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

Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability	))))	CC Docket No. 98-32

COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

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SUMMARY

The Commercial Internet eXchange Association ("CIX") looks forward to the day when a multitude of broadband data access options are available to the American public. A grant of the Ameritech Petition, however, is quite unlikely to hasten that day. CIX is concerned that Ameritech's Petition, if granted, would extend the incumbent LEC's local access monopoly to the Internet. Specifically, CIX finds that:

- Competition and innovation on the Internet continues at an unprecedented pace. Ameritech's factual premises that the Internet is too congested, and fails to respond to market demand, is fundamentally flawed. CIX believes that Americans living in rural areas also deserve policies that promote efficient and competitive data access services, and not monopolies, in rural areas.
- Internet competition and innovation is best served through a regulatory structure that permits broad access to the incumbent LEC's network. Ameritech's approach, by contrast, would close its network to competitive providers. The Ameritech plan for a Competitive Carrier subsidiary fails to meet Congressional and Commission standards that protect competition from RBOC cross-subsidy and access discrimination.
- Ameritech neglects to address key competitive and public interest issues, including: (a) failure to describe how competing independent Internet Service Providers would connect to customers through the Ameritech broadband data services; (b) failure to address the inherent discrimination that results from deployment of xDSL when independent ISPs lack collocation; (c) failure to articulate what improvements would be made to the Internet backbones.
- The 1996 Act properly places competitive safeguards on Bell Company participation in the interLATA services market to ensure open, nondiscriminatory, local competition. Consistent with this goal, the 1996 Act also limits the Commission's

authority to forbear from these cornerstones of the legislation -- the Commission may not forbear from Section 251(c), 271, and 272 as Ameritech requests.

- Local competition is well served by the policies for network unbundling (including elements of the incumbent LEC's data access equipment), wholesale resale, and Open Network Architecture. A loss of these competitive safeguards would jeopardize the present and future broadband data access options for the American consumer.

For these reasons, CIX does not support the Ameritech Petition.

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COMMENTS OF THE
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The Commercial Internet eXchange Association ("CIX"), by its attorneys, files these comments on the March 5, 1998 "Petition of Ameritech" (the "Ameritech Petition" or "Petition"). CIX is a trade association that represents over 150 Internet Service Providers who handle over 75% of the United States' Internet traffic.[1] CIX works to facilitate global connectivity among commercial Internet service providers ("ISPs") in the United States and throughout the world. A CIX membership list is attached hereto. CIX is quite concerned that a grant of the Ameritech Petition would amount to nothing less than a new RBOC data local access monopoly, to the detriment of the innovative and competitive Internet services.

Introduction

CIX heartily supports the development of new telecommunications services that offer data users more innovative opportunities to access the Internet. Thus, in addition to traditional voice-grade wireline access, CIX anticipates the day when local competition among telecommunications carriers, as envisioned by the 1996 Act, will yield a host of exciting alternatives to the current incumbent Local Exchange Carrier ("ILEC") monopoly services.

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1 The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

These new providers and services will surely compete for the American consumer in terms of price (e.g., services that are competitive with ILEC ISDN offerings), quality of service (e.g., more responsive installation and customer care services), access convenience and portability (e.g., terrestrial wireless data and satellite data services), as well as a greater bandwidth options with alternative technologies engineered for data packet-switched communications.

CIX believes that competition for Internet services is well-served by the Telecommunications Act of 1996 ("1996 Act") and the Commission's on-going policies for competitive safeguards governing ILEC participation in the information services markets. Consistent with these regulatory and statutory goals, incumbent LECs must continue to keep the underlying telecommunications services (which should include unbundled elements of those services) open on equal and affordable terms for all competing telecommunications and Internet providers. Indeed, because the local access to both business and residential customers is still wholly in the hands of the ILEC, a competitive information and Internet market *can only* exist when all Internet providers have access at competitive prices to the same underlying ILEC telecommunications service offerings.

In CIX's view, the Ameritech Petition is fundamentally antithetical to these principles of competitive safeguards, open access to telecommunications services, and rigorous competition among Internet providers. If granted, it could devastate the vast majority of ISPs that lack facilities of their own and must rely on "equal access" to the ILEC network in order to reach their residential and business customers. Similarly, CLECs and other telecommunications carriers that could offer xDSL to ISPs in competition would be deprived of their unbundling and resale rights.

Further, while it has yet to demonstrate the minimum statutory criteria for in-region local competition, Ameritech vaguely contends that its own in-region interLATA entry can solve a purported "lag in deployment and innovation" of the Internet backbones and xDSL deployment. Petition at 4. In CIX's view, Ameritech asks the Commission to act in ways that exceed its statutory forbearance authority and that are otherwise contrary to the innovation directives of

Section 706 of the 1996 Act. CIX is confident that the success of the Internet cannot be measurably improved on by Ameritech, and may be significantly harmed if the Commission approves Ameritech's vague plan for a local data access monopoly.

Discussion

I. Ameritech Misapprehends Competition and Innovation on the Internet.

The Ameritech Petition rests on a very simple "public interest" goal: encourage Ameritech to provide regional Internet backbone services and xDSL, by eliminating and modifying its statutory and regulatory obligations. Ameritech uses four arguments to support its claims that innovation and competition on the Internet would be better off with Ameritech's deregulated participation. *First*, it cites to Bell Atlantic's recent Section 706 Petition, which claims (errantly, in CIX's view) that the Internet backbones are "too slow, too congested, to unstable . . . [and] . . . only getting worse."[2] *Second*, Ameritech uses the recent Section 706 Petition of U S West and argues that rural Americans in Ameritech's region "face additional choke points that show this traffic even more."[3] *Third*, Ameritech restates it arguments in the Access Charge Reform proceeding that Internet traffic is causing "major [PSTN] network

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2 "Petition of Bell Atlantic Corporation," CC Dkt. No. 98-11, White Paper at 57-58 (Jan. 26, 1998) ("Bell Atlantic Petition").

3 Petition at 5.

congestion problems."[4] Finally, Ameritech offers its own Study to bolster the proposition that less regulation will help the RBOCs to innovate quicker.[5]

CIX finds that the Petition is essentially grounded on factually dismal and anecdotal perceptions of the state of competition, investment, and innovation on the Internet. In sum, the goals of Section 706 for "advanced telecommunications capability to all Americans" are unlikely to be realized by granting the Petition.

A. There Is No Internet Capacity Crisis to be "Solved" By Ameritech

Contrary to assertions of Ameritech of a "lag in deployment and innovation,"[6] the Internet industry is experiencing a period of unprecedented growth. The number of Internet hosts that store information, interact, and relay communications increased from 1.3 million in 1993 to 19.5 million in 1997.[7] In the United States, there exist over 4,000 Internet Service Providers and over 60 million Internet users.[8] The extraordinary growth of the Internet is due to the efforts of many different industries and technological advances. While traditional circuit-switched telephony continues to struggle towards open competition, the Internet Service Provider industry

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4 Id. at 7. CIX notes that the alleged "Internet PSTN congestion" has been thoroughly considered in the Access Charge Reform Proceeding, and the Commission's pending Notice of Inquiry (CC Dkt. 96-263), is designed specifically to address the Commission's response, if any, to that issue. Certainly, the Commission has found that, after review of Ameritech's claims of Internet congestion, no immediate response was warranted. Thus, Ameritech should properly direct further evidence, if any, to the Notice Of Inquiry proceeding, and should not initiate a new proceeding to relitigate old contentions.

5 James Prieger, "The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services" (dated Mar. 2, 1998) ("Ameritech Study").

6 Petition at 4.

7 Internet Domain Survey, July 1997, Produced by Network Wizards and available on the World Wide Web at <http://www.nw.com/>.

8 Id.

has been highly competitive from its inception, fostering low prices for residential and business Internet connectivity. As discussed below in Part I(B), this growth continues today. Ameritech claims, however, that it can improve the Internet.

First, and relying largely on the Bell Atlantic Petition, Ameritech claims that it can solve asserted Internet backbone issues: "there is significant congestion even at the highest levels (and fastest links) of the Internet backbone." Petition at 5. Ameritech's reliance on Bell Atlantic's factual assertions is misplaced. The level of demand for Internet bandwidth demonstrates that the Internet works well, it is not an indication of network "failure" in need of Ameritech's "unique" monopoly powers. Moreover, Ameritech fails to coherently explain that the many Internet companies today making market-based investments on the Internet backbones are reacting improperly to market demand for bandwidth. Instead, Ameritech relies on Bell Atlantic's views that industry "consolidation" focuses today's Internet providers away from investment in the Internet. Petition at 9-10. This explanation is nonsensical: "consolidation" does not cause purported Internet congestion. Indeed, Bell Atlantic's expert *speculates* that backbone consolidation will "spur investment in infrastructure" and "raise . . . quality of service" as it raises prices for ISPs, not that it would cause Internet congestion.[9] This is borne out by the level of actual and ongoing investment on the Internet, as discussed in Part I(B) below.

Borrowing from US West's Section 706 Petition, Ameritech then asserts that, if deregulated, it would improve the Internet service for rural Americans using ADSL technologies. CIX questions the factual premise that U S West's deployment of ADSL will bring broadband services to rural America, as CIX comprehends that there are technical distance limitations associated with ADSL that would limit such offerings (see Part II (A)(2), below). Thus, in rural

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9 Bell Atlantic Petition, Attachment 1, Decl. of T. Hazlett at 4, 8.

areas where the population is unlikely to be relatively close-in to the ILEC central office, ADSL may not be a feasible high bandwidth data access solution.[10]

Perhaps Ameritech's perception of the Internet as virtually on the brink of "chaos" is explained by the fact that the Internet is fundamentally unlike the monopoly network that Ameritech owns and operates on an end-to-end basis. Compared to the monopoly local telecommunications network, participation and risks on the Internet must surely seem "substantial" (Petition at 10) because the Internet is inherently decentralized in nature, and responds quickly to market demand. CIX believes it would be a grave mistake to permit Ameritech to superimpose its more centralized, monopoly model on the Internet.

Ameritech's perception is also explained by its comparatively limited involvement in the growth of the Internet. Other Internet providers, including all major backbone providers, have been in the Internet business for many more years, have far more Internet service experience, and have assembled management and technical teams that have literally built today's Internet. Ameritech's lack of involvement in the Internet suggests that it may not fully appreciate the promises its Petition makes. For example, if the Petition is granted, exactly how would Ameritech "revolutionize" the Internet backbones? Ameritech does not say. It seems that Ameritech would enter the market in one of two ways: either by purchasing an existing backbone provider, or by laying its own lines. The acquisition of an existing provider, however, would not cure any of the alleged network congestion issues that it claims is lacking in today's Internet. Alternatively, laying lines to create a new multi-state network takes significant time

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10 Given the technical limitations of ADSL, Ameritech may not be best positioned to meet the challenge of providing broadband to rural areas. In the short term, it appears that providers of alternative technologies such as satellite or wireless providers may be better suited to overcoming the distance limitations of wired terrestrial systems. As such, perhaps the Commission should focus on deregulatory efforts to promote these services.

and bears with it considerable uncertainty. Either way, the "public interest" promises that Ameritech makes for enhancing short-term Internet capacity[11] are likely to ring hollow.

Ameritech's aspirations for a more robust backbone are more likely to be confronted by the same market realities faced by the several other Internet backbone companies today: the *market demand* for high capacity network services will drive the supply of Internet network deployment. Thus, the presence of Ameritech, as one among several companies providing Internet backbone service, is neither a necessary nor a sufficient component to achieve the market-based deployment of higher capacity on the Internet.

B. Market Investment and Innovation in the Internet Backbones Are Significant and Fundamentally Sound

Every indication is that the Internet backbones are rapidly upgrading as quickly as possible to meet network demand and to offer a host of innovative services. All of the major backbone providers including AT&T, MCI, Sprint, PSINet, UUNET and Qwest are rapidly deploying advanced broadband networks. Several examples sufficiently put the Ameritech's notion of inadequate investments on the backbones to rest.

- Qwest is currently constructing a 16,000 mile network that is scheduled to be completed in the 2nd quarter of 1999, of which currently only 3,500 miles of this are activated.[12] This is obviously a very aggressive growth plan.
- Sprint on September 3, 1997, announced that it would increase bandwidth by 400 percent. Sprint stated that this upgrade "allows Sprint to continue to meet and stay ahead of the increasing traffic demands on its Internet backbone."[13]

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11 See, e.g., Petition at 30 ("Ameritech is ready and willing to invest in advanced high-speed, broadband facilities and equipment . . .").

12 http://www.qwest.com/press/12998.html

- In October of 1997, AT&T announced that it would offer its Worldnet Internet Service over its own IP backbone, rather than through it previous arrangement where it contracted its Internet services to other providers. [14]
- PSINet acquired the rights to use 10,000 miles of IXC's OC-48 switched network that will be used for its Internet backbone capacity. This network is 50 times faster than the T3 backbone that is dominant today. In a press release announcing this increased capacity PSINet stated, "We aren't dependent on telcos for our network infrastructure: as a result, we can deliver our services in a more timely manner and are less effected by incidents that affect other carriers' networks and business plans."[15] PSINet emphasized that they have the bandwidth necessary to support customers requirements for the foreseeable future.
- UUNET in October of 1997 announced its new service OCDirect. This service is designed to meet the bandwidth requirements for high-capacity users such as Internet service providers, Internet content providers, large corporations, and organizations with large Web sites. UUNET is able to offer this service as a result of a $300 million dollar investment in network infrastructure, which significantly raised the speed of its backbone.[16]

(Footnote continued from previous page)

13 http://www.sprint.com/sprint/press/releases

14 http://www.att.com/press

15 http://www.psi.net/news/pr/98/ixccomplete.html

16 http://www.us.uu.net/press/oc3.shtml

More generally, as one industry expert recently noted that, while three years ago available Internet bandwidth doubled every year, bandwidth today doubles every 4 to 6 months.[17] For Ameritech to insinuate that adequate investment in the backbones is not occurring is nonsensical.

In CIX's view, the sources of significant congestion on the Internet lie not on the backbones, but primarily at the information provider's source.[18] Network Access Point ("NAP") congestion is also far less frequent today and, to the extent that it occurs, Internet providers oftentimes resolve those issues without regulatory intrusion through private peering arrangements that by-pass the NAPs or through routing to more efficient NAPs to avoid temporary network congestion.

C. Competition and Innovation on the Internet is Better Served Through Open Access to Advanced Local Telecommunications Services

CIX certainly applauds Ameritech's efforts to deploy xDSL technologies. However, to better serve users' data and telephone needs, the ILEC's access lines and network (whether combined with ADSL or other technologies) must remain open with competitive safeguards, including unbundling and resale, for robust competition to develop. This is not just the statutory mandate of the 1996 Act, but a principle that must be held if local telecommunications competition is to emerge. If not, Americans will find themselves -- once again -- locked into local access monopoly that seemed state-of-the-art at one time, but which will eventually be surpassed by ongoing progress of the competitive technology markets.

Ameritech correctly points out that the deployment of efficient local access technologies is essential to the continuing growth of the Internet: "the most significant choke point in data

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17 Statement of Alan Taffel, UUNET Technologies, at Internet World (Los Angeles, CA March, 1998).

18 Specifically, congestion can occur because of limitations of the capacity of the content provider's server.

communications . . . [is] . . . the LEC network." Petition at 10. However, CIX disagrees with Ameritech's method of solving those issues because the long term growth of Internet communications are dependent on the regulatory and market efforts to make the local access market more competitive, which is not where it is today. In fact, Ameritech and other ILECs continue to control 99% of the country's local service business.[19] CIX believes that it is more important to ensure the continued growth of local competition -- a path that the Commission has worked for so arduously -- than it is to ensure the success of any given ILEC technology application as it competes on the Internet. For example, the ILECs' slow rate of ISDN deployment may be a harbinger of ILEC xDSL service roll-out. In the Internet market, an Internet year (in terms of depreciation) is measured in a matter of months. Currently in the United States, CIX estimates that every major backbone provider plans to double its backbone capacity every 4 to 6 months.

Moreover, Ameritech has not demonstrated that it actually needs the exemptions from statutory and regulatory obligations in order to effectively deploy xDSL.[20] For example, Ameritech could continue to deploy xDSL on an intraLATA basis as the market demands it and consistent with existing statutory obligations. As it does so, the existing competitive Internet backbone providers will meet such demand for high-speed services, or, as Ameritech obtains Section 271 interLATA authority, it can enter the market to provide Internet backbone services

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19 1996 Trends in Telephone Service, Industry Analysis Div. - CCB, at Table 9.1 (Feb. 1998) (CAPS/CLECS held a 1.0% share of nationwide local service revenues in 1996, up from 0.7% in 1995).

20 Petition at 11 (the interLATA restriction "diminishes incentives to deploy ADSL technology by denying Ameritech the ability to aggregate traffic across LATA boundaries . . ."). Ameritech fails to explain why aggregation of interLATA traffic cannot be handled by the existing competitive industry, or what efforts it has made to discuss with the existing industry the realization of such efficiencies.

through its Section 272 affiliate. Notably, Ameritech offers no financial data to support its allegations that the relief requested is necessary. Further, Ameritech apparently has not even attempted to work out alleged short-term capacity issues with the existing Internet backbone providers, because it would obviously prefer to own all facilities from the customer's home the global Internet.[21]

Indeed, to avert loss of local market share, Ameritech would seemingly have sufficient financial incentive to deploy an ADSL network within the ambits of the current law. Notably, Ameritech provides no study or showing that intraLATA deployment of xDSL is economically infeasible. To the contrary, "Ameritech has . . . recently entered the retail data telecommunications marketplace . . . with sophisticated new capabilities such as ADSL . . . [which has] . . . attracted significant customer interest and subscribership." Petition at 30. U S West also finds itself able to offer xDSL -- it has already filed tariffs in several in-region states to commence ADSL service in April, 1998. Within the year, the ILECs will have already invested in significant ADSL deployment throughout the United States. Further, it seems improbable that the Bell Companies would have so fully committed themselves (and would have promised high bandwidth to residential and rural customers) if the feasibility of ADSL deployment actually hinges on the grant of the Petition.

Ameritech has strong financial and strategic incentives to deploy intraLATA ADSL, irrespective of the outcome of its Petition. Financially, Ameritech risks a significant loss of its existing market share in the local data access market, as the threat of other local

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21 For example, the Commission has held that, even prior to Section 271 approval, RBOCs may engage in nondiscriminatory "teaming" relationships with interLATA providers. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, as Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 96-149, 11 FCC Rcd. 21905, 22047 (1996) ("Non-Accounting Safeguards Order").

telecommunications providers and the demand for data services become more real. In terms of strategy, Ameritech must also plan to participate in the ever-growing Internet communications marketplace, and to form strategic alliances for the long term. This is evidenced by Ameritech's participation in the ADSL Forum, which provides an important strategic opportunity to work with computer hardware and software providers (e.g., Microsoft, Intel, Compaq) and other incumbent LECs (e.g., US West, Ameritech, and Pacific Bell) to control and resolve xDSL technical and deployment issues. Thus, placed in the context of its long-term business interests, Ameritech's need for statutory and regulatory exemptions -- exemptions which ensure local telecommunications competition and competition among ISPs -- is doubtful.

To the extent Ameritech faces any financial challenge in the deployment of xDSL, it is due to the market interplay between the ILEC's xDSL roll-out and its own profitable second and third line sales and dedicated access (including T1) sales. However, that market-based decision must be made by the ILEC regardless of the outcome of its Petition.

D. The Ameritech Study Fails To Measure Innovation in the Information Services Markets.

Ameritech also claims that the proposed deregulation will result in increased innovation. Petition at 31-32. To demonstrate this, the Ameritech Study asserts to examine "the pernicious effects that regulation can have on the innovation and the introduction of new telecommunications services," and concludes that "relaxed regulation" would benefit consumers through more services in the market and a quicker introduction of services. Ameritech Study at i. CIX finds that the Ameritech Study does not support these conclusions. Based on CIX's own participation in the CEI proceedings, the Ameritech Study analysis of the CEI process is based on several erroneous assumptions.

Most significantly, the study assumes without discussion that the CEI regulatory safeguards have only one effect on innovation: to discourage or delay the introduction of new RBOC services. The study neglects to consider (let alone investigate) the positive effects the

CEI safeguards have had on innovation and the introduction of new services generally, throughout the market. For example, the existence and enforcement of the RBOCs' CEI "equal access" obligations[22] have likely had a very positive impact on the ability of other carriers and enhanced service providers to introduce and innovate during the periods that CEI has been in effect. After all, CEI is an enforceable mandate ensuring that other "innovators" in the enhanced services market are not unreasonably denied access to the RBOC's monopoly access services. Other "innovators" are more likely to invest in new services because CEI rights disarm the RBOCs' efforts to prevent the deployment of those new services.[23] Thus, the study fails to look at the whole picture -- the innovation and introduction of new services to the American consumer by RBOCs *and other providers* -- of the impact of CEI. Rather, it errantly assumes that the information service industry is simply made up of RBOCs. Until shown, Ameritech cannot possibly substantiate its conclusion that "hundreds of millions of dollars could have been lost by consumers while CEI requirements were in effect." Ameritech Study at 9.

The Ameritech Study also assumes that the filing date of an RBOC CEI plan is a reasonable proxy to measure the date when an innovative service was introduced to the American consumer. Id. at 5. It is, once again, assuming that the world of innovators is made up only of RBOCs -- i.e., when an RBOC submits a CEI plan, it is for a truly innovative service. This assumption is unwarranted, especially in the context of Internet access services as Ameritech proposes in its Petition, because it fails to consider whether a market for the service already exists at the time that the RBOC filed its plan. For example, the study uses Bell Atlantic's March 8, 1996 Internet Access CEI plan as data of an innovative service offering to the American

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22 Computer III Inquiry, 104 F.C.C. 2d 958, 1038-42 (1986) (subsequent history omitted).

23 Conversely, the rise in the introduction of RBOC services during non-CEI years may also be explained by the RBOCs' increased ability to discriminate against independent ISPs.

consumer.[24] In March, 1996, however, the American consumers in Bell Atlantic's region already had hundreds, if not thousands, of Internet access providers to choose from -- non-RBOC Internet access providers had offered an array of Internet services in that market for years.[25] In short, the Ameritech Study fails to focus on what is innovative, and so teaches nothing about innovation and regulation.

Finally, the study asserts that the CEI plan approval process adds "almost 200 days" of delay to the introduction of the RBOCs' services. Ameritech Study at 10. However, no evidence is presented to indicate that the RBOCs' would or could have initiated service on the day of CEI plan filing. Stated differently, since the RBOCs are aware of the predicted delay (and even the statistical variance), they can and likely do avoid any actual delay by filing CEI plans in advance of commercial launch of the service. In addition, the study concludes that elimination of delay would add "to the benefit of consumers and companies alike." Id. However, as discussed above, the study does not even consider "the benefit of consumers" because it fails to look at the positive effects of CEI safeguards, and review process, for other "innovators" in the market.

Thus, Ameritech's assertion that it has "empirically demonstrated" that relaxed regulation of Ameritech has "distinct positive effects on consumers" is unproven. Petition at 31-32. Its study fails to show that consumers are in any way adversely affected by the Commission's regulation of RBOC-integrated information service offerings, nor does it show that RBOCs are subject to unwarranted delay under that process.

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24 Ameritech Study, Appendix 4 (at 1).

25 The study fails to investigate whether the RBOC service offered is measurably different than existing services already on the market, or whether the service would represent a truly new offering for consumers. Especially in the case of Internet access, the RBOCs largely followed in after the market of independent providers had "pioneered" the way.

II. The Ameritech Petition Leaves Key Competitive and Public Interest Issues Unresolved.

CIX finds that the Ameritech has failed to address a number of key issues that are central to the evaluation of its Petition. Without addressing these key issues, it is quite impossible for either the public or the Commission to adequately examine whether the Ameritech Petition is in the public interest. 47 C.F.R. § 1.41 (requests for Commission action must "set forth clearly and concisely the facts relied on, [and] the relief sought").[26]

A. The Ameritech Petition Fails To Address Key Competitive Issues Of the Internet Service Provider Industry.

The Petition fails to address at least two key competitive issues raised by the deployment of ADSL which will have a significant impact on the existing level of competition in the Internet Service Provider industry.

1. Interconnectivity With Other ISPs

The Ameritech completely fails to explain how competing ISPs would interconnect with ADSL facilities to serve end-user customers. As described in the attached Figures 1, 2, and 3, ADSL deployment could mean that only Ameritech offers its ADSL and Internet service to customers (which CIX strongly opposes) or it could provide for functional and competitive market for the ISP industry.

Without some explanation, CIX and the independent ISP industry cannot know whether Ameritech intends to offer access to its xDSL to any other ISPs, on what terms, or whether such terms would be equivalent to those afforded Ameritech's own ISP. Without this description, CIX submits that the Commission cannot evaluate whether the Ameritech Petition is, in fact, a

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26 See also, Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1167 (D.C. Cir. 1990) (requests for waivers of FCC rules and orders must present the facts necessary upon which the Commission may base an articulable standard for the waiver).

proposal to exclude consumers of independent ISPs from gaining access to xDSL and/or inhibit the businesses of such ISPs, to the detriment of the Commission's goals encouraging the competitive provision of Internet services.

2. Collocation and xDSL Distance Limitations

Perhaps the most significant technical issue to independent ISPs that is raised by the Ameritech Petition is the physical distance limitation inherent in the deployment of any xDSL service. Because of line attenuation issues, xDSL services can only be offered to customers that are within a specific wired radius of the ILEC office. For example, the ADSL Forum estimates that ADSL download speeds of 1.5 to 2 Mbps can only be offered to customers that are within a wired distance of 18,000 feet of an ADSL-equipped ILEC central office.[27]

Under current FCC rules, independent ISPs are denied collocation at the ILEC office; however, the ILEC's Internet affiliate is able to collocate.[28] With the deployment of ADSL, the ILEC's ISP affiliate has a competitive advantage over any other independent ISPs in the market because it has a larger geographic reach to offer ADSL than all of its competitors. For example, assume that ADSL can be deployed only within 18,000 feet of a ILEC office, and that the independent ISP's office is 5,000 feet from that office because it cannot collocate. (See Figure 4, attached hereto). In such a market, only the ILEC's ISP-affiliate can serve the customers that are located in the geographic range within 18,000 feet and more than 13,000 feet away from the central office. In that same geographic market, independent ISPs cannot serve the "ring" from 18,000 to 13,000 feet and so are denied ILEC telecommunications services that are afforded the ILEC-affiliated ISP.

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27 ADSL Forum, "ADSL Tutorial: Twisted Pair Access to the Information Highway," at <http://adsl.com/adsl_tutorial.html>.

28 Computer III Inquiry, 104 F.C.C. 2d 958, 1042 (1986).

Such abuse of monopoly access to the underlying telecommunications service, for the benefit of the ILEC's affiliate, is patently offensive to the Commission's Computer III goals for a competitive information services market. For example, the purpose underlying the "equal access" standard adopted as part of CEI is to "require the basic service functions utilized by the carrier-provided enhanced service to be available to others on an unbundled basis, with technical specifications, *functional capabilities*, . . . equal to those provided to the carrier's enhanced services."[29] Discrimination favoring the ILEC-affiliated ISP use of the local telecommunications network is contrary to the Commission's settled policies: "[w]e have long recognized that the basic network is a unique national resource, and our policies have been designed to promote nondiscriminatory utilization of that resource's capabilities."[30] While the Commission has declined to provide enhanced service providers with broad collocation rights, it based that decision on the finding that equal access, at that time, could be achieved in other ways and that "collocation merely reduces transmission costs, it does not address the more general issues of equal functionality . . . ."[31] In the 1986 Computer III proceeding, however, the Commission could not have anticipated the advent of xDSL technologies, and its inherent distance limitations. With xDSL, collocation becomes a very real issue of "equal functionality," which cannot be resolved through minimizing transport costs.[32]

The Petition is unacceptably vague on this issue. Ameritech asserts that it will offer "collocation to data service providers for interconnection or access to unbundled network elements." Petition at 18 (emphasis added). While this would seemingly provide all competing

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29 Computer III Inquiry, 104 F.C.C. 2d at 1036 (emphasis added).

30 Id.

31 Id. at 1038.

32 Cf., id. at 1042.

ISPs with collocation for access to the unbundled copper, Ameritech then states that it will offer unbundled loops "consistent with the requirements of Section 251(c)." Id. Thus, competing "pure ISPs," with no rights under Section 251(c) of the Act are left with no solution to the xDSL - collocation issue raised above.

CIX emphasizes that the deployment of xDSL technologies *must be reconciled* with the Commission's long-standing policies favoring vibrant competition in the information services markets, and the need to ensure that ILECs do not use their monopoly control over the local loop and central office facilities to create a discriminatory advantage for their own information services. Obviously, CIX prefers a practical solution to this issue -- a solution that gives all ISPs the same access to ILEC xDSL and that covers the same geographic market.

B. Ameritech Fails To Identify The Improvements to the Internet Backbones It Would Make.

To a large extent, Ameritech seeks regulatory relief from the interLATA safeguards on the promise that it is ready and willing to will deliver, on an expedited basis, the "power of the marketplace to spawn new investment." Petition at 9. It then fails to describe:

1. What are the levels of increased investment that Ameritech commits to?

2 Over what time-frame will Ameritech make this commitment?

3. What is Ameritech's specific plan for improving on Internet backbone speeds, Network Access Point congestion, Website telecommunications access issues, connectivity between ISPs?

4. Does Ameritech intend to use its interLATA facilities built or acquired now to transport voice telephony, even after it receives Section 271 approval? If so, then the Petition essentially seeks to allow Ameritech the ability to build its interLATA network for voice services prior to Section 271 approval. Cf., Petition at 13 (a grant of the relief requested "would in no way undermine the purposes or the efficacy of Section 271 generally").

Without answers to these fundamental questions, it is hard to evaluate whether Ameritech's promises are real or not. If not, then there is no public interest supporting Ameritech's requests interLATA authority and other deregulatory relief.

C. Consideration of The Ameritech Petition Is Premature

As the Ameritech Petition (at 35) notes, the Commission has already decided it will implement Section 706 by first initiating a comprehensive rulemaking proceeding, as contemplated under Section 706(b), and not through *ad hoc* company-specific requests for deregulation such as the Ameritech Petition. "Federal-State Board on Universal Service," First Report and Order, CC Dkt. No. 96-45, 12 FCC Rcd. 8776, 9091 (1997) ("We concur with the Joint Board's conclusion . . . that Congress contemplated that section 706 would be the subject of a separate rulemaking proceeding.").[33] With a general rulemaking, the Commission and interested parties can consider the regulatory goals to be achieved by Section 706, and what means the Commission should use achieve those goals. CIX believes that the Commission is correct in holding to its decisions on implementation of Section 706. A general rulemaking avoids the implicit bargaining of *ad hoc* regulatory relief for one technology deployment or another; it also adds a context of regulatory principals to apply to specific decisions.

Therefore, consideration of the Ameritech Petition is premature because the public and the Commission cannot evaluate such *ad hoc* requests for deregulation until the general rulemaking has been completed.

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33 See also, "Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996," Order and Notice of Proposed Rulemaking, 11 FCC Rcd. 5937, 5975 (FCC "reserves its right to address the implementation of Subsection 706(a) in a consolidated action"), and, "Implementation of Local Competition Provisions in the Telecommunications Act of 1996," First Report and Order, CC Dkt. No. 96-98, 11 FCC Rcd. 15497, 16120-21 (1996) (subsequent history omitted) (FCC declines to implement Section 706 in its Interconnection Proceeding because "[w]e intend to address issues related to section 706 in a separate proceeding") ("Local Competition Order").