



**TABLE OF CONTENTS**

	<u>Page</u>
INTRODUCTION AND SUMMARY .....	1
ARGUMENT	
I.    AMERITECH HAS NOT SHOWN THAT IT LACKS MARKET POWER IN THE CHICAGO LATA .....	4
A.    Ameritech Does Not Accurately Describe Competitive Conditions .....	4
B.    The Market Surveys Ameritech Conducted Are Unreliable .....	13
II.   AMERITECH’S PETITION DOES NOT SATISFY THE THREE- PART TEST FOR FORBEARANCE UNDER SECTION 10 .....	19
III.  AMERITECH HAS FAILED TO UTILIZE THE PRICING FLEXIBILITY THAT THE COMMISSION ALREADY ALLOWS .....	22
CONCLUSION .....	24

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Ameritech for Forbearance from	)	
Dominant Carrier Regulation of its	)	CC Docket No. 99-65
Provision of High Capacity Services in the	)	
Chicago LATA	)	
	)	

**AT&T CORP. OPPOSITION**

Pursuant to the Commission's Public Notice (DA 99-334), released February 16, 1999, AT&T Corp. ("AT&T") hereby opposes the petition of Ameritech Corporation ("Ameritech"), filed on February 5, 1999, requesting the Commission to forbear from regulating Ameritech as a dominant carrier of high capacity services in the Chicago LATA, filed on February 5, 1999 (the "Petition").

**INTRODUCTION AND SUMMARY**

Ameritech has petitioned the Commission pursuant to Section 10 of the Telecommunications Act of 1996 (47 U.S.C. § 160) to forbear from certain aspects of dominant carrier regulation with respect to its provision of 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"). Specifically, Ameritech requests the Commission to forbear from applying: (i) the tariff filing requirements of sections 61.38 and 61.41 – 61.49 of the rules, 47 C.F.R. §§ 61.38, 61.41–61.49, so that Ameritech can avoid filing tariffs altogether or, if so required, to file tariffs on one day's notice without cost support; (ii) the

averaged rate structure requirements of section 69.3(e)(7) of the rules, 47 C.F.R. § 69.3(e)(7); (iii) the price cap rules in Parts 54 and 65; and any other Commission rules that would apply to Ameritech as a dominant provider of high capacity services in the Chicago LATA, but not to non-dominant providers of those services.<sup>1</sup>

Section 10(a) of the Act requires the Commission to determine that a request for forbearance satisfies three criteria:

- (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations, by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.
- (2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) Forbearance from applying such provision or regulation is consistent with the public interest.

Under Section 10(b), the Commission must also find that the proposed relief will “promote competitive market conditions” and “enhance competition among providers of telecommunications services.”<sup>2</sup> Ameritech’s Petition clearly fails to satisfy these statutory requirements.

First, Ameritech’s Petition is premised upon incomplete, misleading and faulty data. Second, Ameritech’s description of the competitive landscape for high capacity services in the Chicago LATA is fundamentally wrong. Ameritech has not demonstrated that it lacks market power in the provision of those services. Ameritech’s professed justification for its alleged loss of

---

<sup>1</sup> See Petition, p. 24.

<sup>2</sup> 47 U.S.C. § 160(b).

market power grossly understates the dependency of interexchange carriers on Ameritech's services, and fails to take into account the formidable obstacles competitors confront in attempting to compete with Ameritech. In fact, as AT&T demonstrates herein, Ameritech continues to enjoy market power in the provision of high capacity services. Third, Ameritech's Petition conflicts with the Commission's policies favoring a market-based approach to access charge reform, and thus the Commission cannot find it to be in the public interest.

Given the absence of adequate competition constraining Ameritech from charging unjust and discriminatory rates and engaging in unreasonable practices, the Commission cannot conclude that forbearance from dominant carrier regulation of its high capacity services is appropriate. In light of Ameritech's market power, the Commission must conclude that Ameritech has not satisfied the three-part test for forbearance of Section 10 of the Act. In any event, it is premature for Ameritech to even request additional pricing flexibility because it has not even fully utilized the pricing flexibility it already possesses under the Commission's rules.

Accordingly, AT&T requests that Commission dismiss or deny the Ameritech Petition. AT&T further requests the Commission give all future LEC petitioners specific guidance on the form of data collection, explanation and presentation to assist the Commission and commenters in evaluating similar requests for relief.

## ARGUMENT

### I. AMERITECH HAS NOT SHOWN THAT IT LACKS MARKET POWER IN THE CHICAGO LATA

#### A. Ameritech Does Not Accurately Describe Competitive Conditions

To support the assertion that it lacks market power and merits forbearance from dominant carrier regulation, Ameritech relies on a report by Dr. Debra J. Aron<sup>3</sup>, that in turn relies on market share surveys conducted by Quality Strategies.<sup>4</sup> The Aron Report and the Quality Strategies surveys are unverified and the authors do not make any representations regarding the accuracy of the data presented. In fact, the market share data proffered by Ameritech as support for its Petition is demonstrably erroneous and unreliable. Consequently no credence can be given to Dr. Aron's conclusions regarding Ameritech's market power based on Quality Strategies' data.

AT&T appends to this Opposition several Declarations demonstrating that, based on currently available AT&T data, Ameritech retains significant market power in the provision of high capacity services in the Chicago LATA.<sup>5</sup> At bottom, the data attached to the instant Petition

---

<sup>3</sup> Petition, Attachment A, "An Analysis of Market Power in the Provision of High Capacity Access in the Chicago LATA in Support of Ameritech's Petition for Section 10 Forbearance" by Dr. Debra J. Aron (the "Aron Report").

<sup>4</sup> Aron Report, Exhibits 6-8 (collectively the "Quality Strategies surveys").

<sup>5</sup> Declaration of Janusz A. Ordover and Robert D. Willig (the "Ordover/Willig Decl."), appended hereto as Exhibit A; Declaration of Bruce C. Bennett (the "Bennett Decl.") appended hereto as Exhibit B; Declaration of Rocco Degregorio (the "Degregorio Decl.") appended hereto as Exhibit C; Declaration of Robert E. Polete, Jr. (the "Polete Decl.") appended here to as Exhibit D; Declaration of Timothy J. Rowland (the "Rowland Decl.") appended hereto as Exhibit E.

is misleading and plainly wrong.<sup>6</sup> The faulty and misleading data alone should be sufficient ground for the Commission to dismiss Ameritech's Petition forthwith.

At the outset, Ameritech distorts the size and structure of Chicago's marketplace for high capacity services. Ameritech apparently includes statistics regarding the fiber route miles of competitors' facilities and a count of rooftop sites<sup>7</sup> for wireless access providers.<sup>8</sup> Calculating competitors' facilities in this manner, however, clearly overstates the number of route miles used for the special access services (the services for which Ameritech seeks relief). Conversely, in presenting the Local Distribution Channel ("LDC") results for First Quarter 1998, Quality Strategies' survey notes SONET facilities are not included.<sup>9</sup> If SONET circuits were taken into account, Ameritech's DS1 and DS3 market shares may be even greater than the surveys currently depict.

The misleading tenor of Ameritech's analysis<sup>10</sup> is revealed by its predatory observation that "competitive providers have captured almost 94% of the retail market for high

---

<sup>6</sup> Because, AT&T can only access its own data, and because Ameritech obscures or does not provide data definitions and omits all critical information about its data presentation, accurate comparisons of data are often difficult or impossible to achieve. Since AT&T or any other individual commenter can only provide a limited amount of the Chicago marketplace data, the Commission must seek a broader base of data upon which to build an informed analysis of market place conditions. See pp. 17-19, infra.

<sup>7</sup> Moreover, the number of rooftops on which wireless carriers have antennas does not signify that those carriers are carrying traffic to the full capacity of their antennas.

<sup>8</sup> See Petition, pp. 11-14.

<sup>9</sup> Importantly, the note goes on to point out, "Ameritech's SONET growth rate in Chicago was approximately 62% from 4Q96 to 1Q97, increasing from 177 to 287 OC-3 equivalents." Aron Report, Exhibit 8, p.12, n.1.

<sup>10</sup> See Ordoover/Willig Decl., ¶¶ 17-18.

capacity” services (emphasis supplied).<sup>11</sup> Neither Dr. Aron, the purported source for this statistic, nor any independent party generated the market share information; instead Dr. Aron’s Report unambiguously states that the conclusion is based on unspecified “[d]ata provided by Ameritech.”<sup>12</sup> Ameritech does not explain how it derived or calculated that data. Moreover, Dr. Aron offers no reason for the Commission to uncritically accept Ameritech’s unverified, self-serving data.<sup>13</sup>

More importantly, Dr. Aron’s overall analysis of the wholesale high capacity services market is also flawed. To be “conservative,” Dr. Aron analyzed the special access and switched access markets separately, despite concluding that they are nearly perfect supply-side substitutes.<sup>14</sup> If that is the case, neither market can be properly analyzed in isolation because providers in one market would constrain, however imperfectly, the prices of providers in the other market. Thus, Ameritech’s high share in certain market segments means that its market power in other segments is greater than even Ameritech suggests in the Quality Strategies data. Given this

---

<sup>11</sup> Petition, p. 4, citing Aron Report, pp. 19-25.

<sup>12</sup> Aron Report, p. 19, n.53.

<sup>13</sup> In any event, Ameritech’s data regarding the retail high capacity market are irrelevant to the issue of whether Ameritech has market power in the provision of high capacity services. Ameritech’s interstate high capacity services are sold to interexchange carriers and other service providers that resell those services in providing end-to-end service to their customers. Because these carriers are dependent upon Ameritech for critical portions of their end-to-end offerings, they cannot effectively constrain Ameritech’s prices for those services. It is therefore grossly misleading for Ameritech to claim that competitors’ alleged 94% share of the retail market is indicative of Ameritech’s general lack of market power in the provision of high capacity services. (See Petition, p. 14-15.) Consequently, Ameritech’s alleged 6% share of the retail high capacity market “has no economic significance as a gauge of the extent of competition in the relevant market.” (Ordoover/Willig Decl., ¶ 34.)

<sup>14</sup> See Aron Report, pp. 6-7, 36-38.

circumstance, if the Commission granted its Petition, Ameritech would not be incented to reduce its prices in the segments in which it faces less competition.<sup>15</sup>

Dr. Aron's conclusions are not even supported by the data attached to her report. Dr. Aron states that "[a]ll Qualities Strategies market share statistics quoted in this report are for the Chicago MSA rather than the LATA."<sup>16</sup> In other words, while arguing on economic grounds for forbearance across the Chicago LATA, Dr. Aron has not considered data relating to Ameritech's market power outside the Chicago MSA. In fact, Dr. Aron does not show that price-constraining competition exists across the entire LATA. This mismatch between the data and the requested relief is significant, for if its Petition were granted, Ameritech could charge monopoly rates to customers outside the MSA but within the LATA.<sup>17</sup>

Ameritech's argument that the vast majority of its dedicated switched transport business is immediately addressable<sup>18</sup> by competitors because of collocation arrangements is belied by the fact that Ameritech's share of AT&T's expenses for POP to LSO service<sup>19</sup> actually increased between 4Q97 and 1Q98.<sup>20</sup> Dr. Aron claims that "evidence on collocation demonstrates that competitors already have facilities in place to serve a substantial majority of

---

<sup>15</sup> See Ordoover/Willig Decl., ¶¶ 35-36.

<sup>16</sup> Aron Report, p. 2, n.3.

<sup>17</sup> See Ordoover/Willig Decl., ¶¶ 37-38.

<sup>18</sup> See Petition, pp. 16-17, citing Aron Report, pp. 22, 26-27.

<sup>19</sup> Ameritech's share of AT&T's expenses for DS1 POP to LSO increased from 4Q97 to 1Q98. A POP is the interconnection point between the local network and the long distance network. An LSO is a Local Serving Office in the local network.

<sup>20</sup> See Polete Decl., ¶ 11.

Ameritech's switched access minutes, including those in the suburbs."<sup>21</sup> Dr. Aron misunderstands the role collocation plays in the marketplace, and thus overestimates the degree of competition Ameritech faces. In fact, the high levels of collocation arrangements confirm that Ameritech retains market power over LDCs and therefore over special access and related services.

The existence of collocated facilities in a central office does not mean competitors can readily address Ameritech's customer base. Neither does it place the collocators on an equal footing with the incumbent. AT&T and other entities collocate in Ameritech's central offices because it is economically infeasible for them to access customers' premises by means of their own facilities and they therefore must rely on Ameritech's LDC facilities.<sup>22</sup> To be economically effective, a collocation arrangement requires the cooperation of Ameritech, but Ameritech has used its dominant position to insist on patently unreasonable terms and conditions for the use of collocation spaces. Ameritech has assessed extraordinary collocation charges, refused to permit AT&T to install certain equipment in collocation spaces, and erected other obstacles to the efficient use of collocation arrangements. The conditions Ameritech imposed resulted in delays in AT&T's ability to provide service, unreasonably increased its costs, and degraded the quality of service AT&T can provide.<sup>23</sup> Furthermore, Ameritech has constrained the type of equipment AT&T can use in its collocation spaces.<sup>24</sup> As a result, Ameritech has placed AT&T at a serious competitive disadvantage.

---

<sup>21</sup> Aron Report, p. 22.

<sup>22</sup> See Ordoover/ Willig Decl., ¶ 41; Bennett Decl., ¶¶ 6-7.

<sup>23</sup> See Bennett Decl., ¶¶ 8-9.

<sup>24</sup> See Bennett Decl., ¶¶ 10-11.

In addition, the mere existence of a collocation arrangement does not mean it is feasible for a competitor to serve all of the customers currently served out of the office by means of its own LDC facilities. As the attached Declaration of Tim Rowland explains, it is economically infeasible for competitors to provide their own LDCs for the vast majority of special access customers. Competitors therefore can only address those limited locations that produce a significant volume of traffic and are within close proximity to their fiber rings. Moreover, in attempting to address that narrow market, competitors incur substantial costs that Ameritech, as the incumbent carrier, avoids altogether.

Competitors must incur substantial costs to wire buildings that Ameritech already serves. In Chicago, these costs can be as high as \$250,000 per building.<sup>25</sup> Competitors also incur substantial costs in obtaining rights-of-way to access buildings, costs that Ameritech does not incur. Even when competitors can reach a new location, building owners often insist that the competitors -- but not Ameritech -- pay substantial fees for the use of their risers, laterals, building entrances, and closets. Building owners have even demanded fees from AT&T based on a percentage of AT&T's revenues or required AT&T to pay a fee for every customer it cross-connects to its facilities. Moreover, many building owners do not even allow AT&T to perform the necessary cross-connects, but required AT&T to pay Ameritech to perform this "service."<sup>26</sup>

Competitors also confront an even more fundamental problem: they are physically unable to deploy their own LDCs because of the lack of space in many buildings. Since most buildings were designed when there was only one local telephone provider, they may only have

---

<sup>25</sup> See Rowland Decl., ¶ 5.

<sup>26</sup> See Rowland Decl., ¶ 7.

space for one provider's equipment. Ameritech, of course, is well aware of this circumstance, and has a powerful incentive to "warehouse" unnecessary equipment or otherwise ensure that it uses all available space, however inefficiently. Even where additional space for a competitor can be created, AT&T must pay for the related work, and is often required to use the building owner's preferred vendor. In addition, because many buildings lack the requisite infrastructure for multiple competitors, building owners generally require the new entrant to pay to upgrade power facilities.<sup>27</sup> In sum, it is economically feasible for competitors to extend their facilities to only a limited number of buildings, and therefore they will continue to be significantly dependent on Ameritech for their high capacity access service needs.

Ameritech has also taken steps to discourage customers from purchasing high capacity services from competitors even when those competitors are able to access two customers' locations. Ameritech offers customers long term agreements, with large discounts coupled with substantial termination penalties, and uses these pricing plans in locking up customers for substantial periods of time.<sup>28</sup> In general, the termination penalty is equal to the remaining amount owed on the contract. Termination accelerates the payments, however, making the outstanding balance immediately due and payable.<sup>29</sup> Thus, in order to take advantage of the

---

<sup>27</sup> See Rowland Decl., ¶ 8.

<sup>28</sup> Ameritech offers various terms up to and including 60 months.

<sup>29</sup> Due to the time value of money, the accelerated payment, especially over a multi year contract, makes the termination fee more expensive than completing the contract in its normal course. Even as Ameritech's market share of AT&T's LDC expense has risen (See Polete Decl., ¶ 14.) from 4Q97 (90.13%) to 1Q98 (90.72%), AT&T paid \$9 million in termination charges last year, mostly for terminating DS1s.

steep discounts Ameritech provides in exchange for long term service commitments, customers have to refrain from purchasing services from competitors for extended periods.

In any event, to justify the relief it seeks, Ameritech must provide verifiable evidence, that it has lost market power with respect to each component of high capacity service. This is crucial because, as Professors Ordover and Willig explain, “[e]conomic theory and experience both teach that a supplier of a service will have the ability to exercise market power with respect to that service if the supplier maintains market power over a *single* critical input to providing the service – even if the provision of all other components of the service is fully competitive. So long as the incumbent retains monopoly power over any such bottleneck input to special access services, for example, it can extract monopoly rents from special access customers (or from resellers who must buy the bottleneck inputs from the incumbent).”<sup>30</sup>

Consequently, there must be a competitive supply of both the link from the long distance carrier’s POP to the LSO and the LDC link from the LSO to the customer’s premises before any price constraint on the incumbent monopolist can be expected.<sup>31</sup> The attached Declarations demonstrate, however, that competitive supply of all the components of high capacity services in the Chicago LATA does not currently exist. Consequently, the evidence does not support Dr. Aron’s conclusion that Ameritech lacks market power.

In analyzing Ameritech’s market power claims, the Commission must also consider the extent of competition in the entire geographic area in which Ameritech seeks relief. The existence of facilities-based competition in one part of the Chicago LATA cannot constrain

---

<sup>30</sup> See Ordover/Willig Decl., ¶ 15.

<sup>31</sup> See Ordover/Willig Decl., ¶ 17.

Ameritech's high capacity service prices in another area not subject to that same degree of competition. Moreover, even if the existence of facilities-based dedicated transport competition in one part of the LATA were proven (and that is not the case) the Commission cannot infer that such competition would be feasible in other parts of the LATA, or that local distribution channel competition would be feasible in any part of the LATA. If Ameritech were freed from dominant carrier regulation, it would have an incentive to charge rates lower than its competitors' for service in the portion of an area in which it faces some competition and substantially higher rates for service in the area in which it does not face such competition. Ameritech could even use the prospect of pricing at its incremental cost to shield its less competitive market regions from competition.<sup>32</sup> Ameritech's capacity to engage in this kind of conduct is evidenced by its own market share data (which AT&T demonstrates is grossly understated) indicating that its dedicated transport market share in the Chicago suburbs is 72%, substantially higher than its claimed share

---

<sup>32</sup> See Ordoover/Willig Decl., ¶¶ 18-22. Indeed, as shown in the Ordoover/Willig Declaration, an incumbent LEC free of regulatory constraints may be able, by virtue of its incumbency and ubiquity, to deter entry in non-competitive areas even without lowering its rates. *Id.*, at 21. Not all parts of a state are equally attractive to or able to support competitive entry. The incumbent, moreover, has sunk all or most of the costs necessary to provide the service in question statewide, so that its incremental cost to provide the service is low relative to a new entrant faced with the need to sink substantial costs to provide service. In these circumstances the incumbent may effectively deter entry in more competitive areas through the threat of pricing its service there at or near its incremental cost (i.e., at a price which would deny to a new entrant the opportunity to recoup the investment it would need to make to provide the service). Consequently, entry would be deterred throughout the state and the price would be maintained at the monopoly level. *Id.* This threat is particularly pertinent in the case of a state such as Illinois, where the bulk of business access lines (and thus demand for high capacity services) is in a single urban area – Chicago.

in the city.<sup>33</sup> Accordingly, Ameritech is well-positioned to engage in precisely the kind of market foreclosure practices described above.

In sum, Dr. Aron's analysis of competitive conditions is methodologically and factually wrong. Competitors continue to face considerable obstacles in attempting to compete with Ameritech in the provision of high capacity services, and as a result Ameritech continues to possess significant market power.

B. The Market Surveys Ameritech Conducted Are Unreliable

The data definitions and methodology underlying Ameritech's market survey are deceptive and erroneous. Ameritech bases its' analysis on "DS1 equivalent" circuits, not revenues. This vastly overstates Ameritech's professed loss of market share because the loss of a single DS-3 would be viewed under Ameritech's criteria as the loss of 28 DS1s. This analysis fails because the price of a DS3 is not 28 times that of a DS1, in fact the DS3 may only be two to three times the cost of a DS1. Ameritech's analysis thus vastly overstates the revenue loss of a DS3. By applying the same logic, this faulty analysis also overestimates the market share gains of competitors.

More generally, the Quality Strategies surveys are inadequately documented, unverifiable, and simply wrong. The surveys asked customers more than 200 questions regarding services in use, providers, quantities, pricing and purchase decision-making criteria.<sup>34</sup> However, Ameritech did not include the survey questions in the Petition to enable the Commission to determine their reliability. Nor did Quality Strategies provide the answers to the questionnaires or

---

<sup>33</sup> Aron Report, p. 21.

<sup>34</sup> See Aron Report, Exhibit 8, p. 5.

describe how it weighted and evaluated those answers. In addition, the surveys allegedly examined Ameritech, interexchange carrier, and competitive access provider high capacity service invoices,<sup>35</sup> but no information was provided concerning what that data showed and how it was used. The surveys also considered private networks, including satellites, as high capacity service alternatives.<sup>36</sup> However, no information was provided regarding those networks' capacity, traffic volumes, cost, or other quantifying information. The Petition withheld this vital data from both the Commission and commenters. Ameritech even past up the opportunity to make this data available subject to an appropriate protective agreements. As a result, neither interested parties nor the Commission have been given a reasonable opportunity to evaluate the basis for Ameritech's claim that it lacks market power. Given the absence of that data, it would be improper for the Commission to accept the conclusions Ameritech draws from the surveys.<sup>37</sup>

To the extent the survey results can be tested, they are demonstrably inaccurate, as the attached Declarations of Robert E. Polete, Jr. and Rocco Degregorio explain. For instance, the Quality Strategies' "Chicago HICAP Track Fourth Quarter 1997" survey<sup>38</sup> states that 48.2% of AT&T's POP-to-LSO purchases went to Ameritech. Mr. Polete's Declaration shows that AT&T's data provide an entirely different picture. Mr. Polete further shows that, in the case of DS3s, 96.52% of AT&T's 4Q97 expenditures went to Ameritech. In the case of DS1s, 99.03%

---

<sup>35</sup> See Aron Report, Exhibit 8, p. 5.

<sup>36</sup> See Aron Report, Exhibit 8, p. 5.

<sup>37</sup> Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983) (an agency must "examine the relevant data and articulate a satisfactory explanation for its action"); See American Telephone and Telegraph Co., v. F.C.C., 974 F.2d 1351 (D.C. Cir. 1992).

<sup>38</sup> See Aron Report, Exhibit 7, p. 11.

of AT&T's 4Q97 expenditures went to Ameritech.<sup>39</sup> The Quality Strategies' survey<sup>40</sup> results for the First Quarter 1998 are similarly wrong. According to the survey, AT&T purchased 48.2% of AT&T's POP-LSO links from Ameritech. In fact, 95.62% of AT&T's 1Q98 DS3 expenditures went to Ameritech. In addition, 99.88% of AT&T's 1Q98 expenditures for DS1s went to Ameritech.<sup>41</sup>

The data produced by the Quality Strategies surveys for LDC channels are similarly erroneous. Quality Strategies' 4Q97 survey<sup>42</sup> indicates Ameritech had only 52.53% of the DS1 LDC equivalents in the Chicago marketplace, whereas competitors had 47.47%. However, AT&T's data shows that 90.13% of its combined DS1 and DS3 LDC expenditures in 4Q97 went to Ameritech. Similarly, for the First Quarter 1998, the Quality Strategies' 1Q98 survey<sup>43</sup> indicates that Ameritech's market share of combined DS1 and DS3 LDC was 51.50% compared to a market share of 48.50% for competitors. However, AT&T's data shows that 90.72% of its combined DS1 and DS3 LDC expenditures in 1Q98 went to Ameritech.<sup>44</sup> In fact, AT&T's data shows an increased proportion of its LDC expenses from 4Q97 to 1Q98 went to Ameritech.

The Declaration of Mr. Degregorio provides another illustration of the complete unreliability of the Quality Strategies data. The surveys purport to show "Distribution by CAP"

---

<sup>39</sup> See Polete Decl., ¶¶ 9, 11.

<sup>40</sup> See Aron Report, Exhibit 8, p. 15.

<sup>41</sup> See Polete Decl., ¶¶ 9, 11.

<sup>42</sup> See Aron Report, Exhibit 7, p. 9.

<sup>43</sup> See Aron Report, Exhibit 8, p. 12.

<sup>44</sup> See Polete Decl., ¶ 14.

statistics –i.e., the percent of business individual IXCs gave to various CAPs.<sup>45</sup> For the Fourth Quarter 1997, the survey<sup>46</sup> claims that Teleport Communications Group (“TCG”) derived from AT&T, MCI, and Sprint, respectively, 42.2%, 27.5%, and 21.8% of its revenues. TCG’s data shows that Quality Strategies’ data is off by as much as 32% for the 4Q97 figures.<sup>47</sup> For the First Quarter 1998, the Quality Strategies survey<sup>48</sup> indicates that TCG derived the same proportion of its revenues from AT&T, MCI, and Sprint as in the Fourth Quarter, 1997. However, the TCG’s data again indicates that Quality Strategies’ data is incorrect and off by as much as 35% for 1Q98 figures.<sup>49</sup> Not only does the Petition get significant quantities of data wrong, it seems important market information was omitted.

The Petition also ignores critical distinctions in the serving arrangements of competitive access providers (“CAPs”) in Ameritech’s territory. In some service configurations, referred to as Type I service, the CAPs provide all of their facilities. However, Ameritech also sells facilities to CAPs on a wholesale basis that may be used in conjunction with CAP facilities or constitute an end-to-end connection for the CAP themselves. This type of CAP arrangement with the incumbent is referred to as Type II service.<sup>50</sup> TCG’s records reflect that in 1998 Ameritech

---

<sup>45</sup> Again, Ameritech obscures categories, mixing POP to POP and POP to LSO data. It is misleading for Ameritech to include an IXC’s backbone network (e.g. an AT&T POP to AT&T POP) link in its market while not including Ameritech’s backbone network links (e.g. Ameritech LSO to Ameritech Tandem or LSO).

<sup>46</sup> See, Aron Report, Exhibit 7, p. 11.

<sup>47</sup> See, Degregorio Decl., ¶ 9. TCG’s customer-specific market data are proprietary.

<sup>48</sup> See, Aron Report, Exhibit 8, p. 15.

<sup>49</sup> See, Degregorio Decl., ¶ 10. TCG’s customer-specific market data are proprietary.

<sup>50</sup> See Degregorio Decl., ¶ 11.

provided up to 18% of the facilities for TCG's DS3 circuits in Chicago, and up to 29% of the facilities for TCG's DS1 circuits in Chicago.<sup>51</sup> Yet, Ameritech makes no mention of this type of arrangement.

The unverified Quality Strategies survey results thus cannot be reconciled with AT&T's own data regarding the two critical links the surveys considered: POP-LSO and LDCs. Moreover, the errors in the Quality Strategies data discussed above may well be representative of other, as yet undisclosed, errors that pervade all of the survey results. As a result, the Commission cannot give credence to the market share results of those surveys, nor to the conclusions drawn by Ameritech and its consultant, Dr. Aron, regarding the market power implications of those surveys.

The unreliability of the data Ameritech has submitted underscores the need for the Commission to collect a more complete factual record before entertaining any forbearance petitions such as Ameritech's. Accurate, comprehensive, and timely data regarding the genuine state of competition in high capacity services in the Chicago LATA should be available to the Commission before it acts on the Petition. The Commission recently recognized that, in order to exercise regulatory flexibility, it needs more data regarding local competition conditions than is currently available to it, and requested suggestions regarding the data it should collect.<sup>52</sup> AT&T

---

<sup>51</sup> See Degregorio Decl., ¶¶ 15-16.

<sup>52</sup> See Public Notice "Common Carrier Bureau Seeks Comment on Local Competition Survey," CC Docket No. 91-141, CCB-IAD File No. 98-102, DA 98-839, released May 8, 1998 (the "Local Competition Survey Docket").

supported the Commission's initiative to collect data.<sup>53</sup> AT&T clearly recognized that in order to develop an accurate picture of the marketplace it is crucial for the Commission to be able to compare ILEC and CLEC data in a meaningful way. Although the Local Competition Survey Docket sought information different than at issue here, Ameritech's instant Petition underlines the critical need for the Commission to undertake a similar data collection effort in any future request for similar relief.

The Commission needs to establish a verifiable process where an ILEC petition presents data in a manner and form that permits commenters an opportunity to present evidence in opposition.<sup>54</sup> At a minimum, the data collection process should provide, at a minimum, for the following: 1) clear definitions of each data element with appropriate characteristics for measurement; 2) clear geographic and temporal parameters; 3) data source and collection procedures clearly identified and explained; and 4) all data attested to and verified by appropriate individuals. Provisions should be made to afford access by interested persons to any information

---

<sup>53</sup> See Reply Comments of AT&T Corp. in Local Competition Survey, CC Docket No. 91-141, CCB-IAD File No. 98-102, filed June 22, 1998; Comments of AT&T Corp. in Local Competition Survey, CC Docket No. 91-141, CCB-IAD File No. 98-102, filed June 8, 1998.

<sup>54</sup> The need for accurate and verified data is especially important for the Commission to address in this proceeding because Ameritech indicates it is preparing similar filings for other portions of its region. Industry participants have recently expended substantial resources responding to other factually insufficient BOC petitions for forbearance. E.g., Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia, CC Docket No. 99-24, filed January 20, 1999; Petition of U S WEST Communications, Inc. For Forbearance From Regulation as a Dominant Carrier in Seattle, Washington MSA, CC Docket No. 99-1, filed December 30, 1998; and Petition of the SBC Companies For Forbearance From Regulation as a Dominant Carrier for High Capacity Dedicated Transport Services in Specified MSAs, CC Docket No. 98-227, filed December 7, 1998.

for which the Petitioner may claim confidentiality. It is indisputably clear that Ameritech has not met a single point enumerated above. Its data are demonstrably insufficient to provide the Commission with the requisite information to support a petition for forbearance under Section 10. The Commission should dismiss Ameritech's Petition with data collection and presentation instructions to guide Ameritech and other BOCs seeking Commission action in the future.

II. AMERITECH'S PETITION DOES NOT SATISFY THE THREE-PART TEST FOR FORBEARANCE UNDER SECTION 10

In order to satisfy the first prong of the three part test under Section 10 of the Act, Ameritech must show that application of the Commission's price cap, tariffing and rate averaging rules is not necessary to ensure that Ameritech's rates and practices are just, reasonable and not unreasonably discriminatory. These rules are unnecessary where a carrier does not possess market power. As demonstrated above, that clearly is not the case here. Ameritech still has market power in the Chicago LATA with respect to the services identified in the Petition, and it has failed to satisfy the test of Section 10 of the Act.

Because Ameritech possesses such market power, it has the ability and incentive to charge unjust and discriminatory rates. The Commission's regulations, therefore, must be applied to protect against this result. Without the tariffing requirements, for example, customers would not be able to challenge potentially unlawful rates before they become effective. And Ameritech already has substantial freedom under the Commission's zone density pricing rules and price cap rules to deaverage rates in more competitive zones and to adjust its rates. As discussed below, Ameritech has not even taken full advantage of this permitted flexibility. To eliminate the remaining requirements in the face of Ameritech's continued market power would significantly increase the risk of unlawful and discriminatory rates.

Ameritech's claim that the Commission can adequately address any issue regarding unlawful rates and practices through the Section 208 complaint process,<sup>55</sup> is erroneous. The complaint process could only provide prospective relief,<sup>56</sup> and given the current demands of the Enforcement Division, a competitor could not expect to obtain sufficiently prompt relief after the filing of a complaint.

Nor has Ameritech satisfied the second prong of the Commission's three-part test: it is clear that regulation of Ameritech's high capacity services is necessary to protect consumers. Without regulation, Ameritech could discriminate against certain customers by charging higher rates to those who do not have competitive alternatives and lower prices to those who do.

It is also clear that Ameritech cannot show that forbearance under these circumstances is consistent with the public interest. Because it retains overwhelming market power, competition will not constrain anti-competitive conduct by Ameritech. Thus, the public interest would be harmed, not benefited, by forbearance. Moreover, long distance carriers, by necessity, rely heavily on high capacity services by Ameritech. Given Ameritech's desire to compete in the long distance market, it should not be given regulatory flexibility while it still controls a monopoly input for that service.

In particular, the public's interest in effectively competitive local exchange and access service markets would be harmed if Ameritech's Petition were granted. Ameritech has made no attempt to show that it has satisfied the market opening requirements contained in section 251(c) of the Act (and indeed, it could not make such a showing). Deregulating

---

<sup>55</sup> See Petition, p. 26.

<sup>56</sup> See Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, 12 FCC Rcd 2170, at ¶¶8, 24 (1997).

Ameritech's high capacity services in the Chicago LATA would provide Ameritech with another incentive to avoid complying with its statutory obligation to open its monopoly by giving it the alternative of obtaining targeted pricing where it is needed to crush limited competitive inroads by CLECs.

Ameritech's proposal also conflicts with the Commission's "market based" approach to access reform, and therefore contravenes the public interest. The Commission has relied on the existence of competition to bring about reduced access rates for customers in general, rather than reductions for only a select or narrow market segment.<sup>57</sup> If Ameritech is permitted to further deaverage access rates and target reductions to a limited group of large business customers, it would have little, if any, incentive to lower access prices for the vast majority of customers. Indeed, granting the relief that Ameritech requests will only motivate it to provide targeted deep discounts where it is subject to an active competitive threat. Because the access market is characterized by prices that greatly exceed costs, the main objective of regulation ought to be to reduce prices to all customers rather than to a small subset of individual customers.<sup>58</sup> Ameritech's piecemeal approach, however, is contrary to this objective.<sup>59</sup>

---

<sup>57</sup> See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, First Report and Order (CC Docket Nos. 96-262, 94-1, 91-213, 95-72), 12 FCC Rcd 15982 at ¶¶258-274 (1997).

<sup>58</sup> See Comments of AT&T to Update and Refresh the Record in Access Charge Reform, CC Docket No. 96-262 (filed Oct. 26, 1998), and Janusz Ordover and Robert Willig, "On Reforming the Regulation of Access Pricing" (Attachment A thereto).

<sup>59</sup> In the Access Charge Reform proceeding, the Commission is currently considering whether to expand the range of access pricing flexibility generally. Ameritech's request should be considered, if at all, only in the context of that larger proceeding.

### III. AMERITECH HAS FAILED TO UTILIZE THE PRICING FLEXIBILITY THAT THE COMMISSION ALREADY ALLOWS

The Commission has already provided LECs like Ameritech with a wide variety of pricing options that can be used in offering high capacity services. Now that Ameritech is requesting substantial new pricing flexibility, one would presume that it has exercised the full measure of the pricing options the Commission has already extended to it, before seeking even more. The fact of the matter is, however, that Ameritech has not done so. Indeed, Ameritech's rates for its DS3 and DS1 high capacity services have increased (some dramatically, others only slightly) over the past three to four years.<sup>60</sup> Furthermore, as of January 1, 1999, Ameritech was only 1.1% below its price cap for the trunking basket that includes high capacity services.<sup>61</sup> Thus, Ameritech has not taken full advantage of the pricing flexibility currently available to it.

Ameritech's pricing strategy is inconsistent with its claim that it is facing increased competition and therefore must have additional flexibility to reduce prices. The pricing of Ameritech's high capacity services very close to the price cap ceiling is difficult to reconcile with Ameritech's claim that market forces will constrain its prices to competitive levels even in the absence of dominant carrier regulation, particularly since historical cost-based price caps are well above relevant forward-looking costs. Indeed, Ameritech has retained its high market share despite charging special access rates significantly higher than its competitors, and has even increased its rates over the past three to four years. Thus, as Professors Ordoover and Willig conclude, "[t]here is no obvious explanation for Ameritech's maintenance of supracompetitive

---

<sup>60</sup> See Polete Decl., ¶ 15.

<sup>61</sup> See Polete Decl., ¶ 16.

rates other than market power. . . . The fact that Ameritech has not availed itself of this pricing flexibility to lower prices suggest strongly that Ameritech is not currently subject to effective competition and that the deregulations Ameritech seeks would give it the ability to raise prices in the many areas where it faces no effective competition.”<sup>62</sup> Accordingly, the public interest would be better served if Ameritech were to use the freedom it has to lower rates across the board for all customers than if Ameritech were permitted through forbearance, to target only those customers which have competitive alternatives. In this light, Ameritech’s claims that it has a pressing need for even broader authority are unfounded.

---

<sup>62</sup> See Ordoover/Willig Decl., ¶ 44.

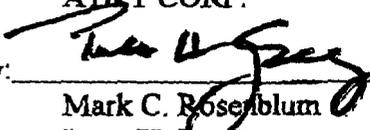
**CONCLUSION**

The Ameritech Petition suffers from numerous methodological and factual flaws, and fails to meet the legal standard for forbearance. Accordingly, it should be denied.

Respectfully submitted,

AT&T CORP.

By: \_\_\_\_\_

  
Mark C. Rosenblum  
Peter H. Jacoby  
James W. Grudus

Its Attorneys

295 North Maple Avenue  
Room 3245H1  
Basking Ridge, New Jersey 07920  
(908) 221-424

March 31, 1999