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John T. Lenahan
Assistant General Counsel

July 30, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Statement
CC Docket 96-98 UNE Remand

Dear Ms. Salas:

Jim Smith, Bonnie Cameron, Frank McCall, Carol Graczyk and I recently participated in a conference call with Jake Jennings, Claudia Fox and Sanford Williams of the Common Carrier Bureau. During the conference call, staff requested clarification and additional information regarding various issues in this proceeding. This letter provides the additional information requested.

I. OS/DA - CUSTOM ROUTING

Staff inquired regarding the availability within Ameritech's region of, and provisioning intervals for, custom routing in connection with operator services and directory assistance (OS/DA). Ameritech advised that it provides telecommunications carriers that purchase unbundled local switching or resell Ameritech's telecommunications services two custom routing options in connection with OS/DA. First such carriers can purchase custom routing to route their OS/DA traffic to Ameritech's OS/DA platform in a manner that permits it to be branded with the carrier's identity. Second, such carriers can custom route their OS/DA traffic to another provider's, or their own, OS/DA platform. A chart of the standard intervals applicable to OS/DA custom routing is attached.

II. OS/DA - SIGNALING

We also discussed the use of Feature Group D access facilities to route OS/DA traffic that originated from an Ameritech end office switch. We responded that in the Ameritech region, and we believe throughout the industry, it is not technically feasible to route OS/DA traffic on Feature Group D facilities. This technical and network limitation, which has existed since divestiture, is caused by the incompatibility of Feature Group D

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and Modified Operator Services Signaling (MOSS), which is MF (inband) signaling. All of Ameritech's OS/DA equipment and its OS/DA traffic require MOSS signaling, which cannot be provided on Feature Group D facilities.

III. ACCESS TO DIRECTORY LISTINGS -- SECTION 251(b)(3)

We confirmed our understanding that Section 251(b)(3) requires Ameritech, and all local exchange carriers, to provide access to directory listings to "competing providers" by either magnetic tape or direct electronic access. See, e.g., Section 51.217(c)(3)(ii) of the Commission's Rules. In accordance with these rules, Ameritech provides competing carriers an initial load on either magnetic tape or electronically. Direct access to the DA database allows a competing provider to query the Ameritech DA database for on-line retrieval of directory listings. In either case, Ameritech provides daily updates to the competing provider, which is the same interval at which it updates its own DA database used by its retail operations. The directory listings provided to the competing provider include all listings, except unlisted numbers, within Ameritech's service territory and all other directory listings Ameritech is permitted to disclose to other carriers.

In response to the Staff's inquiry, Ameritech has two DA-only customers, no OS-only customers, 19 OS/DA customers, 1 dialing parity DA list customer and 8 competitive DA list customers. The TELRIC-based rates for the states in the Ameritech region range from \$.024 per listing for the initial load, \$.024 per listing for updates and a monthly fulfillment charge (processing, handling and shipping the data) of \$1229.46 to \$.033 per listing for the initial load, \$.033 per listing for updates and a monthly fulfillment charge (processing, handling and shipping the data) of \$1460.04. Market-based rates for listings are based on two options. For customers with the per query charge pricing option, the market-based rates for DA listings are \$.02 per listing for the initial load, \$.03 per listing for updates and a query charge of \$.01 to \$.03. Customers who choose the no query charge pricing option pay \$.04 to \$.05 per listing for the initial load and \$.06 per listing update.

IV. OS/DA -- SELF PROVISION AND ALTERNATE SOURCES

We next discussed the ability of CLECs to either self provide directory assistance, or obtain it from the incumbent, pursuant to Section 251(b)(3). We noted that numerous companies provide competitive OS/DA throughout the United States. These alternate providers include major CLECs, such as AT&T, MCI Worldcom, Sprint, McLeod, Alltel Communications, GST, Cox, Omnipoint, and WinStar. In addition, major Internet providers now provide OS/DA. Finally, there are a number of wholesale providers of OS/DA, including Century Telecommunications, Excel Agent Services, Frontier Communications, Hebcom, Info NXX, Metro One, Qwest 411 and TelTrust. These alternative suppliers were discussed in detail in the UNE Fact Report, Section IV, dated May 26, 1999. See also Ameritech's Comments at pp. 106-114.

Notwithstanding these numerous alternative options, some CLECs, in particular, Time Warner, claim they lack the capital to self provide OS/DA and that carrier DA providers are unable to obtain access to the incumbent LEC's OS/DA databases pursuant to Section 251(b)(3). Therefore, Time Warner claims that it is forced to rely on an alternative OS/DA provider with a single nationwide call center. As a result, Time Warner claims that its trunking cost amounts to approximately \$500,000 annually. See, e.g. Time Warner Telecom Ex Parte dated July 15, 1999, CC Docket 96-98. Time Warner fails to support any of these claims with any facts. Time Warner also fails to demonstrate any impairment.

While Time Warner complains of high transport costs resulting from its use of an alternative OS/DA provider with a "single national call center", Time Warner could have chosen another OS/DA provider with multiple call centers. For example, Hebcom operates five regional call centers that serve the U.S. Excel operates six call centers, each serving the entire U.S. Info NXX provides nationwide service using four call centers. See UNE Fact Report dated May 26, 1999 at IV-9 through 10. Time Warner offers no evidence that those other providers are in any way inadequate. That being the case, its argument shows not impairment, but what appears to be a poor business decision on its own part.

In a more recent ex parte in this proceeding, Time Warner purported to demonstrate that it is impaired if DA is not a required network element. See Time Warner Telecom Ex Parte dated July 27, 1999. However, the single page "cost estimate" it submitted in support of this claim is so vague and undocumented, it is impossible to address these estimates. Surely, Time Warner must provide far more detail regarding the basis for these estimates for them to be allowed any weight at all.

In any event, it is highly unlikely that competitors' DA prices are four times higher than incumbents'; or that self-supply is ten times higher. If that were the case, competitive DA providers and self suppliers would not be able to survive in the marketplace. Yet, the most recent edition of Forbes describes the \$3.6 billion-a-year market for directory assistance as "buzzing with new competition," that "now has rivals ringing up revenue."¹

V. LOCAL SWITCHING - DEFINITIONS

We were also asked to determine whether Ameritech's existing circuit – switch switches had changed in any material way since the Commission's initial definitions, in Rule 51.319(c)(1)(i)(A) and (B), were adopted in 1996. Ameritech does not believe that any changes in circuit switch technology or architecture have taken place since 1996 that warrant a change in definition. In particular, the distinction between line-side facilities

¹ See "Numbers Game," by Joanne Gordon, Forbes, August 9, 1999 at pp. 124-126.

and trunk-side facilities is the same as it was in 1996. For that reason, Ameritech disagrees with MCI's proposed change to this rule. See MCI Comments at pages 56-57. Moreover, MCI's proposed rule changes are obviously improper because they treat circuit switches and alternative switching technologies, such as packet switches, identically for Section 251(d) purposes, although there are, in fact, significant differences between them.

VI. SS7 – SELF PROVISION AND ALTERNATIVE SOURCES

In a recent ex parte, Time Warner Telecom also describes a few specific problems it has had with a particular, undisclosed, competitive SS7 provider. Time Warner acknowledges that it used an alternative source for SS7 for a period from 1996 to 1998, but recently decided to purchase SS7 from incumbent LECs. See Time Warner Telecom Ex Parte dated July 27, 1999, CC Docket 96-98. Again, Time Warner appears to have exercised poor business judgment. Contrary to its implication, there are multiple SS7 network providers, as shown in the UNE Fact Report dated May 26, 1999 at Section V; see, also Ameritech's Comments at pp. 114-118. Indeed, the record demonstrates that there are at least six major facilities-based SS7 providers (AT&T, MCI WorldCom, Illuminet, TNS, GTE-INS, and SBC/SNET) that operate nationwide networks. Plus at least four other mid-sized CLECs (GST, ICG, Intermedia, and US LEC) that operate regional SS7 networks. Two of the national competitors are backed by AT&T and MCI WorldCom; two more are backed by GTE and SBC/SNET; a fifth (Illuminet) is supported by a consortium of smaller, independent ILECs. Given these alternatives, Time Warner's claim that it was dissatisfied with its choice proves nothing.

VII. SS7/STP ACCESS – RATES

At the request of staff, we are attaching Ameritech's existing rates for unbundled access to SS7. It should be noted that currently no carriers have purchased this unbundled network element SS7 offering. A number of carriers, however, are purchasing Ameritech's SS7 service offering from Ameritech's access tariffs.

VIII. PROPRIETARY NETWORK ELEMENTS – LEGAL ANALYSIS

Finally, staff requested that we provide additional information regarding our position on the proper interpretation of proprietary network elements. In its Comments, Ameritech recommended that proprietary network elements be interpreted to include intellectual property that can be protected by patent, copyright, or trade secret laws. See Ameritech Comments at pages 40-45. In our comments, we provided two examples: the routing tables programmed into Ameritech's switches; and "Privacy Manager," which is an AIN service that screens telemarketing calls and provides certain recorded messages and instructions to telemarketers without interrupting the called party. Staff requested further analysis with respect to both examples. In particular, whether we consider these network

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elements protectable under trade secret, copyright or patent laws. The attached analysis addresses this request.

Two copies of this letter are being submitted in accordance with Section 1.1206 of the Commission's Rules. If you have any questions concerning this please let me know.

Sincerely,

A handwritten signature in cursive script that reads "John T. Lenahan".

John T. Lenahan
Assistant General Counsel

Attachments

cc: Jake Jennings
Claudia Fox
Anthony Mastando
Sanford Williams

BASIC ULS/REBUNDLED/RESALE LINE CLASS CODE (LCC) REQUEST
INSTALLATION INTERVAL

Maximum number of LLCs	1 End Office	5 End Offices	10 End Offices	LATA	State	Region
1-4	4	20	40	TBD	TBD	TBD
Interval	30 days	35 days	50 days	Negotiated	Negotiated	Negotiated
5-8	8	40	80	TBD	TBD	TBD
Interval	30 days	50 days	Negotiated	Negotiated	Negotiated	Negotiated
9-25	25	125	250	TBD	TBD	TBD
Interval	40 days	Negotiated	Negotiated	Negotiated	Negotiated	Negotiated
25-50	50	250	500	TBD	TBD	TBD
Interval	60 days	Negotiated	Negotiated	Negotiated	Negotiated	Negotiated

1. All LCC installation requests using custom or specialized routing to dedicated trunk groups must be negotiated with a minimum installation of 60 days.
2. All LCC installation requests using custom or specialized dialing plans must be negotiated with a minimum installation interval of 60 days.
3. A TC may initiate a maximum of 2 (two) LCC requests per calendar month dated the 1st and 15th day of the month.

	Illinois		Indiana		Michigan		Ohio		Wisconsin	
	IL	IL	IN	IN	MI	MI	OH	OH	WI	WI
	Total Cost Monthly	Total Cost NRC	Total Cost Monthly	Total Cost NRC	Total Cost Monthly	Reduced Total Cost NRC	Total Cost Monthly	Total Cost NRC	Total Cost Monthly	Total Cost NRC
SS7/STP Access										
Port Termination - (For Both ISUP/TCAP msgs)	263.19	714.11	288.78	617.01	270.11	254.79	302.76	665.69	347.17	628.12
Signal Switching/ISUP msg	0.000133		0.000155		0.000121		0.000135		0.000184	
Signal Transport/ISUP msg	0.000084		0.000085		0.000046		0.000050		0.000133	
Signal Formulation/ISUP msg	0.000451		0.000124		0.000699		0.000160		0.000342	
Signal Tandem Switching/ISUP msg	0.000299		0.000324		0.000207		0.000233		0.000458	
Signal Switching/TCAP msg	0.000108		0.000125		0.000103		0.000120		0.000152	
Signal Transport/TCAP msg	0.000057		0.000057		0.000031		0.000033		0.000090	
Signal Formulation/TCAP msg	0.000324		0.000284		0.000417		0.000132		0.000333	
Orig.Point Code/per svc added or changed		24.75		21.38		9.63		24.21		22.94
Global Title Address Trans per svc added/changed		13.31		11.49		5.18		13.03		12.33

Indiana pricing reflects compliance studies filed with the commission awaiting formal approval.
Illinois, Michigan, Ohio and Wisconsin pricing reflect approved rates.

**PROPRIETARY NETWORK ELEMENTS –
LEGAL ANALYSIS
AMERITECH**

This addresses the basis for concluding that routing tables and proprietary AIN services, such as Ameritech's "Privacy Manager" are protectible under intellectual property laws, and, thus, "proprietary in nature" for purposes of Section 251(d)(2) of the 1996 Act.

I. AMERITECH'S ROUTING TABLES

Routing tables are programmed into each of Ameritech's switches. These routing tables are part of the computer software unique to each switch that instructs the switch how to route each call. These tables are developed, updated and maintained by highly trained technicians to screen and direct traffic over available facilities. Insofar as these tables are an important part of Ameritech's switches, they are obviously of value to Ameritech, and are maintained in strict confidence. Because they are protectible under the trade secret laws, they are proprietary for purposes of Section 251(d)(2).

It is not "necessary," however, to require access to Ameritech's proprietary routing tables to CLECs that use unbundled local switching. That is because CLECs using Ameritech's unbundled local switching have the capability of specifying their own custom routing developed for their customers in each Ameritech switch. This is accomplished today through the use of line class codes under which different codes are assigned to the CLEC's end users using Ameritech's switch, and then traffic from those customers can then be custom routed based upon routing instructions provided by the CLEC. Therefore, any reasonably efficient CLEC that uses unbundled local switching has the ability to develop their own routing instructions, making access to Ameritech's proprietary routing table unnecessary.

A. The Legal Basis for Trade Secret Protection

Trade secret rights developed as a common law doctrine. Specifically, these rights protect a holder of information used in the operation of a business, which is sufficiently valuable and secret to be of an actual or potential value, and to require protection against the misappropriation of this information. (Third Restatement of Unfair Competition, Section 39) Now, most states have adopted statutory protection modeled on the Uniform Trade Secret Act. (Jager, Trade Secret Law, Section 3.05[1], page 3-71, release #19 10/95)

The definition adopted by the Uniform act is presented in Section 4:

"Trade Secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that: (i) derives independent economic value, actual or potential, from not being

generally known to, and not being readily ascertainable by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The statutory definition of trade secrets thus includes both technical and commercial information. (Jager, Trade Secret Law, Section 3.05[6], page 3-85, release #19 10/95). The two primary requirements for information to be subject to trade secret protection are, therefore, the "independent economic value" and "reasonable efforts to maintain secrecy." These factors are discussed separately below.

The independent economic value portion of the trade secret test parallels the common law. Factors used in determining the economic value of the information include the following common law factors:

- (1) the value of the information to the employer and his or her competitors and
- (2) the amount of effort or money expended by the employer in developing the information.

The reasonable efforts to maintain secrecy portion of the trade secret test further parallels the common law. As an initial proposition, it should be noted that reasonable efforts do not require absolute secrecy or all conceivable efforts at maintaining secrecy. (*Sugidev Corp v. ETI, Inc.* 4 U.S.P.Q. 2d 1090, 1093 (8th Cir. 1987) and *Trandes Corp. v. Guy F. Atkinson Co.*, 996 F.2d 655, 664 (4th Cir. 1993)). Factors used in determining the reasonableness of secrecy efforts include the following common law factors:

- (1) the use of employee confidentiality agreements;
- (2) the use of a company policy manual emphasizing the importance of confidentiality;
- (3) the use of confidentiality agreements with licensees;
- (4) the use of passwords for access to software;
- (5) the physical security of the information and restrictions on plant tours; and
- (6) control over distribution of copies of the information. (See *Avnet, Inc. v. Wyle Lab., Inc.* 263 Ga. 615, 617 437 S.E.2d 302 (1993); *Centrol, Inc. v. Marrow*, 489 N.W. 2d 890, 894-95 (S.D. 1992); *MAI Sys. Corp. v. Peak Computer, Inc.* 991 F.2d 511, 521 (9th Cir. 1992); *Trandes Corp. v. Guy F. Atkinson Co.*, 996 F.2d 655, 664 (4th Cir. 1993); *Allen v. Johar, Inc.* 308 Ark. 45, 823 S.W. 2d 824, 826-827 (1992).

B. Application of Legal Requirements to Routing Tables

Applying the above legal elements to Ameritech's routing tables, it is clear that they contain valuable proprietary information that is reasonably protected as a "trade secret" from unauthorized disclosure, as that term is defined in state statutes and by the courts.

The Routing Tables Have Economic Value.

Routing tables are an integral part of all switches and are used in combination with each other to define different classes ("line class codes") of local exchange lines and to determine the corresponding call routing, call screening, and billing options. As the "brain" of the switch, routing tables are critical to the efficient routing of traffic. The routing tables for each individual switch are custom to that switch and reflect the unique circumstances of the carrier, network, and the switch involved. Moreover, because Ameritech's network, customers, and customer traffic patterns are constantly changing, maintaining a routing table is an ongoing process: routing tables must be continually revised and updated. To perform these functions, Ameritech uses only highly skilled employees who are trained at significant expense to Ameritech. All told, Ameritech spends millions of dollars each year maintaining and updating routing tables that serve its 20 million access lines. For all these reasons - because of the critical importance of routing tables to the efficient routing of traffic, the high level of skill and training demanded of Ameritech's personnel responsible for its routing tables, and the significant sums of money spend by Ameritech in maintaining and updating its routing tables - those routing tables clearly have more than sufficient economic value to constitute a trade secret.

In order to function, the routing tables contain proprietary descriptive data of Ameritech, its customers, its resellers' and CLECs' customers, and other carriers and providers that are served by its switches. The tables also contain proprietary information relating to local carrier and interexchange carrier service offerings. The routing tables also contain routing instructions, and information regarding different services offered by interexchange carriers to customers served from the switch. Because of the proprietary information contained in routing tables; the significant time and expertise required to update and maintain them; and the inherent commercial value of having a network that functions efficiently and effectively; Ameritech's routing tables have commercial value.

Ameritech Takes Reasonable Steps to Protect the Routing Tables from Unauthorized Disclosure.

In order to protect the confidentiality of Ameritech proprietary information, including the routing tables, Ameritech has implemented a host of general company-wide measures. Besides protecting the physical security and access to confidential information, Ameritech requires employees to periodically acknowledge their duty to protect confidential information of the company via a Code of Business Conduct. Ameritech distributes the Code of Conduct to all employees who must sign a written confirmation that they have read and agreed to abide by it.

Protecting the routing tables from unauthorized access is considered critical by Ameritech, because errors in or corruption of the routing tables could disrupt the voice and data services offered by Ameritech, as well as its SS7 network. Not restricting access could result in the unauthorized disclosure of proprietary information of Ameritech, its customers, and other carriers. Ameritech has implemented rigorous procedures and practices designed to protect its routing tables from unauthorized access, either by unaffiliated entities, or by its own employees who do not have a need to know in order to perform their job functions. It is important to note that routing tables are stored in Ameritech computer facilities in five Centralized Translations Groups centers. Each CTG center is located in a secured, ID ACCESS, Ameritech building. Only select employees are provided access to this information through the use of logon and password protected support systems.

In some cases, access to the routing tables is provided to the switch manufacturer so it can perform necessary software, facility, repair and maintenance work on the switch on behalf of Ameritech. However, the access to the routing tables is provided under the strict terms of a nondisclosure agreement.

In summary, Ameritech's routing tables are reasonably protected from unauthorized disclosure. That is to say: Ameritech has employees sign confidentiality statements; it uses confidentiality agreements with licensees; it protects the routing tables from unauthorized access through the use of passwords and other methods; the physical security of the routing tables and switches is protected against unauthorized access by non-Ameritech personnel; and there is rigid control over distribution of copies of the routing tables to others.

II. AMERITECH'S PRIVACY MANAGER SERVICE

In the Local Competition Order, the Commission required ILECs to provide unbundled access, not only to the AIN platform itself, but to the AIN services ILECs create over the platform. Since that time, no CLEC has sought unbundled access either to Ameritech's AIN platform or its services. This, in itself, suggests that access to these elements is not, as the Commission assumed, "critical to entry in the local exchange market. Assuming *arguendo*, however, that the Commission continues to require unbundled access to the AIN platform – i.e., the SMS and SCE – there is no conceivable justification upon which the Commission could continue requiring unbundled access to proprietary AIN services themselves, such as Ameritech's Privacy Manager. See Ameritech Comments, pp. 125-128.

Privacy Manager is a proprietary AIN service that works in conjunction with Caller ID to help screen unwanted telemarketing calls. When a call is received where the Caller ID cannot identify the caller because the number is "blocked", "unavailable", "out of area" or "private," Privacy Manager intercepts the call before the telephone rings and tells the caller, "The number you are calling has Privacy Manager and does not accept calls from unidentified numbers. At the tone, say your name or the company you represent and your

call will be completed.” If no name is given, the call is disconnected. If a name is given, the call rings through, and the recorded name is played to the called party. The called party is then given the option of: (a) accepting the call, in this case the calling party is connected to the called party; (b) declining the call, in this case, the caller is played a message that states that the called party is unavailable; or (c) refusing a sales call, in this case the caller is played a message that states that the called party does not accept sales solicitations and instructs the calling party to place the called party on a “do not call list.”

This new process includes several new and useful improvements that are subject to patent protection. In addition, it currently is a trade secret. Because Privacy Manager is protectible under patent and trade secret laws, it is proprietary for purposes of Section 251(d)(2).

A. The Legal Basis for Patent Protection

The framers of the Constitution, in recognition of the importance of protecting the rights of inventors, incorporated express support for the U.S. patent system. Clause 8 of Section 8, Article I of the Constitution provides:

The Congress shall have power To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

The 1952 Patent Act, as amended, defines the nature and scope of inventor’s patent rights. One who invents or discovers any new or useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof, may obtain a patent (35 U.S.C. Section 101). A patent-holder enjoys the right, during the term of the patent, to exclude others from making, using, selling, offering for sale or importing the subject matter of the patent (35 U.S.C. Section 271). To qualify for patent protection, an invention must be new, useful and non-obvious when viewed in light of prior inventions. *Graham v. John Deere Co.* 383 U.S. 1 (1966).

B. The Basis for the Proprietary Nature of Ameritech’s Privacy Manager

Ameritech’s Privacy Manager service is the subject of several pending patent applications that cover various aspects of the service. These pending patent applications demonstrate that Privacy Manager is a new, useful and non-obvious process. On this basis, Ameritech believes the Privacy Manager Service is entitled to patent protection and, thus, proprietary to Ameritech. Ameritech would be willing to provide the Commission with additional information with respect to these pending patent applications subject to appropriate non-disclosure arrangements.

In addition, and as an independent basis for the proprietary nature of the Ameritech Privacy Manager Service, various aspects of the service relating to its implementation are

the subjects of trade secret protection. This information has independent economic value from not be generally known by or readily discernable to Ameritech's competitors and, like the network routing tables discussed above, have been the subject of reasonable measures to protect their secrecy.