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BY FEDERAL EXPRESS

Ms. Donna M. Caton
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62794-9280

Re: Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996 (Docket No. 96-0404)

Dear Ms. Caton:

Enclosed for filing in the above-cited docket are an original and four copies of the Supplemental Rebuttal Testimony of Joseph Gillan on behalf of the Competitive Telecommunications Association ("CompTel"). Please return a date-stamped copy of the enclosed (additional copy provided).

Sincerely,

Linda L. Oliver
Jeremy B. Miller (Bar No. 6216557)
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Enclosures

cc: Attached Service List

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CERTIFICATE OF SERVICE

Linda L. Oliver, an attorney for the Competitive Telecommunications Association, hereby certifies that on the 3rd day of January, 1997, she caused to be served the foregoing Supplemental Rebuttal Testimony of Joseph Gillan in Docket No. 96-0404 on the attached service list by overnight delivery or U.S. Mail, as indicated.

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Supplemental Rebuttal Testimony of Joseph Gillan

on behalf of the

Competitive Telecommunications Association

Q. Please state your name and business address.

A. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando, Florida 32854.

Q. What is the purpose of your supplemental rebuttal testimony?

A. The purpose of my supplemental rebuttal testimony is to respond to Mr. Gebhardt's position that the additional information supplied by Ameritech in his supplemental testimony brings the company any closer to complying with the requirements of Section 271 of the Federal Telecommunications Act (Act). To the contrary, this information does little more than demonstrate that Ameritech *has not* taken the actions necessary to open the market to other exchange providers and that Ameritech's systems are not yet capable of supporting commercial entry on a scale that would satisfy the Act.

In particular, my supplemental testimony addresses Mr. Gebhardt's supplemental information concerning Ameritech's unbundled local switching element. The "call flow matrix" presented in Mr. Gebhardt's supplemental exhibit 1/ clearly shows that Ameritech intends to offer a local switching element which: (1) maintains Ameritech's monopoly on terminating access service, (2) recovers revenues in excess of cost through the imposition of a non-cost surcharge on interstate minutes, and (3) denies the ULS-based entrant non-discriminatory access to Ameritech's interoffice network for the completion of local calls.

Q. How does Mr. Gebhardt's supplemental information concerning local switching demonstrate Ameritech's non-compliance with Section 271 of the Act?

A. Ameritech's obligations under the Competitive Checklist include the requirement that Ameritech provide an unbundled local switching element that conforms to FCC Order and the Act. 2/ Simply stated, a compliant unbundled local switching (ULS) element must:

1/ Schedule 1 to Ameritech Exhibit 1.2.

2/ In keeping with the principal focus of my direct and rebuttal testimony, my supplemental rebuttal testimony primarily addresses unbundled local switching and the platform configuration.

1. establish its purchaser as a *complete* local telephone carrier providing local exchange services to its subscribers *and*, with respect to these subscribers, exchange access to other telecommunications providers.

2. provide the ULS purchaser the *option* to use Ameritech's transport network in the *same* manner as Ameritech (or transport obtained from another service provider if the entrant desires).

Q. Does Mr. Gebhardt's supplemental testimony describe a ULS element that establishes its purchaser as the provider of exchange access service and which can be combined with Ameritech's transport network on a non-discriminatory basis?

A. No. Mr. Gebhardt's call-flow diagrams 3/ (while difficult to decipher) appear to define a ULS element which:

(1) maintains Ameritech's monopoly on terminating access (i.e., the termination of long distance calls to the subscribers of the ULS-based entrant),

(2) imposes a surcharge on interstate access minutes in violation of the effective portions of the FCC's rules, and

---

This focus does not mean, however, that I believe Ameritech complies with any other element of the Competitive Checklist or the Competitive Presence Test in Section 271.

3/ See Schedule 1 to Ameritech Exhibit 1.2 (Gebhardt Supplemental Rebuttal).

(3) denies a ULS purchaser the non-discriminatory use of the same interoffice transport arrangements that Ameritech will use for the transport and termination of traffic originated at the same switch as the ULS purchaser.

Ameritech's ULS element does not comply with the Act's requirements permitting combinations, establishing cost-based rates, or prohibiting discrimination.

Q. Which portions of the Act and effective Federal Rules does Ameritech's ULS violate?

A. Although I am not a lawyer, the plain language of the Act obligates Ameritech to provide network elements to a requesting carrier so that the requesting carrier may offer whatever array of services it desires. 4/ Certainly, the FCC rules which implement Section 251 of the Act make clear this principle. For instance, 47 CFR §51.307(c) states (emphasis added):

> (c) An incumbent LEC shall provide a requesting telecommunications carrier access to any unbundled network element, along with all of the unbundled network element's

4/ Section 251(c)(3) describes Ameritech's obligation to provide network elements as:

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements ...

> features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide *any* telecommunications service that can be offered by means of that network element.

The Act simply does not contemplate a environment where Ameritech limits, in any way, the services requesting carriers may offer or how they may be provided.

Q. Please explain Ameritech's position with respect to access service.

A. Mr. Gebhardt's supplemental material reemphasizes Ameritech's position that it will refuse to recognize a ULS-based competitor as the provider of *terminating* exchange access service, 5/ except under the condition that the entrant agrees to a convoluted transport arrangement for which no market or technological justification exists.

First, the ULS network element defined by the FCC and the Illinois Commission clearly establish the ULS-purchaser as the provider of exchange access service, a term with includes both originating (i.e., long distance calls made by the subscriber)

5/ See Gebhardt Rebuttal (Ameritech Exhibit 1.1) at pages 48 and 51.

and terminating (i.e., long distance calls made to the subscriber) traffic. As the Illinois Commission stated: 6/

> We also reject Ameritech's position that the purchasing carrier should not retain the revenues for exchange access provided through the leased network elements. As Staff observes, once the incumbent LEC has received the cost-based price for the LSP [the ICC Staff's term for the ULS], the purchasing carrier is entitled to the use of the network element and all revenues for services therefrom.

Certainly, the FCC's Orders could not be clearer that the ULS purchaser becomes the subscriber's local telephone carrier both with respect to local exchange (including vertical features) and exchange access services: 7/

> . . . a carrier that purchases the unbundled local switching element to serve an end user effectively obtains *the exclusive right* to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user. 8/

6/ Dockets 95-0458/95-0531 (Consol.), page 65.

7/ The FCC's decision should not be surprising since, as this Commission is well aware, the FCC Interconnection Order represented the adoption, on national scale, of the precedential initiatives of the Illinois Commission and its staff defining a ULS element.

8/ Order on Reconsideration, Federal Communications Commission, CC Docket No. 96-98, FCC 96-324, released September 27, 1996.

1 There is a compelling explanation for the views of the Illinois and Federal
2 Communications Commissions: With respect to the loop and switch components,
3 the provider of local exchange service is inherently the provider of switched access
4 service. Because local and access traffic utilize a single set of facilities, the
5 economic roles of local and access provider must also go together. Ameritech is not
6 free under the Act, FCC Rules nor this Commission's Order to unilaterally decide
7 that it will honor the ULS-based carrier's role as access provider for *originating*
8 calls, but it will deny these carriers the same role (and, importantly, revenues) as
9 *terminating* access provider.
10
11 **Q. Is it Ameritech's position that a ULS-based entrant can become an access**
12 **provider only if it also agrees to an Ameritech-imposed transport**
13 **arrangement?**
14
15 A. Yes. Ameritech's position suggests that the only effective way to use *unbundled*
16 local switching is if purchased in a *bundle* with another network element: either
17 transport from Ameritech or, at the least, transport terminations as designed by
18 Ameritech. The entire premise of the Act, however, is to provide entrants the ability
19 to decide how to use network elements to provide services and an overriding

principle is that Ameritech cannot force carriers to obtain elements or services which they do not desire in order to purchase those elements which they do.

Second, and even more fundamentally, Ameritech's position ignores that transport is inherently different from the remaining components of switched access (loop and switch). Access transport (i.e., the transmission between the switch and the IXC) can be obtained from a provider other than the local telephone company. 9/ Because access traffic need not use the same facilities as local traffic, the first step to local competition was to permit IXCs to obtain transport from whatever source they desire. 10/

The bottom line is that the choice of transport provider belongs to the IXC and not to the LEC. Ameritech's position that a ULS-based carrier may provide terminating access to IXCs only if offered in combination with transport ignores the fact that the ULS-based access provider (like Ameritech) cannot demand that IXCs use their

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9/ As noted earlier, switched access involves the use of the same loop and switch that is used to provide local service. Consequently, these components of switched access can never be obtained from a carrier other than the customer's local telephone company.

10/ See Second Report and Order and Third Notice of Proposed Rulemaking in FCC CC Docket No. 91-141 (Expanded Interconnection), FCC 93-379, released September 2, 1993.

1 transport network. In effect, Ameritech's conditional recognition of the ULS-based
2 entrant as terminating access provider is meaningless.
3
4 **Q. What would be the effect if Ameritech's position on terminating access were**
5 **adopted?**
6
7 A. The entire position is structured to maintain for Ameritech the terminating access
8 monopoly to the subscribers of the ULS-based carrier. To the extent that these
9 charges are inflated above cost -- which they are -- then Ameritech would have this
10 revenue source at its disposal to attract (i.e., retain) customers while the ULS-based
11 carrier would not. Full competition would be seriously impaired as this important
12 revenue source is *denied* ULS carriers, but is received by Ameritech not only from
13 the traffic of its *own* local subscribers but from the traffic of the *ULS carriers'*
14 customers as well.
15
16 **Q. Does Ameritech intend to limit its ULS to cost-based rates?**
17
18 A. No. In addition to retaining, effectively, a complete monopoly on terminating
19 access, Mr. Gebhardt indicates that Ameritech also intends to retain the lion's share

of interstate access revenues (including originating access) even if the ULS-based entrant accedes to its transport demand. Mr. Gebhardt proposes to impose the two largest access rate elements (the carrier common line charge and 75% of the residual interconnection charge) as a surcharge on all interstate ULS minutes.

Once again, this position directly conflicts with the fundamental premise that a ULS-based carrier replaces Ameritech as the access provider (except transport, at the option of the IXC) to its subscribers. Ameritech does not get to pick and choose which aspects (or rate elements) of access service the entrant provides and Ameritech retains. Ameritech's obligation is to provide the entrant with the elements the entrant requests to become the local (and thus, exchange access) provider, to receive *cost-based* compensation for those elements, and then step out of the picture with respect to the entrant's subscribers. 11/

11/ Of course, Ameritech would continue to receive access revenues relating to the traffic to and from *Ameritech's* subscribers.

1 **Q. What is Mr. Gebhardt's explanation for this additional charge on interstate**
2 **minutes?**
3
4 A. Mr. Gebhardt's position appears founded in an interim provision in the FCC's rules
5 *which would have* permitted Ameritech to impose the CCLC and 75% of the RIC
6 for a short period of time. 12/ However, as Mr. Gebhardt acknowledges, this
7 portion of the FCC's rules has been stayed. Remarkably, Mr. Gebhardt concluded
8 that, in light of the stay, Ameritech had but two choices: (1) bill for ULS as though
9 the stay had not occurred, or (2) bill the IXC as though the ULS provider did not
10 exist.
11
12 Evidently, Mr. Gebhardt overlooked the third option: implement the FCC rules (and
13 ICC Order) that were not stayed. 13/ As described above, these rules establish an
14 environment where the ULS-based carrier leases the capacity to become a complete
15 provider of local exchange and exchange access service and compensates Ameritech
16 at cost-based rates. With the temporary exception to this environment stayed, the

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12. Had the FCC's rule not been stayed, these interim provisions would have expired no later than June 30, 1997.

13/ 47 C.F.R. §§ 51.307(c), 51.309(b) (1996).

default becomes the long term arrangement required by the Act and FCC Order. As the FCC itself noted when it adopted its interim deviation from the norm (emphasis added): 14/

> . . . the 1996 Act permits carriers that purchase access to unbundled network elements from incumbent LECs to use those elements to provide telecommunications services, including the origination and termination of interstate calls. *Without further action on our part*, section 251 would allow entrants to use those unbundled network facilities to provide access services to customers they win from incumbent LECs without having to pay access charges to the incumbent LECs.

The stay effectively eliminates the FCC's "further action" and restores the environment required by the Act. Notably, this is also the environment previously ordered by the Illinois Commission which became the model for the federal rule.

Although Mr. Gebhardt claims that this is a question for the FCC, its answer goes directly to one of the fundamental issues in this docket: Does Ameritech's ULS offer satisfy the Competitive Checklist? The answer is an unambiguous no. A compliant ULS arrangement must recognize its purchaser as a legitimate local entrant, with the same rights and abilities to assess access charges like any other local provider, with

14/ First Report and Order, CC Docket 96-98, paragraph 717.

1 compensation to Ameritech based solely on the cost of the element requested by the
2 carrier.
3
4 **Q. What is Ameritech's position regarding ULS and transport?**
5
6 A. Mr. Gebhardt's supplemental exhibit describes an environment where the ULS
7 could only be used in combination with a separately designed transport network for
8 ULS-related traffic. Although some carriers *may desire* to use their own transport
9 facilities or specially designed network arrangements, there is no reason to *require* -
10 - and no justification to demand -- a separately engineered, parallel, interoffice
11 network for use by ULS-based entrants. To do so would be both uneconomic,
12 inherently discriminatory, and increase costs for both Ameritech and new entrants.
13
14 Mr. Gebhardt offers no policy rationale for Ameritech's position 15/ that entrants
15 may not use the same routing algorithms and interoffice facilities to complete local

15/ Mr. Gebhardt recommends that the Illinois Commission "defer" this issue to the FCC, but adopt *Ameritech's view* of the issue in dispute until the FCC rules. Mr. Gebhardt is correct that ultimately the FCC decision will have national application. But as this Commission is particularly aware, the FCC looks closely to leading state decisions in establishing national policy. In fact, it is this Commission's efforts on unbundled switching that became the national model and the Commission should continue its efforts to implement a viable platform arrangement on its own merits.

calls as Ameritech. Requiring ULS entrants to devise individual routing algorithms and transport arrangements would increase the entrants' cost as they are forced to engineer less efficient parallel interoffice networks. In addition, Ameritech's own costs would increase as its own interoffice network becomes less efficient with the migration of traffic to these parallel networks. The sole explanation for such a position is that Ameritech is willing to see its own costs increase if it can create, through this denial of non-discriminatory access to its interoffice network, a barrier to ULS-based entry.

Q. Have you prepared a Schedule comparable to Mr. Gebhardt's "call flow" diagrams (Schedule 1 to Ameritech Exhibit 1.2) which describe a compliant ULS arrangement?

A. Yes. Attached to my testimony is a similar schedule which represents my effort at describing a compliant ULS using the format of Mr. Gebhardt's diagrams. Unfortunately, Mr. Gebhardt's schedule contained little descriptive information and no textual explanation in the body of his supplemental testimony so no complete comparison is possible. Nevertheless, the schedule attached to my testimony should

1 assist the Commission by summarizing the key elements of a compliant ULS and
2 ULS/Transport entry vehicle. 16/
3
4 **Q. Is Ameritech's legal memorandum concerning network elements consistent**
5 **with Mr. Gebhardt's description of the ULS?**
6
7 A. No. Ameritech claims that network elements can properly be considered facilities
8 of the entrant because the network element provides its purchaser with control
9 equivalent to ownership. Yet, Ameritech's view of the ULS confers no such
10 dominion to its purchaser, but is instead structured to retain for Ameritech control of
11 the facility, the services it may offer, the charges to other carriers and, ultimately,
12 the market as well.

16/ Attached Schedule 1 reflects the rate structure proposed by Ameritech witness Gebhardt, which includes a flat-rate element and a usage-sensitive element. My reliance on this rate structure for illustrative purposes in the attached Schedule 1 does not mean that I am taking any position on the merits of this rate structure, which will be addressed in ICC Docket No. 96-0486.

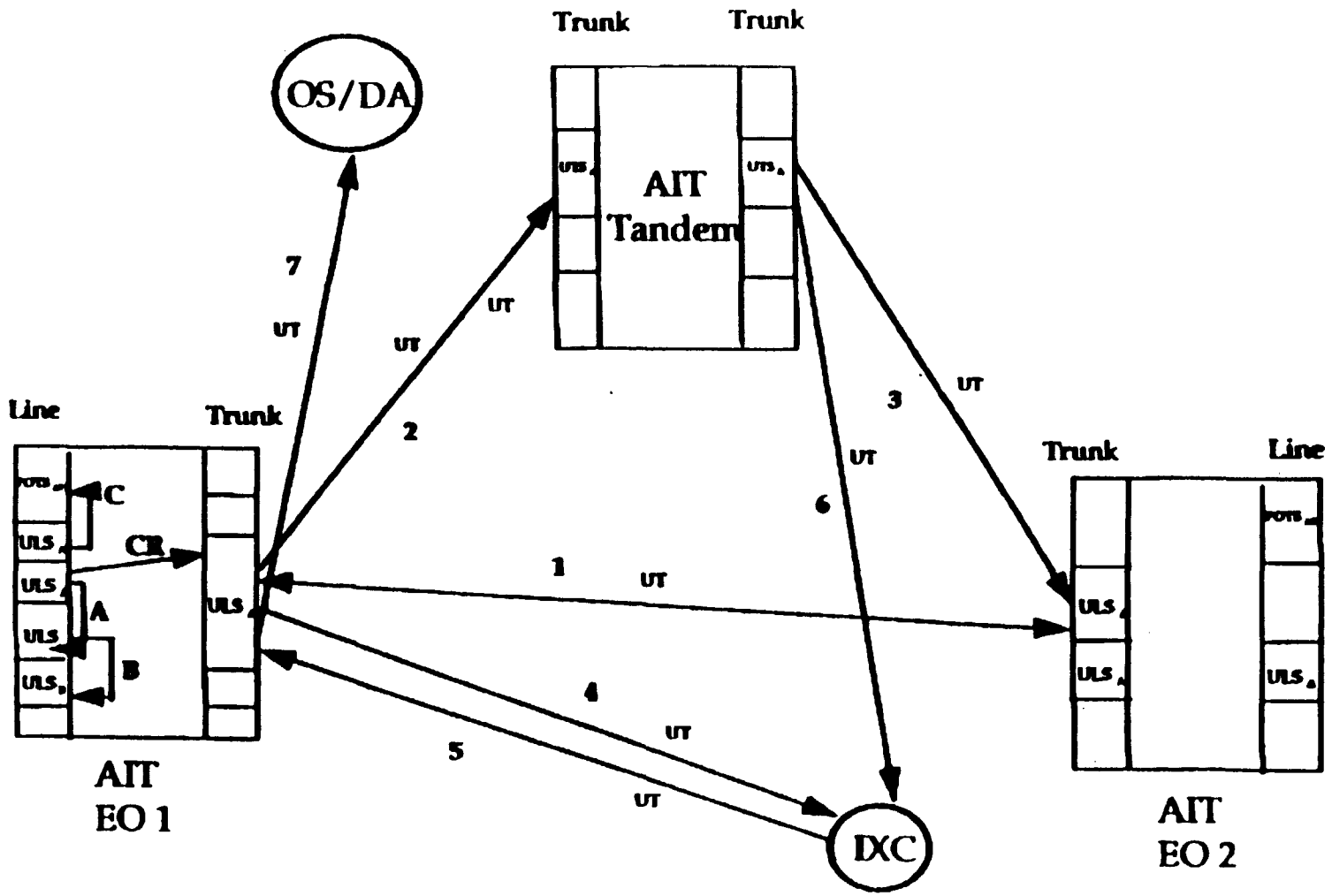
Q. Has Ameritech's supplemental information demonstrated that its operational systems are prepared for commercial scale entry?

A. No. Ameritech's supplemental testimony reveals that it receives approximately 2,600 orders for unbundled loops per month on a regional basis and that approximately 20,000 unbundled loops have been processed since April of 1995. 17/ To put these statistics in perspective, however, Ameritech has more than 18 million access lines regionwide; the total number of loops used by competitors represents approximately 0.1% of the market. Moreover, to my knowledge Ameritech is not currently providing any unbundled local switching or platform arrangements.

I should note also that Ameritech fundamentally misconstrues the relevance of statistics such as these. The intent is not to demonstrate that *competition* is not succeeding -- although that conclusion is certainly supported by the evidence. The larger point is that the *conditions* necessary for competition cannot be shown to exist until carriers are offering alternatives, customers are making choices, and the processes to accomplish each are working.

17/ Supplemental rebuttal testimony of Mr. Rogers (Ameritech Exhibit 9.0) page 7.

1 No matter how you color the analysis, the conclusion is the same: the conditions
2 necessary for widespread entry (such as the network element combination at whose
3 heart lies the ULS platform) are not in place and Section 271 of the Act has not yet
4 been satisfied.
5
6 **Q. Does this conclude your supplemental rebuttal testimony?**
7
8 A. Yes.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EO 2

ULS/Transport Call Flows and Compensation

Intraswitch			
Line Routing	**Trunk Routing**	**Usage Compensation**	**Additional Notes**
1) ULS_a ---> ULS_a 2) ULS_a ---> ULS_b 3) ULS ---> POTS[1]	Calls within the switch do not require interswitch trunking.	The originating ULS provider pays the ULS usage charge for minutes originated by its customer.	A per line/per month charge applies on each ULS line independently of traffic pattern.
Interswitch - Routing Provided By Ameritech's Interoffice Network and Routing Algorithms (Common Transport)			
Line Routing **EO1 ---> EO2**	**Trunk Routing**	**Usage Compensation**	**Additional Notes**
4) ULS_a ---> ULS_a ---> ULS_b ---> POTS[1]	When using common transport, the interswitch routings are identical for all ULS/POTS[1] carriers using the originating switch.	ULS usage charge plus Per minute transport charge based on the cost of the typical routing plus terminating charge at EO2[2] payable to ULS or POTS.[1]	

[1] Matrix equates POTS with a subscriber served by Ameritech.

[2] Terminating charge should be equivalent to the ULS usage charge.