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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 99-65

In the Matter of)
)
Petition of Ameritech for Forbearance from)
Dominant Carrier Regulation of its)
Provision of High Capacity Services in)
the Chicago LATA)

OPPOSITION OF SPRINT CORPORATION

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March 31, 1999

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SUMMARY

In its Petition, Ameritech claims that forbearance from dominant carrier regulation of its high capacity services is in the public interest because it no longer exercises market power in the putative Chicago LATA high capacity services market. Petition at 1-6. Ameritech's request for forbearance should be denied. As explained in more detail below, Ameritech retains market power even in the self-selected, high capacity facilities market in Chicago. Thus, by its own admission, Ameritech still provides at least 66 percent of the DS-1 special access facilities in the Chicago LATA and 72 percent of the dedicated transport circuits in the Chicago suburbs. And, although Ameritech fails to provide any revenue market share data, it may well be that in terms of the revenues derived from the sales of such facilities, Ameritech's market share may be substantially greater. In any event, all of the market share figures presented by the petition are highly questionable in light of Ameritech's failure to provide any of the underlying raw data that it or its consultant, Quality Strategies, rely on for evidence of competition.

Moreover, these facilities are essential inputs used in important downstream service markets (namely, local service and exchange access) where Ameritech retains a near monopoly. The need to integrate high capacity facilities with Ameritech's local networks (so that competitors can use these facilities to reach the vast majority of customers taking local service in the Chicago LATA) results in a bottleneck which Ameritech can use against competing providers of high capacity facilities by degrading the service of these rivals, by raising their costs, or by otherwise engaging in discrimination both blatant and subtle.

There is, in any case, no need for the relief urged by Ameritech. The Commission's Density Zone Pricing rules already grant Ameritech substantial flexibility in pricing high capacity facilities throughout its service territory. If Ameritech feels threatened by nascent

competition in the sale of high capacity facilities in Chicago, it can lower its prices for these facilities to contest its competitors so long as it undertakes the same reduction in other areas of equivalent density and, presumably, equivalent costs. Ameritech may also make its high capacity facilities available pursuant to term and volume discounts. To grant Ameritech's request will allow it to segment its markets and lower prices only where it has come under competitive pressure. Ameritech would then be able to continue to receive monopoly rents from users that have similar cost characteristics but that lack competitive choices, and to use the supranormal profits obtained from its remaining monopoly customers to charge below-cost rates in areas where competition is only beginning to present a challenge to Ameritech.

The problem of such cross-subsidization is hardly a remote threat. Ameritech provides high capacity facilities, local service and exchange access on a vertically and horizontally-integrated basis. Accounting constraints are inadequate to prevent Ameritech from raising prices to monopoly users and then using these increases to lower its prices for high capacity facilities below its applicable costs. Price caps may be helpful in preventing such behavior, but they are hardly a panacea. This Commission and State regulatory agencies continue to carefully monitor the prices of local carriers, and yet "costless predation" is still a viable business strategy.

Finally, the Commission is already actively reviewing proposals from regional Bell Operating Companies ("RBOCs") for additional pricing flexibility for their access services in the Access Charge Reform proceedings. Public Notice, FCC 98-256 (released October 5, 1998). Petitions such as this one are simply attempts by the RBOCs to have as many "bites at the apple" as possible. Sprint respectfully requests that the Commission preserve its limited resources for completing more significant proceedings already before it, especially those in which the instant issues have already been raised.

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OPPOSITION OF SPRINT CORPORATION

Pursuant to the Commission's Public Notice, DA 99-334 (released February 16, 1999), Sprint Corporation ("Sprint") respectfully submits its opposition to the above-captioned Petition ("Petition") filed by the Ameritech Operating Companies ("Ameritech").

I. INTRODUCTION

Ameritech seeks forbearance under Section 10 of the Communications Act of 1934, as amended, 47 USC §10, from dominant carrier regulation in the provision of high capacity special access, dedicated transport for switched access, and interstate intraLATA private line services ("high capacity services") in the Chicago, Illinois local access and transport area ("LATA").

Petition at 1. Ameritech claims that forbearance is in the public interest in this case because it no longer exercises market power in the putative Chicago LATA high capacity services market.

Petition at 1-6. For the reasons described below, Sprint respectfully requests the Commission to deny Ameritech's Petition.

II. THE COMMISSION SHOULD CAREFULLY CONSIDER WHETHER IT IS IN THE PUBLIC INTEREST FOR IT TO CONSIDER OVERLY NARROW RBOC FORBEARANCE REQUESTS

As noted, Ameritech already has substantial pricing flexibility. There can be no serious argument that it is so burdened by existing regulation that it will be unable to compete fairly

against emerging competition for high capacity facilities. While Ameritech goes to great lengths to pattern its request for non-dominant treatment after that of AT&T, the fact remains that AT&T's Motion covered a substantially larger scale and scope of services. See Motion for Reclassification of American Telephone and Telegraph Company as a Non-Dominant Carrier, CC Docket No. 79-252, filed September 22, 1994; see also Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, *Order*, 11 FCC Rcd 3271 (1995) ("AT&T Domestic Non-Dominance Order").

In the AT&T Domestic Non-Dominance Order, the Commission agreed with AT&T that the relevant market should be defined as all interstate, domestic interexchange services. Id. at ¶ 21 (emphasis supplied). Such a market essentially encompassed all of AT&T's interexchange services, with the exception of international services. After a careful analysis of all of the relevant services offered in the defined market, the Commission determined that while AT&T possessed market power with respect to a few discrete services, it lacked market power in the overall nationwide interstate, domestic interexchange market. Id. at ¶ 39. In contrast, Ameritech seeks non-dominant regulatory treatment for its narrowly-defined offering in one small geographical area, the Chicago LATA.

This is the fifth RBOC attempt thus far to obtain piecemeal regulatory reclassification of high capacity facilities offerings.¹ In its opposition to the first RBOC forbearance petition, Sprint warned that petitions of such minute scale and scope would needlessly suck up enormous resources of the Commission and all other interested parties. See Sprint Comments, CC Docket 98-157 at 4. Unfortunately, the RBOCs have proven Sprint's prediction to be correct.

¹ In chronological order, the five RBOC forbearance petitions are: 1) U S West Phoenix Petition, CC Docket No. 98-157 (filed Aug. 24, 1998); 2) Petition of SBC Communications, Inc. for forbearance in 14 MSAs, CC Docket No. 98-227 (filed Dec. 7, 1998); 3) U S West Seattle Petition, CC Docket 99-1 (filed Dec. 30, 1998); 4) Petition of Bell

The recent flurry of copycat petitions augurs for more of the same from the RBOCs. After all, the petitions filed thus far cover only two of the many RBOC services that are offered in small geographical areas and subject to dominant carrier regulation. Indeed, throughout its Petition, Ameritech states that it will soon file similar forbearance petitions for every one of its metropolitan service areas, Petition at note 29; Attachment A at 1. To deter the RBOCs from attempting to overwhelm the Commission's limited resources, the Commission should clearly indicate that it will not seriously entertain such narrow and redundant forbearance petitions.

Granting petitions such as Ameritech's on a piecemeal basis would also inevitably lead to inconsistencies. Each petition would require an in-depth, fact-intensive competitive analysis for each service offered in small geographical areas. Small differences in the factual circumstances surrounding the provision of services in each narrow geographical area would, in all likelihood, give rise to inconsistent rulings. The Commission would be engaged in making increasingly narrow distinctions and determinations concerning small market segments in smaller and smaller geographical areas. The probability of inconsistent rulings would increase as the product and geographical markets became smaller. To avoid this result, the Commission should make clear that it will not rule on petitions for non-dominance such as those filed by U S West, SBC, Ameritech and Bell Atlantic, unless they cover a wider range of products and services, such as all residential or business local access services in a state or an entire RBOC region.

Atlantic Telephone Companies for Forbearance in 12 jurisdictions, CC Docket 99-24 (filed January 20, 1999); and 5) Petition of Ameritech for Forbearance in the Chicago LATA, CC Docket No. 99-65 (filed February 5, 1999).

III. AMERITECH RETAINS MARKET POWER IN THE HIGH CAPACITY FACILITIES MARKET

A. Ameritech controls bottleneck local exchange and exchange access services

High capacity circuits are used by some carriers and end users in order to provide local exchange and exchange access services. As such, these dedicated circuits constitute an essential input for a defined set of customers. Ameritech contends that this upstream market exhibits indicia of competition and therefore the Commission should not regulate it as dominant for this market. However, Ameritech continues to maintain a virtual monopoly in the non-competitive downstream markets of local exchange and exchange access services. As a result, Ameritech can, absent dominant carrier regulation, exercise its downstream market power to the detriment of consumers and providers of high capacity circuits.

Ameritech has both the ability and the incentive to exercise its bottleneck control over its local exchange and exchange access services in order to harm competition in the high capacity services market. Any choice that carriers or end users may have over the supplier of high capacity circuits would be undermined by Ameritech's ability to act anticompetitively. For example, Ameritech could charge higher interconnection fees or degrade the quality of interconnection to those customers who subscribe to competitive high capacity circuit providers. Because high capacity circuit subscribers have no choice but to subscribe to Ameritech's local exchange and exchange access services, they will not be able to respond to this type of anticompetitive conduct. Rather, they would have only the choice of keeping their high capacity circuit provider and accepting higher priced or lower quality local services, or switch to Ameritech for their high capacity circuit needs. Until Ameritech opens its local markets to competition, the Commission must maintain dominant carrier regulation over Ameritech's provision of high capacity facilities.

In addition to maintaining monopoly power over local exchange and exchange access services, Ameritech also has bottleneck control over adjacent inputs that are essential for the provision of local services. For example, in the Chicago LATA, Ameritech has bottleneck control over interconnection and local switching services. Ameritech could raise its charges for these services and use the additional revenues to cross-subsidize its high capacity circuit offerings. In doing so, Ameritech would at least be able to harm competitive providers of high capacity facilities and, conceivably, would be able to drive them out of the market entirely. Neither accounting regulation nor price caps on their own provide effective safeguards against such anticompetitive behavior. In order to help prevent Ameritech from engaging in cross-subsidization, the Commission must continue to require Ameritech to file tariffs and cost support for its provision of high capacity circuits.

B. Ameritech maintains a very high market share in each of the relevant markets

Perhaps the most obvious indication of Ameritech's dominance is its market shares for the markets it purports to have identified. According to the "estimates" found in Quality Strategies' "Summary Results" of DS-1 special access market shares, Ameritech maintains at least a 66 percent share of the Chicago market. Petition at Exhibit 8, page 9, Quality Strategies "Ameritech Chicago HICAP Track Report." In the "Chicago Suburban" dedicated transport market, Ameritech "estimates" that it maintains at least a 72.2 percent market share. Id. at 16. Finally, in the putative high capacity special access facilities market ("local distribution channels" or "LDCs"), Ameritech "estimates" that it maintains at least a 52 percent market share. Even if such "estimates" are accurate, such high market shares indicate that this market segment is highly concentrated and that Ameritech, with overwhelming market share, maintains market power.

But even these figures are highly questionable in light of Ameritech's decision not to provide any of the underlying raw data that Ameritech or Quality Strategies relied on for evidence of competition. Sprint respectfully submits that Ameritech's failure to provide this information makes it impossible to gauge the accuracy of Ameritech's market share estimates. As a result, the Petition provides no more evidence of Ameritech's declining market power in the putative high capacity market than would an Ameritech press release.

An even more fundamental problem with Ameritech's Petition is its reliance on DS-1 equivalent circuits for measuring market shares. Petition at Attachment A at 21, Exhibit 8 at 4. The Commission has consistently considered revenues at least as important as capacity, if not more so, in gauging the amount of competition in a particular market. See, AT&T Domestic Non-Dominance Order, 11 FCC Rcd 3271 (1995). Thus, no meaningful analysis of Ameritech's market power can begin until a comparison can be made between the high capacity revenues earned by Ameritech and its facilities-based competitors. Such revenue figures would allow for a comparison of how much customers are paying to Ameritech and to its competitors and would provide a more complete portrait of the high capacity market in the Chicago LATA.

But even if Ameritech were correct in its assertion that capacity alone is the most appropriate barometer of the level of competition, the manner in which Ameritech appears to have counted circuits skews market share measurements. The Petition notes that market shares for the overall high capacity market were based exclusively upon DS-1 equivalents and that one DS-3 (45 Mbps) circuit is counted as 28 DS-1 circuits. Petition at Attachment A at 21; Exhibit 8 at 8. While this relationship makes sense from an engineering standpoint, Sprint notes that a DS-3 circuit is not 28 times as expensive as a DS-1 circuit. Thus, customers will order DS-3 service even if they do not need all of the capacity available in the DS-3.

If a carrier has a customer mix that is more heavily weighted towards DS-1 rather than DS-3 customers, that carrier will derive greater revenue per DS-1 equivalent than a carrier whose customer mix leans more towards DS-3 customers. This is so even though the nominal amount of DS-1 equivalent circuits provided by both carriers is identical. Ameritech would be expected to have a higher proportion of DS-1 customers generally than its competitors because of the greater ubiquity of its facilities. In fact, Ameritech admits this to be the case. Quality Strategies' report "estimates" that Ameritech's share of the DS-3 special access facilities market is 43 percent, while its share of the DS-1 special access facilities market is 66 percent. Petition at Exhibit 8 at 9-10. It is only by measuring the market in terms of DS-1 equivalents that Quality Strategies is able to estimate Ameritech's overall special access facilities market share at 51.5 percent. Were revenue figures disclosed, they would most likely demonstrate that Ameritech has a disproportionately greater share of high capacity revenues and thus a much greater market share of the high capacity facilities market.

In the putative retail market for high capacity special access facilities, Ameritech states that competitors have captured almost a 94 percent market share. Petition at 4, Attachment A at 19. However, Ameritech, by its own admission, provisions at least 66 percent of DS-1 special access circuits, even though it may have a billing relationship with end users for only six percent of these circuits. It is not clear what comfort Ameritech derives from the fact that there is a "secondary" or "resale" market for high capacity facilities. Ameritech does not participate in this secondary market. Rather, it sells the high capacity facilities which it, not the reselling carriers, provides. It is in the high capacity facilities market where Ameritech seeks to be declared non-dominant based on its claims that it no longer possesses market power. Ameritech's share of this market is, of course, critical to its assertion of non-dominance.

The existence of a secondary market for such facilities is irrelevant. For example, if Ameritech had 100 percent of the market for high capacity facilities, it would have complete control of this facilities market. And, this would be true regardless of whether a lively secondary market for such facilities existed or not. As explained by the court in Rothery Storage & Van Co. v. Atlas Van Lines, Inc., 792 F.2d 210 (D.C. Cir. 1986), cert. den. 479 U.S. 1033 (1987) at 221:

The degree of intrabrand competition is wholly independent of the level of interbrand competition confronting the manufacturer. Thus, there may be fierce intrabrand competition among the distributors of a product produced by a monopolist and no intrabrand competition among the distributors of a product produced by a firm in a highly competitive industry. But when interbrand competition exists, ... it provides a significant check on the exploitation of intrabrand market power because of the ability of consumers to substitute a different brand of the same product.

Because Ameritech actually provides more than 66 percent of the DS-1 special access circuits, even though it may not bill them, the possibilities of facilities-based competition (and the competitive check such competition provides) are limited. For this reason, the Commission should be slow to attach significance to Ameritech's retail market share figures.

Moreover, Ameritech's claims that it is rapidly losing market share ring hollow in view of the substantial changes that are likely forthcoming in access charges. Demand for high capacity circuits is greatly affected by the pricing of switched versus special access service under the current access charge regime. The Commission has already identified the usage sensitive carrier common line (CCL) rate structure as "an economically inefficient cost recovery mechanism and implicit subsidy."² As the Commission is well aware, this usage sensitive rate structure results in larger users overpaying for access, driving many of them to avoid switched access fees by

² Access Charge Reform, First Report and Order, 12 FCC Rcd 15982 (1997), *recon. pending, aff'd in part sub nom. Southwestern Bell v. FCC*, Case No. 97-2618, Eighth Circuit, August 19, 1998.

substituting high capacity service linking them directly with interexchange carriers ("bypass"). As the Commission reforms its interstate access charge regime, it is clear that the subsidies inherent in the current CCL rate element will diminish, rendering the bypass of switched access through high capacity services much less attractive. As a result, the market for high capacity services for voice traffic is likely to shrink and some providers may exit the market. For Ameritech to assume that its past loss of market share will continue unabated in the future is overly simplistic and ignores the likely effect of forthcoming regulatory actions.

Ameritech also mistakenly claims that, because existing competitors have significant amounts of fiber in the ground, and because they have collocated in Ameritech central offices, Ameritech lacks market power in the Chicago LATA high capacity facilities market. Attachment A at 26-29. The fact that Ameritech's competitors may have fiber in the ground and collocation agreements does not equate to the ability to absorb Ameritech's high capacity demand quickly enough to discipline Ameritech's pricing behavior. Sprint has considerable experience with use of alternate providers of high capacity. It speaks from experience in stating that it is complicated and expensive to shift from an ILEC's high capacity circuits onto those of an alternate provider. In order to minimize potential interruptions to customers and maintain quality, such cutovers do not occur with the push of a button.

For example, individual Sprint customer circuits are manually "rolled" one by one from the ILEC to the alternate provider, usually at night when traffic is minimal. Sprint must pay both its and the ILEC's personnel overtime wages to perform this task. Moreover, the testing necessary to ensure end-to-end quality and continuity of the circuit usually requires the involvement of the alternate provider in addition to the ILEC and Sprint, complicating this task significantly.

IV. THERE IS NO NEED FOR FORBEARANCE: AMERITECH ALREADY HAS SUFFICIENT PRICING FLEXIBILITY TO ALLOW IT TO COMPETE EFFECTIVELY IN THE HIGH CAPACITY SERVICES RETAIL MARKET

Under Section 69.123 of the Commission's rules, 47 C.F.R. §69.123, independent local carriers may establish density pricing zones for special access and switched transport services. Within these zones, carriers are allowed to charge different rates for special access services. *See* 47 C.F.R. §69.123(c). Thus, Ameritech may price its special access services provided in high density areas at lower rates than it provides such services in rural areas. This rule enables Ameritech to respond to incipient competition in urban areas by lowering its prices in these pricing zones.

Ameritech appears to complain that it cannot compete effectively because Section 69.123, 47 C.F.R. §69.123(a), requires that it must maintain uniform pricing for each density pricing zone within a study area. Petition at Attachment A at 9-11. Essentially, Ameritech is complaining that in order to lower the price of its high capacity services in Chicago, it would also have to lower the price other similarly dense areas of Illinois. Of course, because Ameritech does not face the same degree of competition throughout its markets, it would like to maintain the above-cost rates that it is able to charge in the non-competitive areas. Thus, the relief sought here is anticompetitive and not in the public interest. If Ameritech believes that its existing zones do not properly reflect the cost characteristics of the very high density that exists in portions of Chicago, nothing in section 69.123 limits Ameritech to just three zones. Thus, it could create a fourth zone, if justified by costs. However, by forbearing from regulating Ameritech as a dominant carrier in the Chicago LATA, the Commission would enable Ameritech to segment the market by allowing it to charge virtually whatever it wants for high capacity

services in those areas where it faces no competition. Sprint respectfully submits that such a result is not in the public interest.

The Commission's Density Zone Pricing rules provide a far better accommodation between the need for the Commission to allow some pricing flexibility in markets where nascent competition is pressuring existing carriers to lower rates and the need to prevent incumbents from harming competition by selectively lowering prices. Because Ameritech provides high capacity facilities on an integrated basis with its monopoly local exchange and exchange access services, there is a palpable threat of cross-subsidization. The threat of such discriminatory actions are at least eased if any price reduction must be made available to all customers with equivalent zone densities and, presumably, with equivalent costs. The benefits of competition are thereby spread to all similarly-situated customers, rather than being limited only to those customers that are directly targeted by competition.

In addition, Ameritech can offer term and volume discounts on its high capacity services. Nothing in the Commission's rules forbids Ameritech (or any other ILEC) from offering such discounts,³ which should enable Ameritech to compete fiercely throughout its territory. Ameritech's status as an incumbent with by far the majority of installed facilities in all of its markets should allow it to offer term and volume discounts that would be difficult for its new competitors to match.⁴

³ Of course, any discounts offered must be cost-based and not reliant on cross-subsidies from other services.

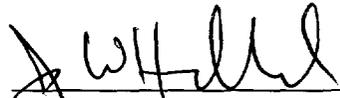
⁴ There are obviously substantial scale economies associated with the provision of high-capacity facilities. Because fiber must be buried, the construction of a single fiber route is relatively expensive. On the other hand, increasing the capacity of that fiber route becomes progressively less costly. Thus, on a circuit basis it is far cheaper to add a fiber line that carries thirty DS3s worth of traffic than to build a system that carries one DS3 or, conceivably, one DS1. Ameritech's near monopoly provision of both local service and exchange access provides it with traffic flows that its competitors cannot yet begin to match.

V. CONCLUSION

For the reasons stated above, the Commission should deny Ameritech's Petition.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "L. Kestenbaum", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Opposition of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 31st day of March, 1999 to the parties on the attached list.


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