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January 14, 1997

Mr. William F. Caton, Secretary
UNITED STATES FEDERAL COMMUNICATIONS COMMISSION
1901 M Street N.W.
Washington, D. C. 20554

RE: Application of Ameritech Corporation on behalf of its Subsidiary Ameritech Michigan for Authorization to Provide Long Distance Service — COMMENTS BY RECYCLEWORLDS CONSULTING IN OPPOSITION Docket No. 97-1

Dear Mr. Caton:

In response to the application of Ameritech for authority to enter long distance markets originating from its service territory in the state of Michigan, this letter is submitted **in opposition** to the request on the grounds that it would lead to cross-subsidization from captive local service customers.

Standing for Objecting to Action in Another State

The reason for our commenting on proposed actions in another state is because that other state is within Ameritech Corporation's region and because captive local customers in Wisconsin (and presumably in other Ameritech states as well) are, as is shown below, being coerced to cross-subsidize in the form of degraded service the entry of the Michigan subsidiary of Ameritech into competitive long distance markets. Subsidization may cross state boundaries when, as here, the parent's ambit is regional because excess profits from one of Ameritech's subsidiaries in monopoly markets flow upstream where they become available to cross-subsidize activity in competitive markets.

Factual Basis for Objection

The facts upon which our legal objection is predicated relate to the serious reductions in local telephone service recently experienced in Wisconsin both in our personal experience as a small business customer and the general practices of the utility which have been prosecuted by the Wisconsin PSC. The only reason that Ameritech could afford to, and could want to so severely downsize that service impairment was inevitable, is because its monopoly in local markets meant it would not lose business and because deregulation meant it would capture the savings from downsizing.

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In our case, we were left out of the 1995 white pages, and even after complaining, we were left out of the 1996 directory as well. As can be imagined, it is professionally devastating for a small consulting firm to not be listed in the phone book for two years because of the inference by that omission that it is going out of business. Although at this writing Ameritech has refused to disclose general listing data from its files, anecdotal information indicates that there has been a significant increase in directory mistakes that are gravely injurious to small businesses.

In addition, in further support of a widespread pattern of service degradation, the Wisconsin PSC filed a lawsuit against Ameritech's Wisconsin subsidiary due to a dramatic increase in service complaints following Ameritech's decision — made immediately following deregulation — to downsize its work force by 5,000 employees. As Public Service Commission Chairman Cheryl L. Parrino stated when the Commission authorized prosecution of the utility for this dereliction:

> "Moving away from rate base regulation can create incentives for more efficiency. BUT IT CAN ALSO CREATE AN INCENTIVE TO DEGRADE SERVICE BECAUSE THE SAVINGS IN MAINTENANCE AND CUSTOMER SERVICE EXPENSE GO DIRECTLY TO PROFITS. Ameritech allowed its service to deteriorate this past year to a level not seen in years, if ever, from this company. Meanwhile, Ameritech has been making record profits."[1]

These facts relating to Wisconsin bear directly upon consideration of the situation in Michigan because the parent corporation for both states is the same entity. Under deregulation in a declining cost industry, the cost savings from reductions in service flow directly to the bottom line as earnings in excess of that which is required to recover operating costs, depreciation and taxes, and obtain a fair return on investment appropriate to the risk involved in monopolized local markets.

Those excess profits, in turn, are paid as dividends to the parent where they are available to subsidize entry into competitive markets for calls originating in Michigan.

Moreover, it will permit Ameritech to enter the competitive long distance markets prior to real competition existing in local service markets. As is widely known, the first firm able to provide front to back communications service under one bill will have an significant advantage over its competitors in achieving first mover status.

If a level playing field is to be maintained, it is absolutely critical that Ameritech not be permitted to enter the long distance markets for calls originating in any of its underlying states until there is substantial competition throughout each of the states in its region.

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1 Prepared Remarks by Chairman Cheryl L. Parrino at the Commission Meeting of December 14, 1995 (capitalization in original text)..

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Legal Basis for Objection

Ameritech supports its application by alleging that there is competition in the Michigan market in the form of various interconnection agreements. We have no information to offer as regards that state. However, we do know and can attest — and sworn testimony would show — that, except for certain business customers in downtown Milwaukee, there is *no* local service competition in the Wisconsin market for local loop calling.

For two legal reasons, the absence of local competition in the Wisconsin markets means the application must be disapproved.

First, 47 USC §271(c)(2)(B), the so-called local competition check list, is clearly *not* restricted in its reach to the particular state from which the long calls originate. This interpretation is compelled because the preceding par. (A) does limit that paragraph's application to "within the State for which the authorization is sought." Paragraph (B), on the other hand, contains no such qualifier. It is a well settled law of statutory construction that this means that the requirements of par. (B) are not limited to Michigan. In this regard, it should be noted that the Wisconsin PSC has determined that Ameritech does not comply with the check list in Wisconsin. *Cf.* §271(d)(2)(B).

Second, in ruling on the application, §271(d)(3)(C) requires the FCC to further find that the "authorization is consistent with the public interest, convenience, and necessity." This impels the FCC to interpret its statutes to include an independent test of fair long distance competition in the local Michigan market because a level playing field is essential to comport with the "public interest". For, even if *arguendo*, there were local competition in Michigan, there is none in Wisconsin, and here we are seeing service reductions that, as noted above, makes it possible for Ameritech to cross-subsidize its long distance foray from captive customers in other states within its region where local competition does not exist into its proposed long distance service originating in Michigan.

Thus, we believe that the local competition tests must be interpreted to extend beyond Michigan to the other subsidiary states under Ameritech if unfair cross-subsidization is to be prevented. Moreover, §271(c)(2)(B) requires this wider fact finding to extend the check list to all states in the Ameritech region. §271(d)(3)(C) requires this wider fact finding to not just extend the check list to the other states, but also to a factual determination of whether competition actually exists on the ground across the entire market — regardless of whether ❶ the hypertechnical check list is met in those states or ❷ localized but non-pervasive pockets of local competition exist in those states.

When this is done, it becomes overwhelming clear that local competition is inadequate to prevent unfair long distance competition.

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It would be a travesty to permit a BOC such as Ameritech to be the first Bell company permitted into long distance markets when it has so flagrantly abused its captive local service customers with massive downsizing, and consequent service deterioration, following deregulation. This kind of outrageous conduct should not be rewarded. Fortunately, neither do the statutes permit this to happen.

Sincerely,

Peter Anderson
President

PA/ji

cc: U.S. Department of Justice
Wisconsin Department of Justice
Wisconsin Public Service Commission
Ameritech Corporation
AT&T Communications, Inc.
MCI Communication Corporation