Ameritech's application would be "consistent with the public interest, convenience, and necessity." 55/

If the Commission nevertheless addresses this issue, it must give "substantial weight" to the Department of Justice's view that the public interest would not be served by Ameritech interLATA entry now because Ameritech's local markets in Michigan are not "fully and irreversibly opened to competition." 56/ The Commission must reject the plea made by the BOCs to ignore the state of local competition in analyzing the public interest ramifications of an application. The Commission also should take into account the fact that its decisions to reform the access charge and universal service regimes adopted transitional steps, many of which will not take effect for some time, and that the existing, largely unreformed access charge and universal service systems are not yet conducive to vibrant local competition.

First, the Commission should follow the public interest assessment of the Department of Justice, the nation's leading expert agency on competition issues. The Department convincingly demonstrates that BOC interLATA entry must be withheld until the BOC's local markets are "irreversibly opened to local competition." 57/ Ameritech's Michigan market has not met this standard. 58/

55/ 47 U.S.C. § 271(d)(3)(C).

56/ 47 U.S.C. § 271(d)(2)(A); DOJ Michigan Evaluation at 29.

57/ Id. at 29-30.

Specifically, the Department concluded that "there is no yet enough local competition in Michigan to warrant a general presumption of openness." 59/ While Ameritech attempts to show that a substantial portion of its market is "addressable" by competitors through collocation and unbundled network elements, the Department demonstrates that CLECs serve only 2.4 percent of the lines served by collocated offices and, at the current pace of conversions, it would take 23 years to cut-over 20 percent of those lines. 60/ Moreover, this does not even take into account the fact that a majority of Ameritech's customers are served by offices where CLECs have not yet collocated.

Where there is such limited competition, the Department concluded that "it is necessary to investigate carefully whether any remaining barriers would impede the growth of local competition in Michigan." 61/ Among the more significant barriers identified by the Department are: (1) the unavailability of unbundled switching and shared transport, which are needed to provide local service through the platform; (2) continuing performance problems with respect to wholesale support systems; (3) inadequate performance measures of wholesale support systems; and (4) troublesome indications of high blockage rates which could

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58/ Id. at 31.

59/ Id.

60/ Id. at 37 n.49.

61/ Id. at 31.

impair the quality of service offered by CLECs. 62/ Each of these deficiencies provides an independent basis for concluding that the public interest does not support interLATA entry.

Based on the Department's interpretation of the public interest test, it is apparent that the Commission must reject Bell Atlantic's argument that the FCC may not consider the state of local competition in its public interest analysis, as well as BellSouth and SBC's argument that the public interest presumptively will be served by BOC interLATA entry if appropriate safeguards are in place. 63/ Both of these arguments rest on the false premise that forces short of actual competition (*i.e.*, the availability of checklist items and the existence of regulatory safeguards) will constrain BOC anticompetitive behavior. If this is what Congress intended, there would have been no need to add a separate public interest determination to Section 271.

The Commission should compare the nascent state of entry into the local market with the competitive reality in the long-distance market, which the Commission has recognized time and again. While the former monopoly still has over half the market, there are no dominant carriers in the long distance business; overall long distance rates have declined significantly over the past several years;

62/ Id. at 34.

63/ Bell Atlantic Comments at 11; BellSouth/SBC Comments at 13.

and the automated operational support systems needed for customers to switch long distance carriers have been in place -- and fully de-bugged -- for over a decade. 64/ By contrast, it is the local telecommunications market that is dominated by BOC monopolies today, and that cannot be opened to competition until the BOCs comply with their statutory obligations to offer unbundled network elements and other checklist items on a reasonable basis. While regulatory safeguards and checklist compliance will set the stage for local competition, they are not sufficient to ensure that all the roadblocks to effective competition have been removed.

Congress clearly intended that the public interest test would include factors other than those considered elsewhere in Section 271. For example, one issue that is relevant to the public interest determination is Ameritech's recent practice of offering its local customers substantial volume and term discounts, with equally substantial penalties for early termination. As WorldCom explained in its comments, the impact of these arrangements is to "lock up" Ameritech's customers before competitive alternatives are available to those customers, thereby foreclosing choices customers do not yet know they will have. 65/ If CLECs are unable to compete because there are so few customers that are able to take competitive service, Ameritech's entry into the interLATA would only serve to extend its

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64/ Motion of AT&T to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995).

65/ WorldCom Comments at 8; see also LCI Comments at 21-28.

monopoly into the long distance market as well. This plainly is not in the public interest.

The Commission also must recognize that its recently issued Universal Service Order and Access Reform Order only initiate the first steps in a long transition towards rate structures that are fully conducive to local competition. As Sprint points out, the current access charge and universal service regimes significantly impede local competition and would give local incumbents such as Ameritech, and their long distance affiliates, undeserved advantages over their unaffiliated local and long distance competitors. 66/ For example, pending the development of cost models that would enable high cost support to be distributed on a competitively neutral basis both to large incumbent LECs such as Ameritech and to competitive entrants, Ameritech continues to receive implicit support with respect to those areas. Competitors still have no access to those support flows, and therefore cannot compete against Ameritech to serve customers in those areas. It would be unreasonable to enable Ameritech to offer its rural customers full service packages (local plus long distance) when the lack of full universal service reform prevents other parties from offering such packages.

Similarly, while the Commission created a transition path that it stated would ultimately lead toward cost-based interstate access charges in the

66/ Sprint Petition to Deny at 45-47.

Access Reform Order, 67/ that transition will take some time to implement. In the interim, above-cost charges for certain interstate access elements and below-cost charges for other elements continue to significantly distort local and long distance competition. Ameritech's refusal to permit purchasers of unbundled local switching to combine switching with shared transport and to serve as the access provider also robs entrants of an important, market-based avenue to address above-cost access charges. 68/

In sum, for all the reasons given above, entry by Ameritech into the interLATA market would not be consistent with the public interest.

67/ WorldCom notes that it does not agree that all the Commission's decisions in the Access Reform Order will make rates more cost-based, and reserves the right to challenge elements of that order.

68/ Access Reform Order at ¶ 337.

CONCLUSION

For the reasons given herein and in WorldCom's initial comments, the Commission should deny Ameritech's application for interLATA entry in Michigan.

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