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Ameritech Reply to Opposition
Ameritech-Michigan
July 29, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)
In the Matter of)
)
Application by Ameritech)
Michigan Pursuant to)
Section 271 of the)
Telecommunications Act of)
1996 to Provide In-Region,)
InterLATA Services in)
Michigan)
_____)

CC Docket No. 97-137

REPLY OF AMERITECH MICHIGAN ON ITS MOTION TO STRIKE

Ameritech Michigan ("Ameritech") hereby replies to the July 17, 1997 opposition (the "Opposition") of Brooks Fiber Communications of Michigan, Inc. ("Brooks Fiber") to Ameritech's motion to strike Brooks Fiber's June 10, 1997 comments in opposition ("Comments") to Ameritech's application to provide in-region interLATA telephone service in Michigan. As Ameritech demonstrated in its motion to strike, Brooks Fiber's Comments are replete with factual assertions regarding alleged deficiencies in Ameritech's application that are not supported by affidavits or sworn statements and, accordingly, the Commission should strike those Comments in their entirety.

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Brooks Fiber rests its entire Opposition on the argument that there is no basis for Ameritech's motion because the § 271 procedural rules do not *specifically* require affidavits of parties opposing an application.¹ Brooks Fiber does not, however, address any of the arguments in Ameritech's motion. In particular, Brooks Fiber fails to address the fact that Sections 63.20(d) and 63.52(c) create an independent requirement that commenters in Section 271 proceedings support their factual assertions with affidavits.² Brooks Fiber also ignores the fact that the Commission's rules invariably require affidavits from parties making factual assertions in opposition to Commission licensing applications such as this.³

Thus, at most, the failure of the Section 271 procedural rules specifically to mention the duty of

¹ Opposition at 1-2, citing *PROCEDURES FOR BELL OPERATING COMPANY APPLICATIONS UNDER NEW SECTION 271 OF THE COMMUNICATIONS ACT*, Public Notice, FCC 96-469 (rel. Dec. 6, 1996) ("Public Notice").

² See Ameritech's motion to strike at 3.

³ See the numerous Commission rules cited in footnote 3 of Ameritech's motion to strike. Clearly, the other parties to this proceeding recognized that an affidavit was required when making factual assertions in oppositions, as the overwhelming majority of the commenters submitted such affidavits.

commenters to support factual assertions with an affidavit was an omission that did not affect that pre-existing duty.

If it nonetheless believes that the omission precludes it from granting Ameritech's motion at this time, the Commission can and should rectify the oversight by amending the Section 271 rules immediately. Those parties that have already filed comments (including Brooks Fiber) should be given one week or less to submit any affidavits necessary to support factual assertions in their comments.⁴ If Brooks Fiber does not file such affidavits, the motion to strike should be granted.⁵

If the Commission chooses to deny the motion to strike, it should then treat the Comments as an informal pleading, and should accord little weight to the Comments

⁴ This approach would be fair to both Ameritech and Brooks Fiber, and consistent with Commission precedent permitting parties submitting deficient pleadings to correct the deficiencies before striking the pleading. See, e.g., Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Humboldt, Kansas), 1997 FCC LEXIS 2195 (1997); Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Brackettville, Texas), 1996 FCC LEXIS 6740 (1996).

⁵ See, e.g., Amendment of Section 73.606(b) Table of Allotments, TV Broadcast Stations (Kailua, Hawaii), 9 FCC Rcd 7819 (1994) (dismissing petition to allot UHF station where applicant, after being given opportunity to correct deficiency, failed to submit affidavit verifying that statements in his petition were true).

or to the comments of any other parties that rely on factual assertions in the Comments.⁶ In addition, it must still amend the Section 271 rules prospectively to ensure fairness for future applicants.

The unfairness of not enforcing the affidavit requirement for all parties to this proceeding is easily demonstrated. For example, Brooks Fiber's Comments contained numerous false and unsupported accusations about the allegedly poor performance of Ameritech on loop provisioning.⁷ After those accusations were made, Brooks Fiber and Ameritech jointly investigated the situation and found that the figures cited in the Comments were wrong and unduly unfavorable to Ameritech. Ameritech therefore submitted information, verified by both parties and supported by affidavit, correcting the record with regard to its loop provisioning for Brooks Fiber.⁸ However, even after allegations made by Brooks Fiber have

⁶ The Commission has consistently treated oppositions containing factual assertions not properly supported by affidavit as informal complaints entitled to little weight. *See, e.g.*, San Luis Obispo Limited Partnership, 11 FCC Rcd 9616 (1996); Salem Media of Ohio, Inc., 10 FCC Rcd 7757 (1995).

⁷ Comments at 17-25.

⁸ Ameritech's July 7, 1997 Reply Comments at 9-10 (relying on the Heltsley/Hollis/Larsen Reply Affidavit).

been demonstrated to be false (see n. 8), Brooks Fiber has failed to advise the Commission of the falsity of the original allegations either in its Reply filed on July 7 or in its subsequent ex parte contacts.

This is just one of the possible examples. Given Brooks Fiber's failure to verify any of its factual information by affidavit or to correct demonstrably inaccurate information, the Commission has no basis to conclude that any of Brooks Fiber's information is reliable. To use that information against Ameritech would be inequitable. It is particularly telling that even now, when Brooks could moot this motion to strike by filing an affidavit, it refuses to do so.

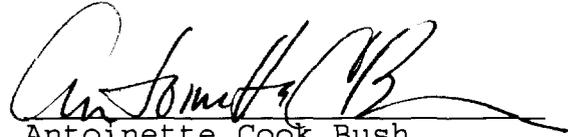
CONCLUSION

For the reasons set forth in this reply and Ameritech's motion to strike, the Commission should grant the motion and strike Brooks Fiber's Comments. Alternatively, the Commission should accord the Comments no more weight than is given to an informal complaint. In either

Ameritech Reply to Opposition
Ameritech-Michigan
July 29, 1997

case, the Commission should accord no weight to those portions of the comments of any other parties that rely on the unsupported factual assertions in the Comments.

Respectfully submitted,



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DATED: July 29, 1997

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply was mailed on this 29th day of July, 1997, via first class U.S. mail to the following:

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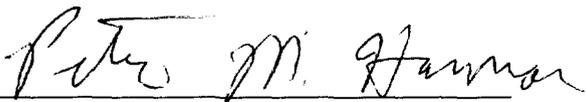
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