ORIGINAL

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY
LOS ANGELES, CA
MIAMI, FL
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

FACSIMILE
(202) 955-9792

DIRECT LINE (202) 955-9608
E-MAIL: saugustino@kelleydrye.com

August 4, 1999

RECEIVED
AUG 4 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition of Ameritech Corporation For Forbearance
From Enforcement of Section 275(a)
CC Docket No. 98-65

The attached letter, which was hand delivered to FCC General Counsel Christopher Wright today, is submitted for inclusion in the record of the above-referenced docket.

If you have any questions, please contact the undersigned.

Sincerely,

Steven A. Augustino

SAA:pab

Enclosure

No. of Copies rec'd 0
List ABCDE

DC01/AUGUS/88312.1

ORIGINAL

[redacted]

KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS
1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036
(202) 955-9600

NEW YORK, NY
LOS ANGELES, CA
MIAMI, FL
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

FACSIMILE
(202) 955-9792

DIRECT LINE (202) 955-9[illegible]
E-MAIL: saugustino@kelleydr[illegible]com

August 4, 1999

RECEIVED
AUG 4 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Christopher J. Wright
General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition of Ameritech Corporation For Forbearance
From Enforcement of Section 275(a)
CC Docket No. 98-65

Dear Mr. Wright:

I understand that, in a recent letter describing a conversation with Peter Tenhula of Commissioner Powell's office, counsel for Ameritech Corporation ("Ameritech") stated that Ameritech would be "satisfied" if the Commission were to forbear from applying the alarm monitoring requirements of Section 275 in states outside Ameritech's region. Given that Ameritech already has had the U.S. Court of Appeals soundly reject its tortured interpretation of Section 275 and that the Commission has pending *Show Cause Orders* to require Ameritech to divest the two-thirds of its base that it has unlawfully acquired, it is not hard to understand why Ameritech would welcome any opportunity to escape even a portion of Section 275's transition rules. However, what is puzzling is the implication that the Commission is receptive to Ameritech's misguided arguments.

The Commission cannot lawfully accept Ameritech's invitation to rewrite the legislation adopted by Congress. As Ameritech is quick to point out, Section 275 reflected a legislative compromise between the arguments of the BOCs and AICC. Compared to other sections dealing with similar concerns over the BOCs' anticompetitive advantages, however, the BOCs – and Ameritech in particular – received significant benefits. Unlike interexchange services, the BOCs do not have to satisfy a checklist or obtain approval to provide alarm

monitoring services.[1] Indeed, Ameritech obtained in Section 275 a provision it fought hard for in Section 271(but failed to obtain): a so-called "date certain" for entry. Moreover, unlike electronic publishing, the BOCs are not required to establish a separate affiliate to provide alarm monitoring or to comply with joint marketing restrictions.[2] Nor must the BOCs comply with detailed disclosure and nondiscrimination safeguards for the provision of alarm monitoring services.[3]

The balance to these significant benefits exists in the scope of the alarm monitoring restriction. Rather than attempting "smart bomb" strikes at specific activities or regions, Congress chose a five year restriction whose breadth matches the absence of detailed regulatory safeguards. As a result, it may well be true that Congress could have chosen to permit certain alarm monitoring activities, to terminate the restriction at a different time, or to adopt a narrower restriction, all of which would have required increased safeguards to govern the permitted conduct. But that is not the judgment made by Congress. Ameritech, despite its never-ending efforts to attack the very deal it helped broker, has not identified a single circumstance that Congress did not know and consider when it chose to adopt Section 275 in its present form. Although Ameritech obviously would have preferred that its arguments had been more persuasive to Congress, it is not the Commission's job – nor within its forbearance authority – to second guess Congress' resolution of this issue.[4]

Indeed, serious Constitutional concerns would be raised if the Commission were to legislate a new alarm monitoring restriction at Ameritech's invitation.[5] The Supreme Court has made clear that, "Congress may not delegate the power to make laws and so may delegate no more than the authority to make policies and rules that implement its statutes."[6] Thus, the Commission's forbearance authority cannot be read to delegate to the Commission the authority to replace a statute with an entirely new provision. Whatever authority Section 10 might give the

---

1 *See* 47 U.S.C. § 271.

2 *See* 47 U.S.C. § 274; *cf. Id.*, § 272 (establishing a separate affiliate requirement for interexchange services, manufacturing, and interLATA information services other than electronic publishing or alarm monitoring).

3 *See* 47 U.S.C. § 273 (establishing rules for telecommunications equipment research, royalty arrangements, equipment procurement and standards setting); *but see* 47 U.S.C. § 275(b) (establishing a nondiscrimination obligation for BOC alarm monitoring).

4 Moreover, Ameritech has never attempted to explain why the Commission should remove Ameritech's alarm monitoring restrictions, and thereby grant Ameritech a competitive advantage over its sister BOCs – all of whom are prohibited by Section 275(a)(1) from direct and indirect involvement in the provision of alarm monitoring services until February 8, 2001.

5 *See* AICC Comments at 8.

6 *Loving v. United States*, 517 U.S. 748, 771 (1996).

Commission to eliminate requirements that have outlived their usefulness, it cannot give the Commission authority to declare to Congress that it has a better idea.

Rather than follow Ameritech down another erroneous path, it is AICC's hope that the Commission will enforce Section 275 – as it is written. Yielding to Ameritech's most recent effort to nullify Section 275 can only lead to further litigation and Court of Appeals intervention. We are now three years into the life of a five year provision. It is time for the Commission to move promptly to complete its enforcement of the statute by ordering Ameritech to divest its unlawful acquisitions. With the August 11 deadline for action on forbearance fast approaching, the Commission must not delay any longer in enforcing the statute as intended.

Sincerely,

Steven A. Augustino
Counsel for the Alarm Industry Communications Committee

cc: Dorothy Attwood
Linda Kinney
Peter Tenhula
Bill Bailey
Sarah Whitesell
Kyle Dixon
Bob Atkinson
Counsel for the parties