ALTS
Association for Local Telecommunications Services

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Ms. Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Application by Ameritech Pursuant to Section 271 of the Communications Act; CC Docket No. 97-1

Dear Ms. Keeney:

The Association for Local Telecommunications Service ("ALTS") hereby moves that the Commission enter an order striking all reliance upon an asserted "MPSC approved AT&T agreement" from Ameritech's pending Section 271 application in the above docket. Alternatively, ALTS asks that the Commission enter an order requiring Ameritech to show cause why such reliance should not be stricken from its application. In support of this request, ALTS respectfully states as follows.

Ameritech's original Section 271 application filed January 2, 1997, placed considerable emphasis on the existence of an agreement with AT&T assertedly already approved by the Michigan Public Service Commission ("MPSC") (see Ameritech Brief at 20: "As a result of painstaking negotiations — which consumed several thousand person-hours — and an extensive arbitration before the MPSC, Ameritech has achieved a comprehensive interconnection agreement with the Michigan operating affiliate of AT&T. (This agreement is referred to hereinafter as the 'AT&T Agreement.') The AT&T Agreement was approved by the MPSC in an order dated November 26, 1996;" (emphasis supplied)). This asserted agreement is referenced almost 400 times in Ameritech's application, more than one hundred times in its brief, and is almost always given appreciable reliance.[1] See, e.g., Ameritech's Brief at 29:

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[1] See, e.g., Brief at 22 : "Pursuant to these MFN clauses in their Agreements, Brooks Fiber, MFS and TCG have available to them today all elements, products and services covered by the AT&T Agreement at the rates and on the terms and conditions

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> "In addition, these carriers have available to them interconnection at any technically feasible point on Ameritech's network, including the line side of the local switch, the central office cross connect points, out-of-band signaling transfer points necessary to exchange traffic and access call-related databases, and all technically feasible points for access to unbundled network elements, as well as physical collocation, on terms and conditions and at rates established in the AT&T Agreement. AT&T Agreement Articles IV, V, XII. Mr. Mayer describes how such interconnection is provisioned in his affidavit (¶¶ 15-48). The AT&T Agreement complies with every requirement of Section 251(c)(2) and the FCC's regulations regarding methods and quality of interconnection. See Dunny Aff., ¶¶ 15-32." (Emphasis supplied.)

See also Ameritech's Brief at 38:

> "Moreover, through the AT&T Agreement, which implements the checklist in a manner that fully satisfies not only the dictates of Section 271(c)(2)(B) but those of Sections 251 and 252(d) as well, all carriers throughout the state have available to them, pursuant to Section 252(i), all elements, products and services covered by that Agreement at rates and on terms and conditions no less favorable than those that the most powerful long distance carrier was able to obtain through negotiation and arbitration." (Emphasis supplied.)

Despite the appreciable reliance Ameritech thus places upon an "MPSC approved AT&T Agreement" in its original January 2d application, Ameritech subsequently informed the Commission that the "AT&T agreement" submitted with its application had

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[1](...continued)
specified in that Agreement;" id. at 23: AT&T agreement assertedly provides access to OSS functions; id. at 25: AT&T agreement assertedly assures resellers of same quality as provided to Ameritech's retail customers; id.: AT&T agreement assertedly assures interconnection will be provided in the "same intervals [Ameritech] uses when it provides comparable elements and services (e.g., interoffice transmission facilities) to itself;" id.: AT&T agreement assertedly assures the provisioning of unbundled elements "on the basis of reasonable intervals" (emphasis supplied). See also Dunney Aff. at ¶¶ 11-12, 55, 61, 75, 94, 139, 147, 149; Palmer Aff. at ¶¶ 15-22; Mayer Aff. at ¶¶ 13, 15, 24, 33, 37, 50, 59, 61, 67, 69, 81, 84, 101, 103, 125, 133, etc.; Mickens Aff. at ¶¶ 9-23, 45, 58, etc.

not been approved by the MPSC, nor even signed by AT&T.[2] Accordingly, Ameritech filed what it deemed "the approved Ameritech Michigan/AT&T Interconnection Agreement filed by Ameritech Michigan with the MPSC on January 16, 1997," and asked that the ninety day approval period for its application be restarted (January 17th letter at 2-3).

ALTS has now learned that, despite Ameritech's representations in its January 17th letter, Ameritech has filed with the MPSC yet a third agreement with AT&T which "supercedes all previously filed agreements" (January 29th letter of Edward R. Becker to the MPSC).

It is manifest Ameritech is not legally entitled in its January 17th application to place substantial reliance upon an interconnection agreement with AT&T which has not been approved by the MPSC, and which has now been superceded by a subsequent agreement. Section 271(c)(1)(A) states that: "A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 ...." Obviously, the AT&T "agreement" submitted in the January 17th supplement does not qualify under Section 271(c)(1)(A) now that it has been "superseded" by a new AT&T agreement. Indeed, the third agreement suffers from precisely the same lack of final MPSC approval noted by the MPSC staff that required withdrawal of the first. Absent MPSC approval of the entire agreement, there is no way to determine the final content of such an agreement, nor is there any way Ameritech can place reliance on the "most favored nation" clauses contained in other parties' agreements, since these provisions are only triggered by agreements with other parties that are "approved by the [MPSC]" (see, e.g., Brooks Agreement at ¶ 28.15(a)).

Beyond the absence of any legal authority for Ameritech's reliance on the "agreement" submitted January 17th, it is simply impossible as a practical matter for

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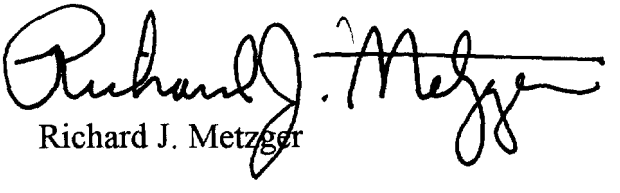
[2] See Ameritech's letter of January 17, 1997, at 2: "Subsequent to Ameritech Michigan's filing on January 2, 1997, however, without claiming that the rate levels were too high, AT&T advised that the pricing modifications in the December 26, 1996, agreement were the product of a misunderstanding. In addition, MPSC Staff has indicated that, insofar as these negotiated prices were not considered in the AT&T/Ameritech Michigan arbitration order, they cannot yet be part of the AT&T/Michigan Interconnection Agreement approved on November 26, 1996."

other parties to now offer meaningful comments on any "MPSC approved" agreements that do not appear in this record, nor is there any feasible way in which the Commission could assess such comments. The narrow ninety day window allowed for Commission consideration of Section 271 applications requires strict adherence to filing requirements and procedural schedules.[3] ALTS and its members do not have the resources to try to uncover the "current MPSC-approved AT&T agreement" during the four days which remain until comments on Ameritech's application are due, and they certainly do not have the ability to predict what further changes the MPSC might choose to make as a result of Ameritech's January 29th filing.

Accordingly, ALTS respectfully requests that the Commission enter an order striking all reliance upon an asserted MPSC-approved AT&T agreement from Ameritech's application. Alternatively, the Commission should enter an order requiring Ameritech to show cause why such reliance should not be stricken from its application.

Sincerely yours,



Richard J. Metzger

cc: A. Bush (by hand delivery)
J. Lenahan (by fax)

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[3] See Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act, FCC 96-469, dated December 6, 1996, at 2: " We expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. In the event that the applicant submits (in replies or ex parte filings) factual evidence that changes its application in a material respect, the Commission reserves the right to deem such submission a new application and start the 90-day review process anew;" (emphasis supplied). See also Commission Rule § 1.746 governing defective applications, as well as the Public Notice dated January 14, 1997, in this docket counting ALTS' motion to dismiss as part of ALTS' 50-page limit (DA 97-86).