

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
A Request for the Amendment of	)	RM-9210
the Commission's Rules regarding	)	
Access Charge Reform and	)	
Price Cap Performance Review for	)	
Local Exchange Carriers	)	

REPLY OF AMERITECH

Ameritech<sup>1</sup> submits this reply to comments on the petition of CFA, ICA, and NRF (collectively "Petitioners") which requested that the Commission commence a rulemaking proceeding to prescribe interstate access charges "to cost-based levels which eventually should be based on forward-looking economic cost."<sup>2</sup>

I. RECENT COURT DECISIONS PROVIDE NO JUSTIFICATION FOR THE COMMISSION TO RETREAT FROM ITS MARKET-BASED APPROACH TO ACCESS REFORM.

Petitioners' supporters echo the claim that recent court decisions will frustrate the Commission's goals with respect to the facilitation of competition

<sup>1</sup> Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

<sup>2</sup> Petition at 9.

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and undermine the basis on which it decided to refrain, at this time, from prescribing access rates to forward-looking cost level.<sup>3</sup> The Commission, as a legislative agency, charged with implementing any of Congress's expressed directives on telecommunications, must reject such a notion out of hand. Especially in light of the court decisions that have been rendered to date, the process must be regarded as a good faith attempt by industry members, with reasonably differing views, to establish with certainty exactly what are Congress's directives in the Telecommunications Act of 1996 ("TA96"). Once a court rules in that regard and that decision becomes final,<sup>4</sup> it would be singularly inappropriate to regard the ruling as frustrating the Commission's goals.

This especially applies to the "discussion" taking place before the courts on the issues of shared transport and the rebundling of unbundled network elements ("UNEs"). They go to the very heart of how much Congress intended that new entrants should be able to rely on incumbents for the things they need to compete and how much those new entrants should be required to do for themselves. What Congress's vision is on this point is extremely important. However, once that vision is determined it should be taken as a "given."

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<sup>3</sup> See *e.g.*, TRA at 11-15, AT&T at 7.

<sup>4</sup> Ameritech would not deprive the Commission of the ability itself to challenge any ruling to a higher court.

In that regard, Petitioners' and their supporters' view that leaving states in charge of UNE pricing will destroy the prospects for competitive development is misplaced. As Ameritech noted in its comments, there is nothing to indicate that states will shirk their responsibilities. Moreover, as even CPI noted,<sup>5</sup> many states have effectively adopted the Commission's approach to cost. And while CPI claims with apparent distaste that one state is required by state law to set rates at "actual" or "embedded" costs,<sup>6</sup> that result cannot be regarded as abhorrent since that standard has been the basis on which rates have been determined to be reasonable in a "monopoly" environment for years. Certainly, to the extent that the forward-looking cost standard is more aspirational than reality-based, requiring the payment of "actual" cost would avoid any claim that the rates would be confiscatory.

In any event, the essence of the Commission's decision in the Access Reform Order was to delay prescribing access rates until Congress' competitive vision had been given an opportunity to work. Given the significant potential competitive downside to prescribing rates, in terms of market distortion and discouraging competitive entry,<sup>7</sup> the validity of that decision has not changed simply because the determination of Congress' vision is itself evolving. Moreover,

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<sup>5</sup> CPI at 5.

<sup>6</sup> *Id.*

<sup>7</sup> Access Reform Order at ¶46.

since the court decisions in question are still subject to review, it would be at best premature for the Commission to make assumptions and declare competition a failure.

## II. COMPETITIVE PRESSURE EXISTS AND IS INCREASING.

Indeed, as Chairman Kennard recently noted in a speech given on February 9, before the National Association of State Utility Consumer Advocates:

There are those, of course, who have already declared the 1996 Telecom Act to be a failure. The King is dead. Well, I say long live the King. Congress got it right: competition beats monopoly as the way to deliver the best telecom services to the American people. And the signs are that competition is indeed coming.

We recently held a hearing at the FCC on the status of local telephone competition. And it was clear to anybody paying attention that the Act has successfully moved us in the right direction -- toward greater competition. Have we moved far enough? Is competition as broad or as deep as we would like? No. But we're beginning to see the early, promising buds of competition. . .

Petitioners' complaints about the development of local competition must be examined in the context of the prevalent market circumstances. The fact that there is minimal residential competition is due to the pricing of residential service which is generally low relative to cost and therefore less attractive for competitive entry. Thus, as a general matter, conscious regulatory policy decisions have slowed residential competition. Instead, competitors will prefer to pick off only those pieces of the residential market where there are higher markups or synergies with existing operations such as intraLATA toll, voice mail, and

Internet access. If the Commission assesses the development of competition only in market segments where, because of regulatory decisions, entry is economically feasible, competition will, in fact, be shown to be much more robust. Moreover, the Commission's market-based approach will allow for a reasonable transition to cost-based rates as local rate restructuring and universal service policies are put in place. As these companion policies are implemented, competition will begin to develop in all segments of the market, including residential, and this competition will drive down access rates accordingly.

Further, with respect to access competition, despite CPI's conclusory statement to the contrary,<sup>8</sup> recent industry mergers and consolidations are placing significant competitive pressures on LEC access rates;<sup>9</sup> and as the Commission itself noted, prescribing access rates could actually have a detrimental effect on the development of additional competition.<sup>10</sup> Certainly, as Ameritech pointed out,<sup>11</sup> if rates are prescribed to a hypothetical forward-looking cost figure, no competitor except the hypothetically most efficient would bother to enter the market. That, of course, would deny customers benefits that could be

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<sup>8</sup> CPI at 2.

<sup>9</sup> See, Ameritech comments at 6-9.

<sup>10</sup> Access Reform Order at ¶46.

<sup>11</sup> Ameritech comments at 10-11.

realized from a market in which competition was more vigorous and multi-dimensional.

III. THERE IS NO OTHER JUSTIFICATION FOR THE COMMISSION TO PRESCRIBE ACCESS RATES AT THIS TIME.

It must be remembered that current rates have not been shown to be unlawful. For price cap carriers, compliance with the formula prescribed by the Commission creates a presumption of lawfulness. Certainly, unless those rates are shown to be unlawful, there is a question, under §205 of the Act, as to the propriety of the Commission's prescribing rates based on any other standard.

Further, MCI's claim that the current level of access charges constrains the financial resources available to IXC's to pursue a competitive local strategy<sup>12</sup> must be taken with a grain of salt. Access charges -- assessed on all IXC's alike -- are flowed through in rates (unlike some access rate reductions) and do not have a net affect cash flow.<sup>13</sup> On the other hand, high access rates imply greater cash flow and profitability in the local exchange business which should make it easier to justify entry and attract capital for that purpose.

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<sup>12</sup> MCI at 2.

<sup>13</sup> That is, unless MCI would maintain that it would not reduce rates if its access costs were reduced.

Finally, Sprint's proposal that BOCs whose access rates are not at forward-looking cost levels be denied 271 authority cannot be squared with the statutory language that prohibits the Commission from expanding the 271 checklist.<sup>14</sup>

Given these facts, the Commission's decision to refrain from prescribing access rates at this time while competition is given a chance to develop as intended by Congress under TA96 is still fundamentally sound.

Respectfully submitted,



Michael S. Pabian  
Counsel for Ameritech  
Room 4H82  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025  
(847) 248-6044

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<sup>14</sup> §271(d)(4).

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply Comments of Ameritech has been served on the parties listed on the attached service list, via first class mail, postage prepaid on this 17th day of February, 1998.

By:

A handwritten signature in black ink, appearing to read "Todd H. Bond", written over a horizontal line.

Todd H. Bond

MARK COOPER  
CONSUMER FEDERATION OF AMERICA  
SUITE 604  
1424 16TH STREET NW  
WASHINGTON DC 20036

BRIAN R MOIR  
ATTORNEY FOR  
INTERNATIONAL COMMUNICATIONS  
ASSOCIATION  
2000 L STREET NW SUITE 512  
WASHINGTON DC 20036-4907

CATHY HOTKA  
VICE PRESIDENT INFORMATION  
TECHNOLOGY  
NATIONAL RETAIL FEDERATION  
327 7TH STREET NW  
WASHINGTON DC 20004

JAMES S BLASZAK  
ATTORNEY FOR  
AD HOC TELECOMMUNICATIONS USER  
COMMITTEE  
SUITE 900  
2100 L STREET NW  
WASHINGTON DC 20036

LEON M KESTONBAUM  
JAY C KEITHLEY  
H RICHARD JUHNKE  
ATTORNEY FOR  
SPRINT CORPORATION  
1850 M STREET NW 11TH FLOOR  
WASHINGTON DC 20036

ALAN BUZACOTT  
REGULATORY ANALYST  
MCI TELECOMMUNICATIONS  
CORPORATION  
1801 PENNSYLVANIA AVENUE NW  
WASHINGTON DC 20006

JOSEPH DIBELLA  
ATTORNEY FOR  
THE BELL ATLANTIC TELEPHONE  
COMPANIES  
EIGHTH FLOOR  
1320 NORTH COURT HOUSE ROAD  
ARLINGTON VA 22201

CATHERINE R SLOAN  
RICHARD L FRUCHTERMAN III  
RICHARD S WHITT  
DAVID PORTER  
ATTORNEYS FOR WORLDCOM INC  
1120 CONNECTICUT AVE NW SUITE 400  
WASHINGTON DC 20036

GENEVIEVE MORELLI  
EXECUTIVE VICE PRESIDENT AND  
GENERAL COUNSEL  
THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION  
1900 M STREET NW SUITE 800  
WASHINGTON DC 20036

ROBERT J AAMOTH  
ATTORNEYS FOR  
THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION  
1200 19TH STREET NW SUITE 500  
WASHINGTON DC 20036

ROBERT B MCKENNA  
RICHARD A KARRE  
ATTORNEYS FOR  
U S WEST INC  
SUITE 700  
1020 19TH STREET NW  
WASHINGTON DC 20036

RONALD J BINZ PRESIDENT  
DEBRA R BERLYN EXECUTIVE DIRECTOR  
JOHN WINDHAUSEN JR GENERAL  
COUNSEL  
COMPETITION POLICY INSTITUTE  
1156 15TH STREET NW SUITE 310  
WASHINGTON DC 20005

CHARLES C HUNTER  
CATHERINE M HANNAN  
ATTORNEYS FOR  
TELECOMMUNICATIONS RESELLERS  
ASSOCIATION  
1620 I STREET NW SUITE 701  
WASHINGTON DC 20006

MARK C ROSENBLUM  
PETER H JACOBY  
ROY E HOFFINGER  
JUDY SELLO  
AT&T CORP  
295 N MAPLE AVE ROOM 3245I1  
BASKING RIDGE NJ 07920

JAMES U TROUP  
AIMEE M COOK  
ATTORNEYS FOR  
THE RURAL TELEPHONE COMPANIES  
1801 K STREET NW SUITE 400K  
WASHINGTON DC 20036-1301

ROBERT J AAMOTH  
ATTORNEY FOR  
EXCEL TELECOMMUNICATIONS INC  
SUITE 500  
1200 19TH STREET NW  
WASHINGTON DC 20036

JAMES M SMITH  
VICE PRESIDENT  
LAW AND PUBLIC POLICY  
EXCEL TELECOMMUNICATIONS INC  
3000 K STREET NW SUITE 300  
WASHINGTON DC 20007

WAYNE V BLACK  
C DOUGLASS JARRETT  
SUSAN M FAFELI  
ATTORNEYS FOR  
AMERICAN PETROLEUM INSTITUTE  
1001 G STREET NW SUITE 500 WEST  
WASHINGTON DC 20001

ANNE K BINGAMAN  
DOUGLAS W KINKOPH  
LCI INTERNATIONAL TELECOM CORP  
SUITE 800  
8180 GREENSBORO DRIVE  
MC LEAN VA 22102

ROCKY N UNRUH  
ATTORNEY FOR  
LCI INTERNATIONAL TELECOM CORP  
ONE MARKET  
SPEAR STREET TOWER 32ND FLOOR  
SAN FRANCISCO CA 94105

MARY MCDERMOTT LINDA KENT  
KEITH TOWNSEND HANCE HANEY  
UNITED STATES TELEPHONE  
ASSOCIATION  
1401 H STREET NW SUITE 600  
WASHINGTON DC 20005

M ROBERT SUTHERLAND  
RICHARD M SBARATTA REBECCA M LOUGH  
ATTORNEYS FOR  
BELLSOUTH CORPORATION  
BELLSOUTH TELECOMMUNICATIONS INC  
1155 PEACHTREE STREET NW SUITE 1700  
ATLANTA GA 30306-3610