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June 9, 1997

VIA FEDERAL EXPRESS

Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 97-137

Dear Sir/Madam:

Enclosed please find an original and 11 copies of The Comments of The Michigan Cable Telecommunications Association in the above-referenced matter. The Comments are also contained on the enclosed 3.5" computer diskette formatted in Word Perfect 5.1. Also enclosed is the Proof of Service.

Very truly yours,

FRASER TREBILCOCK DAVIS & FOSTER, P.C.

David E.S. Marvin

DEM/mjc
Enclosures
cc: Department of Justice
ITS, Inc.
Michigan Public Service Commission

No. of Copies rec'd 0+11
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Application by Ameritech Michigan	)	
Pursuant to Section 271 of the	)	CC Docket No. 97-137
Telecommunications Act of 1996 to	)	
Provide In-Region, InterLATA	)	
Services in Michigan	)	

COMMENTS OF THE MICHIGAN CABLE TELECOMMUNICATIONS ASSOCIATION

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TABLE OF CONTENTS

SUMMARY iv

I. INTRODUCTION 1

II. ACCESS TO AMERITECH MICHIGAN'S POLES AT JUST AND REASONABLE RATES IS NOT AVAILABLE IN MICHIGAN 2

A. Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates In Accordance With The Requirements Of Section 224 2

1. Under Section 224, Michigan Has Opted To Regulate Pole Rates 2

2. The MTA, As Amended, Adopted The Same Statutory Language For Pole Attachment Rates Which Serves As The Basis For The Application Of The "FCC Formula" 3

3. Based On 1995 Data, The Maximum Pole Attachment Rate For Ameritech Michigan Under The MTA Is $1.21 Per Pole Per Year 4

4. Ameritech Michigan Has Filed Two Different Tariffs Which Exceed The Maximum Rate Allowed under The MTA . 5

5. Ameritech Michigan Has "Stonewalled" MCTA's Efforts To Resolve Issues Regarding The Proper Calculation Of Pole Rates Under The MTA 6

6. Ameritech's Most Recent Pole Attachment Rate Of $1.97 Is Unsupported By Any Evidence And Unlawful 10

7. Ameritech Michigan Continues To Attempt To Collect An Unlawful Pole Rate And Is Dunning Cable Companies Based On A Tariff Rejected By The MPSC And Withdrawn By Ameritech Michigan 12

8. Conclusion: Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates 12

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LAWYERS
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B. Ameritech Michigan Is Discriminating By Giving Preferential Treatment To Its Affiliate Ameritech NewMedia 13

1. Initially When Cable Companies Attached To Ameritech Poles, Ameritech Required Them To Abide By The National Electric Safety Code And Incur Substantial "Make Ready" Charges 13

2. When Ameritech NewMedia Sought To Initially Attach To Ameritech's Poles, Ameritech Adopted A New And Invalid Interpretation Of The National Electric Safety Code, Thus Enabling Its Affiliate To Avoid The Expense Of "Make Ready" Charges Which Have Been Imposed On NewMedia's Competitors 14

III. AMERITECH MICHIGAN'S REQUEST FOR INTERLATA RELIEF IS PREMATURE BECAUSE THERE IS NO FACILITIES-BASED COMPETITION FOR RESIDENTIAL CUSTOMERS 15

A. Track A Requires Facilities-Based Competition 15

B. The MPSC Recognizes That There Is No, Or Virtually No, Competition, Either Facilities-Based Or Not 16

C. Ameritech Michigan Has Not Shown The Existence of Facilities-Based Competition For Residential Customers 17

IV. MARKET CONDITIONS DO NOT JUSTIFY ALLOWING AMERITECH MICHIGAN TO ENTER THE IN-REGION INTERLATA LONG DISTANCE MARKET AT THIS TIME 19

A. Within The State Of Michigan, Access To Municipal Rights-Of-Way Is Not Available On A Nondiscriminatory Basis 19

1. Many Local Municipalities Are Imposing Extensive Regulations And Franchise Fees On New Providers 19

2. Ameritech Michigan Claims To Be Exempt Or Grandfathered From Municipal Franchise Regulations And Fees 21

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LAWYERS
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3. Local Municipalities Are Not Imposing These Extensive Franchise Regulations On Ameritech Michigan Because Of Its Claimed Grandfathered Status 22

4. New Providers Must Be Given The Same Treatment As Ameritech Michigan To Ensure Nondiscriminatory Access To Poles And Rights-Of-Way 24

a. Michigan's Governor Engler Recognizes The Current Treatment To Be "Discriminatory" 24

b. Ameritech Michigan Admits That Such Local Regulation Is A "Competition Inhibitor" 25

5. Significant Impediments To Competition Will Exist If New Providers Have To Comply With Extensive Local Regulations And Pay Up To Five Percent Of Their Gross Revenues To Municipalities If Ameritech Michigan Is Not Subject To The Same Regulations And Fees 25

6. As A Result, Nondiscriminatory Access Is Not Available In Michigan 26

B. Premature Entry Into The InterLATA Market Is A Disastrous Policy 27

C. The Public Harm Outweighs The Benefit of Premature Entry 28

V. CONCLUSION 28

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SUMMARY

Ameritech Michigan's application to enter the in-region long distance telephone market must be denied at this time. Despite the requirements set forth in Section 271(c)(2)(B), Ameritech Michigan has failed to comply with the competitive checklist. In particular, Ameritech Michigan is not allowing access to its poles at just and reasonable rates as required by Section 271(c)(2)(B)(iii). Further, Ameritech Michigan's application is premature because there is a lack of facilities-based competition which would justify approval of Ameritech Michigan's application pursuant to Track A as set forth in Section 271(c)(1)(A). Finally, Ameritech Michigan's entry into the in-region long distance market is not in the public interest at this time because there remain other significant barriers to competitors entering Ameritech Michigan's market. For example, Michigan municipalities are discriminatorily applying to new providers telecommunications franchise ordinances which require payments of up to five percent of gross revenue, while not imposing the same requirements on Ameritech Michigan. As a result, the FCC should reject Ameritech Michigan's application because it is not in compliance with the competitive checklist, its application is premature and its entry into the in-region long distance market is not in the public interest at this time.

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I. INTRODUCTION

On January 7, 1997, Ameritech Michigan filed an application under Section 271 of the Communications Act of 1934, as amended, (the "Federal Act") seeking to enter the in-region interLATA market. That application was withdrawn on February 11, 1997. Then, on May 21, 1997, Ameritech filed a new application in this docket seeking the same authorization. In response to Ameritech's most recent filing, The Michigan Cable Telecommunications Association ("MCTA")[1] files these Comments.

Given the expectation that other parties will make extensive filings with the FCC regarding Ameritech's application, MCTA will focus only on the issues critical to the Michigan cable industry as it seeks to bring facilities-based competition to the local telephone market. First, the FCC should find that Ameritech Michigan is not in compliance with the requirements of the 14-item competitive checklist because Ameritech Michigan has failed to satisfy the third item on the checklist which requires access to poles, ducts, conduits and rights-of-way owned or controlled by Ameritech Michigan at just and reasonable rates. 47 USC § 271(c)(2)(B)(iii). Second, the lack of any facilities-based competitor serving residential customers prevents Ameritech Michigan's claim for relief under Track A of the Federal Act and makes Ameritech Michigan's request to be found in compliance with the

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[1]The MCTA has been long recognized by the Michigan Public Service Commission as being "well suited to [participate] in proceedings on behalf of the cable television industry in Michigan." (Order of January 29, 1985 in U-7620 at p. 3.) Cable television companies are expected to be a significant source of facilities-based competition for Ameritech Michigan. MCTA's members, such as Continental Cablevision and Comcast Corporation, have affiliates which have received licenses to provide basic local exchange services in Michigan and other MCTA members are actively preparing to enter the telecommunications market in Michigan.

checklist premature. Third, Ameritech's application is contrary to the public interest because significant impediments still exist to the development of meaningful competition in the local telephone market. For these reasons, the FCC should find that Ameritech Michigan is not in compliance with the competitive checklist, that Ameritech Michigan's application is premature and that Ameritech Michigan's entry into the in-region interLATA market is contrary to the public interest at this time.

II. ACCESS TO AMERITECH MICHIGAN'S POLES AT JUST AND REASONABLE RATES IS NOT AVAILABLE IN MICHIGAN

A. Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates In Accordance With The Requirements Of Section 224

1. Under Section 224, Michigan Has Opted To Regulate Pole Rates

The Federal Act provides that the FCC will regulate the rates, terms and conditions for pole attachments unless a state certifies to the FCC that it will regulate pole attachments. (47 USC § 224(c).) The FCC has recognized that Michigan has submitted the necessary certification to regulate pole attachments. (See, Public Notice, 2 FCC RCD 7535 dated December 30, 1987; Comcast Cablevision and Continental Cablevision of Michigan, Inc v Consumers Power Company, 11 FCC RCD 5412 (June 9, 1995). As a result, Michigan law governs the pole attachment rates for Ameritech Michigan. Ameritech expressly admitted this fact in a recent filing at the MPSC, wherein it concurred that ". . .state law is the controlling statute with regard to the pricing of poles, ducts, conduits, and rights of way." "Ameritech Michigan's Submission of Additional Information" in MPSC Case No. U-11104 (3/27/97, at page 10).

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2. *The MTA, As Amended, Adopted The Same Statutory Language For Pole Attachment Rates Which Serves As The Basis For The Application Of The "FCC Formula"*

In 1995, the Michigan Legislature amended the Michigan Telecommunications Act, 1991 PA 179, as amended, being MCL 484.2101, et seq.; MSA 22.1469(101), et seq., (the "MTA") and adopted the specific statutory language for determining just and reasonable pole rates for cable and telecommunications providers as set forth in the Federal Pole Attachment Act of 1987. Section 361 of the MTA states:

> "(2) A provider shall establish the rates, terms and conditions for attachments by another provider or cable service.
>
> "(3) The rates, terms and conditions shall be just and reasonable. A rate shall be **just and reasonable if it assures the provider recovery of not less than the additional costs of providing the attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the attachment, by the sum of the operating expenses and actual capital costs of the provider attributable to the entire pole, duct or right-of-way**." MCL 484.2361(2) and (3); MSA 22.1469(361)(2) and (3).

The Michigan Legislature essentially duplicated the language of the Federal Pole Attachment Act of 1987, which, in relevant part, states:

> "For purposes of subsection (b) of this section, a rate is **just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way**." 47 USC §224(d).

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Having adopted this statutory language, the Michigan Legislature must be presumed to have had knowledge of the earlier FCC interpretations of this language and desired to have that interpretation applied as a matter of Michigan law.[2] See, Scholten v Rhoades, 67 Mich App 736; 242 NW2d 509 (1976); Beading v Governor of Michigan, 106 Mich App 530; 308 NW2d 269 (1981).

3. *Based On 1995 Data, The Maximum Pole Attachment Rate For Ameritech Michigan Under The MTA Is $1.21 Per Pole Per Year*

The methodology adopted by the Michigan Legislature is highly refined and is based on quantifiable and publicly reported costs. The FCC has precisely identified the particular accounts from a providers' FCC annual reports to be utilized in determining the maximum pole rate for that provider. (See, Amended Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCCR 4387, 4402-4404 (1987), and letter from Chief of Accounting and Audit Division, Common Carrier Bureau, FCC to Paul Glist, 5 FCCR 3898 (1990).) As a result, the calculation of the maximum pole attachment rate for Ameritech Michigan is straightforward and based on its publicly reported costs.

Using Ameritech Michigan's 1995 ARMIS data filed with the FCC, the maximum pole rate for Ameritech Michigan under the methodology imposed by the MTA is $1.21 per

[2] After the passage of Section 361 of the MTA, the Federal Act was amended. One of the amendments to the Federal Act was to phase-in a new methodology for utilities to determine pole attachment rates for telecommunications providers. See, 47 USC § 224(e). This amendment to the Federal Act, however, left unchanged the methodology to determine pole rates for cable providers which is set forth at 47 USC § 224(d). It is the language from 47 USC § 224(d) which was adopted by the Michigan Legislature to be applied to both cable and telecommunications providers. Therefore, the recent amendment to the Federal Act is of no consequence to determining pole rates in Michigan.

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pole/per year. The workpapers supporting this straightforward calculation are attached as Exhibit 1.[3]

4. Ameritech Michigan Has Filed Two Different Tariffs Which Exceed The Maximum Rate Allowed under The MTA

On or about May 30, 1996 (prior to the filing of Ameritech's most recent tariff), Ameritech Michigan submitted a pole attachment tariff to the MPSC which stated that its pole rate was $2.88 per pole/per year. MCTA, realizing that this pole rate was excessive, contacted Ameritech Michigan in an effort to cooperatively resolve any issues regarding the proper calculation of Ameritech Michigan's pole rates under the MTA. As a result of these contacts, Ameritech Michigan did allow MCTA to review its workpapers under a confidentiality agreement. In response, MCTA alerted Ameritech Michigan to the errors contained in Ameritech Michigan's calculations and provided Ameritech with the proper worksheets showing the correct calculation based on the information submitted by Ameritech.

Shortly thereafter, the MPSC sent a letter to Ameritech, expressly declining to accept for filing Ameritech Michigan's tariff establishing the $2.88 rate. (See, Exhibit 3.) Rather than contest this rejection, Ameritech Michigan withdrew its tariff. (See, Exhibit 4.)

In September of 1996, Ameritech Michigan submitted a new tariff to the MPSC with a pole attachment rate of $1.97. Ameritech failed to provide the MPSC with any justification

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[3] The 1995 ARMIS data produces a slightly lower rate than Ameritech Michigan's 1993 ARMIS data which supported a rate of $1.28 per pole/per year. (See, Exhibit I-45b from MPSC Case Nos. U-10741, U-10826 & U-10831, attached here as Exhibit 2.) The principal reason for the reduction is the decrease in the net investment per bare pole due to the depreciation reserve for poles.

of any kind to support this new rate or to explain why Ameritech should be allowed to charge a rate which exceeds the maximum level allowed under the MTA.

5. *Ameritech Michigan Has "Stonewalled" MCTA's Efforts To Resolve Issues Regarding The Proper Calculation Of Pole Rates Under The MTA*

In October of 1996, MCTA's counsel verbally, and then in writing, contacted counsel for Ameritech Michigan seeking an explanation as to the manner in which the $1.97 rate was calculated. No response was received from Ameritech Michigan regarding this letter. Therefore, on November 21, 1996, MCTA's counsel again wrote to Ameritech Michigan requesting information as to its new proposed pole attachment rate of $1.97. Again, no response was received from Ameritech Michigan regarding the verbal request, the October letter or the November letter.

In connection with the Michigan Public Service Commission case relating to Ameritech's compliance with the competitive checklist (MPSC Case No. U-11104), Ameritech Michigan's Assistant General Counsel, John T. Lenahan, sent a letter to all parties on December 17, 1996 inquiring whether there were any issues which could be resolved by the parties to narrow the disputes in this case. In response to this inquiry, MCTA's counsel sent Mr. Lenahan a letter informing him that the pole attachment rate was a disputed checklist item which might be resolved if Ameritech would simply respond to MCTA's repeated requests for an explanation of how Ameritech calculated its rate and then provide an opportunity to discuss the matter.

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In pertinent part, the December letter from MCTA to Ameritech stated:

> "In the spirit of cooperation, MCTA requested the opportunity to meet with Ameritech to review information regarding the pole attachment rate and, if possible, agree upon a mutually acceptable tariff. On behalf of MCTA, we attempted to initiate a mutually beneficial exchange of information last October. Following a verbal request to Ameritech's local counsel, we sent a confirming letter on October 15, 1996. Having received no response whatsoever, we followed-up with another letter dated November 21, 1996. Again, we received absolutely no response from Ameritech.
>
> Copies of both of the above-described letters are enclosed for your review. You will note that both letters express MCTA's sincere interest in working cooperatively with Ameritech to assure full compliance with state and federal law. In response, Ameritech has not only failed to enter into discussions, but it has not even extended to us the courtesy of a response. In similar fashion, Ameritech has also "stonewalled" MCTA by not responding to other recent correspondence requesting the retraction of clearly erroneous billings issued by Ameritech under the terms of a tariff which was rejected by the MPSC Staff and withdrawn by Ameritech itself.
>
> If Ameritech Michigan truly has any interest in resolving disputed issues related to the competitive checklists, you may wish to consider responding to MCTA's longstanding requests for a dialogue regarding pole attachment issues.

Although Mr. Lenahan did not personally respond to MCTA's letter, he apparently prompted Ameritech's local counsel to send a letter to MCTA's counsel on December 30, 1996 promising to provide the workpapers showing how the $1.97 rate was calculated. The letter from Ameritech's counsel also promised to "cooperate in trying to explain the rates and resolve any disputes through discussion."

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On precisely the same day that MCTA received these encouraging promises from Ameritech (1/2/97), Ameritech filed its first application pursuant to § 271 of the Federal Act to provide in-region, interLATA services in Michigan. Then, on January 6, 1997 Ameritech finally sent a two-page workpaper to MCTA showing how Ameritech calculated its $1.97 pole rate. Interestingly, it appears that the workpaper was available to Ameritech much earlier, since it was dated September 26, 1996.

Following receipt of the workpaper, MCTA analyzed the rate calculation, discovered several errors, and contacted Ameritech's local counsel in an effort to arrange a meeting to discuss the issues. Although no meeting was actually scheduled, Ameritech led MCTA to believe that a conference would be arranged. Then, on February 11, 1997, Ameritech withdrew its FCC application for in-region interLATA authority in Michigan. Thereafter, MCTA's efforts to arrange a meeting with Ameritech proved fruitless. Ameritech even ignored MCTA's requests for a simple teleconference with someone at Ameritech who might be knowledgeable about the calculation of Ameritech's pole rate.

Eventually, after receiving several more reminders that MCTA was seeking an opportunity to discuss the pole attachment rate, Ameritech's local counsel sent a letter to MCTA's counsel reneging on Ameritech's prior promise to cooperate and discuss the issues. In that letter, Ameritech's attorney asserted that he was "not authorized to conduct any negotiations" and that "Ameritech stands by its filed tariff pole attachment rate".

After being rebuffed by Ameritech's regional counsel and local counsel, MCTA made one last attempt to open a meaningful dialogue with Ameritech. On May 8, 1997, MCTA's

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counsel sent a letter to Ameritech's in-house Michigan counsel confirming that fact that MTA was seeking the opportunity to discuss the tariff worksheet with someone, anyone, from Ameritech who could explain the rationale for the calculation and address MCTA's concerns regarding several apparent errors. Along with the letter, MCTA sent a summary of the apparent errors in Ameritech's rate calculation, as well as a detailed spreadsheet showing the proper calculation. For ease of reference, the spreadsheet set forth a side-by-side comparison of Ameritech's worksheet with a corrected worksheet developed by MCTA's rate expert. Copies of MCTA's letter, summary and spreadsheet are attached as Exhibit #18.[4] At the conclusion of the letter, MCTA reiterated that it remained willing to discuss these matters at any mutually convenient time, and requested a prompt response. Unfortunately, Ameritech has continued to "stonewall" MCTA and no response of any kind has been forthcoming. Thus, despite repeated requests to various counsel at different levels of the Ameritech corporate structure, spanning eight (8) months, Ameritech has refused to explain or even discuss the apparent errors in the calculation of its pole attachment rate. Thus, the only rational conclusion is that Ameritech is fully aware of the fact that its rate is indefensible. As explained in the following section of these comments, Ameritech's rate is, in fact, unjust and unreasonable because it is unlawfully excessive and improperly computed.

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[4] To honor the terms of a protective agreement, the numbers provided by Ameritech have been redacted from the exhibit.

6. Ameritech's Most Recent Pole Attachment Rate Of $1.97 Is Unsupported By Any Evidence And Unlawful

The workpaper belatedly supplied by Ameritech Michigan to MCTA was never made part of any record before the MPSC. Moreover, the workpaper clearly demonstrates that Ameritech made several errors in calculating its $1.97 pole rate. For example, Ameritech has grossly misrepresented its chargeable maintenance expenses. An important number in the calculation of a pole attachment rate is the total amount of the expenses incurred by the utility in maintaining its own poles. Under the old Uniform System of Accounts for telephone companies (47 CFR Part 31), this figure was the total amount in the account labeled "Pole Maintenance." This changed, however, with the adoption of the new USOC (47 CFR Part 32). Now, the total figure in account 6411 includes a matrix of different costs. Even though the account is still labeled "Pole Maintenance," the total matrix includes other pole expenses besides the pure maintenance expenses. Most notably, the matrix of expenses in Account 6411 includes the rental fees paid by Ameritech to other utilities for attaching Ameritech's lines to poles owned by those other utilities. Obviously, these rental expenses have nothing to do with the maintenance of Ameritech's own poles. Therefore, it is widely recognized that these rental expenses should be deducted from the total figure in ARMIS Account 6411 in order to arrive at the correct figure to use in calculating an accurate pole attachment rate. Apparently misled by the title of the new ARMIS account, Ameritech has based its pole attachment rate on all of its pole expenses, including both its own maintenance expenses and the pole attachment fees which Ameritech pays to other utilities such as Detroit Edison and

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Consumers Energy for attaching Ameritech lines to poles owned by those other utilities. While it is easy to understand how this mistake may have been made, it is impossible to justify Ameritech's refusal to correct this clear error. Obviously, those costs are totally irrelevant to the proper calculation of the rate which Ameritech Michigan should charge to other parties for attachments to Ameritech's poles. Inclusion of this improper cost item is clearly inconsistent with the FCC methodology adopted in Section 361 of the MTA. (See, Letter from Kenneth Moran, FCC Common Carrier Bureau Accounting & Audits to Paul Glist, June 22, 1990, 5 FCC Rcd 3898 (1990); UACC Midwest, Inc. d/b/a United Artists Cable Mississippi Gulf Coast v South Central Bell Telephone Company, PA 91-0005 through PA 91-0009, DA 95-1363 (Common Carrier Bureau) (June 15, 1995).) Nevertheless, Ameritech has ignored all of the applicable standards and, indeed, defied common sense by inflating the cost of its own poles on the basis of expenses which it incurs to attach Ameritech's lines to poles owned by other utilities!

In addition to this blatantly unreasonable padding of its rate, Ameritech has also used the wrong figures for administrative expenses, accumulated deferred taxes and rate of return (See the summary included in exhibit #18). Given the unambiguous manner in which the Michigan Legislature adopted the FCC formula and its straightforward application to Ameritech Michigan's actual costs as reported in its ARMIS filings, (Exhibit 1), it is clearly unjust and unreasonable for Ameritech to insist on a rate which is calculated incorrectly and which overstates its costs in violation of the applicable statutory standards.

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7. *Ameritech Michigan Continues To Attempt To Collect An Unlawful Pole Rate And Is Dunning Cable Companies Based On A Tariff Rejected By The MPSC And Withdrawn By Ameritech Michigan*

Both cable service providers and telecommunications providers under the MTA are subject to the same pole attachment rate. MCL 484.2361(2); MSA 22.1469(316)(2). Therefore, the FCC should be seriously alarmed because cable companies are receiving bills and are being dunned by Ameritech Michigan based on an old pole rate of $2.88. Without any justification whatsoever, Ameritech Michigan is attempting to impose rates based on an ineffective tariff which the MPSC rejected and which Ameritech Michigan itself withdrew. Moreover, Ameritech Michigan's new (but still unlawful) rate of $1.97 is a tacit admission that the $2.88 rate is excessive. Yet, Ameritech Michigan has sent dunning notices seeking to collect the $2.88 pole rate for calendar year 1996. (See, Exhibit 5.) Clearly, Ameritech Michigan is not applying a just and reasonable rate for pole attachments in its service territory.

8. *Conclusion: Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates*

Michigan has certified to the FCC that it regulates pole attachment rates. Section 361 of the MTA expressly defines a "just and reasonable" rate and Ameritech's rate fails to meet this definition. As set forth in Section 361 of the MTA, the Michigan Legislature has adopted the FCC methodology for determining the maximum allowable pole rate. That methodology is straightforward, based on publicly available data and allows Ameritech Michigan to charge a rate no greater than $1.21 per pole/per year. Yet, Ameritech Michigan is seeking to impose a $1.97 rate and, in fact, has to attempted to collect a rate of $2.88,

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based on an ineffective tariff which the MPSC rejected and which Ameritech itself withdrew. As a result, Ameritech Michigan is not providing access to its poles at just and reasonable rates and, therefore, is not in compliance with item three on the competitive checklist.

B. Ameritech Michigan Is Discriminating By Giving Preferential Treatment To Its Affiliate Ameritech NewMedia

1. Initially When Cable Companies Attached To Ameritech Poles, Ameritech Required Them To Abide By The National Electric Safety Code And Incur Substantial "Make Ready" Charges

As required by rules promulgated by the Michigan Public Service Commission, when cable companies sought to attach to Ameritech Michigan's poles, the cable companies were required to abide by the National Electric Safety Code. (See, 1988 AC, R 460.811, et seq.) As a result, cable companies were generally required to attach their cable at a distance of 18 feet above ground clearance. This often required cable companies to move the existing attachments of others to a higher level on Ameritech Michigan's poles. As a result, cable companies incurred millions of dollars of "make-ready" charges in initially attaching their cable to Ameritech Michigan poles. In addition, cable companies were not allowed to attach at the much preferred bottom position on the pole. Instead, this position was reserved for telephone service, while cable companies were required to attach above telephone cable.

2. *When Ameritech NewMedia Sought To Initially Attach To Ameritech's Poles, Ameritech Adopted A New And Invalid Interpretation Of The National Electric Safety Code, Thus Enabling Its Affiliate To Avoid The Expense Of "Make Ready" Charges Which Have Been Imposed On NewMedia's Competitors*

When Ameritech's cable television affiliate, Ameritech NewMedia, initially sought to attach its cable to Ameritech Michigan's poles, Michigan rules still required compliance with the National Electric Safety Code. Yet, when Ameritech NewMedia sought to attach, Ameritech Michigan applied a new, and invalid, interpretation of the National Electric Safety Code which allowed Ameritech NewMedia to attach at 15-1/2 feet. This allowed Ameritech NewMedia to attach below all the other parties on Ameritech Michigan poles thereby avoiding the expensive "make-ready charges" which had been imposed on all other cable companies. Thus, Ameritech NewMedia has been allowed access to the preferred bottom position on the pole which had been earlier denied to other cable providers. As a result of similar activity by Ameritech in Ohio, a complaint was filed by the Ohio Cable Telecommunications Association and others against Ameritech before the Ohio PUC, in Case No. 96-1027-TP-CSS. On April 17, 1997, the Ohio PUC found that "Ameritech's pole attachment policies and practices were unreasonably changed to unfairly benefit NewMedia over complainants, causing prejudice to the complainants." (Opinion and Order at p. 20).

Thus, Ameritech Michigan is providing discriminatory access to its poles because it is giving preferential treatment through an invalid interpretation of the National Electric Safety Code which allows its affiliate Ameritech NewMedia to attach at 15-1/2 feet and avoid substantial "make-ready" charges which have been imposed on other attaching parties. This

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is another clear example of the discriminatory access to Ameritech Michigan's poles which establishes that Ameritech Michigan is not in compliance with the competitive checklist.

III. AMERITECH MICHIGAN'S REQUEST FOR INTERLATA RELIEF IS PREMATURE BECAUSE THERE IS NO FACILITIES-BASED COMPETITION FOR RESIDENTIAL CUSTOMERS

A. Track A Requires Facilities-Based Competition

In its filing with the FCC, Ameritech Michigan claims it has satisfied the requirement to provide in-region interLATA services because it has entered into interconnection agreements with competitors and satisfied Section 271(c)(1)(A), or Track A, of the Federal Act. Track A requires the presence of facilities-based competition and requires Ameritech Michigan to show that it has entered into one or more binding agreements approved under the Federal Act under which Ameritech Michigan is providing access and interconnection to its network facilities to unaffiliated competitors providing service to both residential and business customers. Further, these competing providers must be providing such services either exclusively over their own facilities or predominately over their own facilities. Section 271(c)(1)(A), in relevant part, provides:

> "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 specifying the terms and conditions under which the Bell operating company ***is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers.*** For the purpose of this subparagraph, ***such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or***

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> ***predominantly over their own telephone exchange service facilities*** . . . (47 USC § 271(c)(1)(A); emphasis added.)

Thus, to be entitled to interLATA relief under Track A, Ameritech Michigan must show that there is facilities-based competition for both residential and business customers.

B. The MPSC Recognizes That There Is No, Or Virtually No, Competition, Either Facilities-Based Or Not

While the State of Michigan has attempted to deregulate the local exchange telephone market, the MPSC has recognized that deregulation does not equal competition. As explained by Chairman John Strand:

> "The one thing I do know is that deregulation is not necessarily the same thing as competition and the Commission believes that basically both must go hand in hand.
>
> A good analysis is one of the telephone industry. The telephone industry to a large extent over the last four or five or six years has been substantially deregulated; ... The only real competitive market is in the long distance interstate market and that basically only has three main players and a lot of small ones. Yet, rates in that area have declined by approximately 60 to 70 percent over the last 15 years.
>
> Conversely, we have deregulated to a large extent in the intrastate area, but in most cases most people still only have one choice. I can tell you the stories we have heard time and time and time again of people who have said my local phone bill is muddled. We have had our rates raised locally or stayed the same locally; yet, basically decline overall on an interstate long distance basis. The result is it's cheaper in many cases to call California than it is five miles down the road." (August 6, 1996 Comments made during a Public Hearing in MPSC Case No. U-11076).

Further, in approving the application of Ameritech Communications, Inc. to provide local exchange service in MPSC Case No. U-11053, this MPSC stated:

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> "In reaching its decision, the Commission places emphasis on the differences between the current levels of competition in the local exchange and long distance markets. ***There is virtually no competition in local exchange markets at this time.*** However, competition does exist in the interLATA market." (August 28, 1996 Order, p 28.)

The MPSC has recognized there is no, or virtually no, competition in the local telephone market, let alone a facilities-based competitor for both residential and business subscribers.

C. Ameritech Michigan Has Not Shown The Existence of Facilities-Based Competition For Residential Customers

In its filing with the MPSC, Ameritech Michigan did not establish that residential customers are receiving local exchange service through local loops owned and deployed by competing providers. Yet, it is the local loops which are the predominant physical plant (i.e., facilities) comprising a local telephone system. Apparently, Ameritech Michigan contends that a competing provider is providing service over its own facilities to residential customers because one competing provider is purchasing unbundled loops from Ameritech Michigan and using those unbundled loops to serve a few residential customers. Such a contention ignores the fact that Congress sought to promote "meaningful facilities-based competition"[5] which cannot come about if service to all customers is being provided over a single set of network facilities. A definition of "facilities-based residential competition" should require a competitor's ownership and deployment of switches, trunks and some subscriber loops which are being used to serve residential customers. Such a definition promotes sound competitive

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[5]Federal Act's Conference Report, p 148.

policy and represents the type of extensive deployment of alternative network facilities envisioned by Congress.

In any event, the number of residential customers being provided service by competitors is so small that it is clearly inconsequential and there is no meaningful competition in Michigan. The data filed by Ameritech Michigan with the MPSC indicates that only 3,612 residential customers are being served by competing local exchange carriers. (Ameritech Michigan's response to Attachment A in MPSC Case No. U-11104, November 12, 1996, p. 16). This number is of no consequence when compared to the nine million residents in the State of Michigan and the fact that Ameritech serves over 3.2 million residential access lines.[6] There is simply no competitor who is providing any meaningful residential service either exclusively over its own facilities or predominantly over its own facilities to justify Ameritech Michigan's claim that it has satisfied Track A of the Federal Act. Ameritech Michigan has not satisfied Track A and its request to be found in compliance with the competitive checklist is premature.

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[6]As a result, Ameritech Michigan still serves over 99.88% of all customers in its local exchanges. While Congress did not impose a metrics test, Congress did envision "meaningful competition" before allowing the RBOCs into the long distance market.

IV. MARKET CONDITIONS DO NOT JUSTIFY ALLOWING AMERITECH MICHIGAN TO ENTER THE IN-REGION INTERLATA LONG DISTANCE MARKET AT THIS TIME

A. Within The State Of Michigan, Access To Municipal Rights-Of-Way Is Not Available On A Nondiscriminatory Basis

1. Many Local Municipalities Are Imposing Extensive Regulations And Franchise Fees On New Providers

A number of Michigan municipalities have enacted telecommunications ordinances which would require new telecommunications providers to obtain franchises, pay franchise fees and comply with other onerous conditions before being permitted to provide telecommunications services within their municipality. For limited example, the City of Troy passed a telecommunications ordinance proposing a franchise formation fee of $10,000.00 and an annual fee which could equal five percent of gross revenue. Section 9(1) of Troy's Telecommunication Ordinance states:

> "(1). . . a Grantee shall pay:
>
> (a) A Franchise formation fee (i) for Franchises of $10,000.00; or, (ii) for Licenses of $2,000.00; and
>
> (b) An annual fee equal to the lesser of (i) 5% of its gross revenue, or (ii) an amount determined as set forth in subsection (2)." (Exhibit 11.)

Yet, these are not the only onerous conditions imposed by the Troy Ordinance, which further provides:

> A. "The rates and charges of a Grantee . . . shall be subject to regulation by the City . . . . Changes to rates and charges shall

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