

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
The Establishment of Rules to Prohibit )  
The Imposition of Unjust, Onerous )  
Termination Penalties on Customers )  
Choosing to Partake of the Benefits )  
Of Local Exchange Telecommunications )  
Competition )

Docket No. 99-142

REPLY COMMENTS OF AMERITECH TO  
KMC TELECOM PETITION

KMC Telecom ("KMC") requests that the Commission reopen incumbent local exchange carrier ("incumbent LEC") contracts for intrastate services for a so-called "fresh look" under which end user customers could abrogate their existing contracts for a specified period, if they can find a better deal from a competitor of the incumbent. In its Opposition, Ameritech demonstrated that the Petition should be summarily dismissed because it exceeds the Commission's jurisdiction, is inconsistent with Commission policy, would introduce inefficiency and chaos into competitive markets, and would improperly impair private contracts. None of the parties that filed in support of the KMC Petition correct these flaws, and the Petition should be dismissed.

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**1. AMERITECH HAS SHOWN THAT THE COMMISSION SHOULD DISMISS THE PETITION ON JURISDICTIONAL AND POLICY GROUNDS.**

Ameritech established in its Opposition that the services mentioned by KMC in its Petition are all intrastate and that there is no basis for the Commission to usurp the jurisdiction of the states over them. Contrary to KMC's slanderous assertions, state commissions have not acted anti-competitively, nor have they blocked entry into the local telecommunication marketplace. In fact, Ameritech presented evidence that local telecommunications competitive entry has been very robust under the stewardship of the states.<sup>1</sup>

Ameritech further demonstrated in its Opposition that even if the Commission can assert jurisdiction over this matter, it should deny the Petition on policy grounds. Fresh look has been imposed in only a very few instances for the benefit of customers in newly competitive markets, not for the benefit of competitors for competitive services. If fresh look is applied to incumbent LECs regarding competitive services, it likewise should be applied to all incumbents, not just incumbent LECs, since in many cases incumbent LECs are not even the dominant provider and do not have market power. Imposing a fresh look in competitive markets would thereby introduce economic inefficiencies and chaos into the normal operation of the entire competitive marketplace. It would further cause severe financial hardships for both carriers and their customers, who could no longer fully enjoy the benefits of long-term contracts with corresponding lower rates and rate stability. A fresh look would also improperly impair private contracts.

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<sup>1</sup> Ameritech Opposition at 4-5.

**2. KMC'S SUPPORTERS ADMIT THAT FRESH LOOK SHOULD BE LIMITED TO NEWLY COMPETITIVE MARKETS, BUT PRESENT NO PROOF THAT TERMINATION CHARGES ARE BEING APPLIED TO SUCH SERVICES.**

The consensus of the parties is that fresh look should only apply to a newly competitive market.<sup>2</sup> For example, McLeodUSA admits that it “does not inherently object to the use of contracts as a means of governing the relationship between a telecommunications provider and its customers; indeed, McLeodUSA itself uses such contracts. The problem arises when the incumbent carrier introduces contracts into a market before the market itself is fully competitive.”<sup>3</sup> Others simply argue that termination penalties imposed in a “monopoly environment”<sup>4</sup> or where the customers have no “competitive alternatives”<sup>5</sup> create a barrier.

But, as Sprint points out, KMC did not present “any evidence that would support elimination of all early termination liabilities. KMC fails to offer even anecdotal evidence of actual ILEC misuse of termination liabilities. Neither does it offer any proof that ILECs are using competitive local service leverage their non-competitive long-term arrangements.”<sup>6</sup> For these reasons, Ameritech agrees with Sprint that the KMC Petition is “unnecessarily broad”.<sup>7</sup> In fact, all the services mentioned by KMC have for many years been and remain fully competitive.<sup>8</sup> Thus, there is no grounds for a fresh look because there is no evidence that onerous termination charges are being imposed on a national basis to newly competitive services.

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<sup>2</sup> See, McLeodUSA at 2, One Communications/Hyperion at 2, Sprint at 2-3,

<sup>3</sup> McLeodUSA at 2.

<sup>4</sup> See, Allegiance Telecom, Inc. at 1-2, and Telecommunications Resellers Association (“TRA”) at 2.

<sup>5</sup> See, One Communications/Hyperion at 2.

<sup>6</sup> Sprint at 2.

<sup>7</sup> Sprint at 1.

<sup>8</sup> Ameritech at 6-7.

The comments supporting KMC have the same basic defect – although they directly or indirectly concede that fresh look should only apply to newly competitive services, they fail to present any proof that incumbent LECs are in fact applying termination penalties to services that are just becoming competitive. Thus, under these parties’ own principles, KMC’s Petition must be dismissed.

Moreover, as Ameritech demonstrated in its Opposition, limiting fresh look to newly competitive services is consistent with existing Commission policy. Fresh look is an extreme measure that impairs existing private contracts and harms carriers and customers since it impairs the ability to offer long-term contracts with corresponding lower non-recurring charges and recurring rates. For these reasons, the Commission has imposed a fresh look in only a very few instances in newly competitive interstate markets, so customers can “obtain the benefits of new, more competitive alternatives.”<sup>9</sup> For instance, fresh look was adopted in the *Special Access Interconnection Docket*. But that case involved the initial opening of a marketplace to competition. Even so, the Commission found that it would “treat customers entering into long term arrangements with the LECs after adoption of this Order as having chosen to do so despite the impending competitive developments.”<sup>10</sup> Thus, even if the Commission does assert jurisdiction, it should dismiss KMC’s Petition on policy grounds.

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<sup>9</sup> Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd, 7369, 7463-64 (1992) (“Special Access Expanded Interconnection Order”).

<sup>10</sup> *Id.*

**3. SPRINT'S PROPOSAL SHOULD BE EXAMINED, IF AT ALL, AT THE LOCAL LEVEL ON A CASE-BY-CASE BASIS.**

Although Sprint admits that there is no proof of any misconduct by incumbent LECs and that “both CLECs and ILECs, should be permitted to address customers’ needs through the use of long-term contracts”, it puts forward a proposal for a fresh look.<sup>11</sup> Sprint admits that “a fresh look policy must, however, be fair to the customer while limiting the ILEC’s exposure to unrecovered, legitimately incurred costs.”<sup>12</sup>

The fatal flaw with Sprint’s proposal is that it is addressed to the wrong regulatory body. Since the proposal relates to intrastate services, and Sprint does not argue that the state commissions are imposing barriers to local entry, there is no ground for the Commission to usurp the jurisdiction of the states in this case. Moreover, fresh look cases are by their very nature fact intensive, since the competitive environment and incumbent LEC practices differ from state-to-state and area-to-area. As such, fresh look is best addressed at the local level on a case-by-case basis. For instance, as Ameritech explained in its Opposition, it permits the assumption of some of its long-term contracts by competitors without the application of a termination charge.<sup>13</sup> This fact is highly relevant to any consideration of whether a fresh look should be required for a particular service in a particular area, but would not necessarily be reflected in any national rules. Thus, the Commission should decline Sprint’s invitation to consider national fresh look rules.

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<sup>11</sup> Sprint at 2, 4-7.

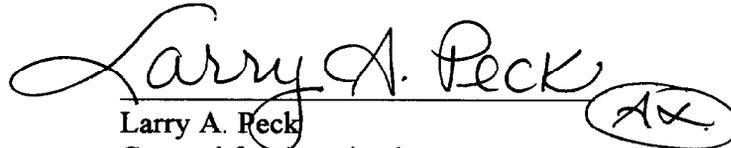
<sup>12</sup> *Id.* at 4.

<sup>13</sup> Ameritech at 4.

### III. CONCLUSION.

The Commission should decline to assert jurisdiction over this matter since the services involved are beyond a doubt intrastate and there is no grounds for the Commission to assert jurisdiction over them. Further, because the contracts involved were freely negotiated in a competitive marketplace, even if the Commission asserts jurisdiction, it should not impose a fresh look on policy grounds.

Respectfully submitted,

A handwritten signature in cursive script that reads "Larry A. Peck". To the right of the signature, the initials "AP" are circled in a hand-drawn oval.

Larry A. Peck  
Counsel for Ameritech  
Room 4H86  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025  
(847) 248-6074

Dated: June 18, 1999  
[lap0312KMC Opposition.doc]

CERTIFICATE OF SERVICE

I, Grace Germain, do hereby certify that a copy of the Reply Comments of Ameritech has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 18<sup>th</sup> day of June, 1999.

By: Grace Germain  
Grace Germain (dk)

JAY C. KEITHLEY  
ATTORNEYS FOR SPRINT CORPORATION  
1850 M STREET N.W., 11<sup>TH</sup> FLOOR  
WASHINGTON, D.C. 20036-5807

SANDRA K. WILLIAMS  
ATTORNEYS FOR SPRINT CORPORATION  
4220 SHAWNEE MISSION PARKWAY  
SUITE 303A  
WESTWOOD, KS 66205

DANA FRIX  
JONATHON DRALUCK  
COUNSEL FOR CHOICE ONE COMMUNICATION  
AND HYPERION TELECOMMUNICATIONS, INC.  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007

DAVID R. CONN  
VICE PRESIDENT – LAW AND REGULATORY  
AFFAIRS  
MCLEODUSA TELECOMMUNICATIONS SERVICES,  
INC MELEODUSA TECHNOLOGY PARK  
6400 C STREET SW  
CEDAR RAPIDS, IA 52406-3177

CHARLES C. HUNTER  
CATHERINE M. HANNAN  
ATTORNEYS FOR TELECOMMUNICATIONS  
RESELLERS ASSOCIATION  
HUNTER COMMUNICATIONS LAW GROUP  
1620 I STREET N.W.  
SUITE 701  
WASHINGTON, D.C. 20006

RICHARD RINDLER  
ATTORNEYS FOR ALLEGIANCE TELECOM, INC  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K STREET, SUITE 300, N.W.  
WASHINGTON, D.C. 20007

RUSSELL M. BLAU  
ATTORNEYS FOR CTSI, INC. AND RCN TELECOM  
SERVICES, INC.  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K STREET, NW  
SUITE 300  
WASHINGTON, D.C. 20007

ROBERT M. LYNCH  
ROGER K. TOPPINS  
MARK ROYER  
ATTORNEYS FOR SOUTHWEST BELL TELEPHONE, PACIFIC  
BELL, NEVADA BELL AND SOUTHERN BELL  
ONE BELL PLAZA, ROOM 3024  
DALLAS, TEXAS 75202

JOHN F. RAPOSA  
ATTORNEY FOR GTE SERVICE CORP  
600 HIDDEN RIDGE, HQE03J27  
P.O. BOX 152092  
IRVING, TX 75015-2092

GAIL L. POLIVY  
ATTORNEY FOR GTE SERVICE CORP  
1850 M STREET, N.W.  
WASHINGTON, D.C. 20036

KENNETH E. HARDMAN  
MOIR AND HARDMAN  
ATTORNEY FOR COLUMBIA  
TELECOMMUNICATIONS.  
1828 L STREET N.W., SUITE 901  
WASHINGTON, D.C. 20036-5104

TED MONINSKI  
DIRECTOR, REGULATORY AFFAIRS  
ATU TELECOMMUNICATIONS  
600 TELEPHONE AVENUE, M.S. #8  
ANCHORAGE, AK 99503