 and, aside from the substantive defects discussed elsewhere in this motion, the filing should be rejected for this reason alone.

Second, the terms of the Statement are inconsistent with Michigan law. A few examples illustrate the inconsistency. Section 10.6 of the Ameritech SGAT not only fails to meet the non-discriminatory standards of the Act, it also is inconsistent with the MTA because it would permit Ameritech to withhold from resellers notice of new services it is offering which are available for resale until a tariff is filed. As discussed previously, the lack of notice will give Ameritech a competitive advantage. Section 305(e) of the MTA prohibits a provider of basic local exchange