March 28, 2000

BY FEDERAL EXPRESS

Ms. Dorothy Wideman Executive Secretary Michigan Public Service Commission 6545 Mercantile Way Lansing, MI 48909-7721

> RE: In the Matter, on the Commission's Own Motion to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996. Case No. U-12320

Dear Ms. Wideman:

By this letter, the Competitive Telecommunications Association ("CompTel") and the Telecommunications Resellers Association ("TRA") wish to express their views on the information that Ameritech Michigan ("Ameritech") has proposed that competitive local exchange carriers ("CLECs") provide in the above-referenced proceeding. $\underline{1}$ /

CompTel is a national trade association representing competitive communications firms and their suppliers. CompTel's members offer a variety of local, domestic and international long distance, Internet, and wireless services. Its members include global and national firms, regional carriers, and emerging local

^{1/} Ameritech Michigan's Proposal Regarding Market Conditions and Competition Issues (filed March 13, 2000) ("Ameritech Proposal")

competitive companies who provide services using a diverse mix of entry strategies. Many of CompTel's members provide telecommunications services in Michigan. Since its inception in 1981, CompTel has advocated policies to promote the development of full and fair competition in the provision of communications services. CompTel's role in both federal and state proceedings is to ensure that companies of different sizes and with different entry strategies have a full and equal opportunity to compete in all communications service markets.

A national industry association, TRA represents more than 800 entities engaged in, or providing products and services in support of, the provision of telecommunications services. TRA was created, and carriers a continuing mandate, to foster and promote telecommunications competition, to support the competitive telecommunications industry, and to protect and further the interests of entities engaged in the provision of competitive telecommunications services. TRA is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers.

In lieu of participating in the collaborative process established by the Commission to help determine the information that CLECs may be required to provide in this proceeding, CompTel and TRA submit this letter to express their views on these issues. CompTel and TRA will not be participating in the collaborative process for two reasons. First, as national industry associations currently participating in proceedings throughout the country, resource limitations prevent us from attending and participating in all hearings, conferences, and meetings conducted in those proceedings. Second, as industry associations, CompTel and TRA represent the interests of a varied membership, both in Michigan and in other states. CompTel and TRA are not in a position to negotiate away the rights of their members in the context of proceedings, such as the collaborative process established in this case, in which participants are asked to reach agreement regarding disputed issues. CompTel and TRA can and do, however, represent the interests of their members generally, as advocates, in proceedings before state commissions and the Federal Communications Commission. In that context, CompTel and TRA wish to provide the Commission with their views on the scope and nature of information that should be collected from CLECs in the referenced Section 271 proceeding.

I. Ameritech's Proposal is Over-Broad and Would Not Protect the Confidentiality of Proprietary Information.

As an initial matter, the Commission should keep in mind in determining the information to be provided by CLECs in this proceeding that Ameritech bears the burden of demonstrating compliance with Section 271. Ameritech cannot rely on the quantitative market condition data that it proposes to obtain from CLECs to make its case. This is so because whether CLECs have been able to begin providing services in Michigan's local exchange market does not necessarily indicate that Ameritech is complying with the requirements of Section 271. Rather, to satisfy Section 271, Ameritech must provide its own qualitative data demonstrating that it is providing competitors with the nondiscriminatory access to its network and services that Section 271 requires.

That being said, the Commission should not require carriers to provide Ameritech with information that: (a) is proprietary or competitively sensitive and (b) is sought in a form not relevant to the determination to be made in this proceeding.

The information that Ameritech proposes to seek from CLECs may, in some cases, be proprietary and competitively sensitive. Providing such information to Ameritech could expose CLECs to competitive harm while giving Ameritech an unfair advantage in the Michigan telecommunications market.

The protective order proposed by Ameritech would not adequately protect such proprietary and confidential information. This is so because its provisions regarding the persons who would have access to the information and the purposes for which the information could be used are vague and open-ended. The protective order, for example, would make the information accessible by, inter alia: (1) the "receiving party's counsel of record and any attorneys employed by or associated with counsel of record and acting at the direction of the counsel of record;" (2) any "regulatory personnel employed by the receiving party who are acting at the direction of counsel;" (3) "persons requested by counsel of record to prepare documents, data, exhibits, comments or other materials for submission to the Commission on behalf of the receiving party;" $\underline{2}$ / and (4) any "clerical personnel for clerical purposes at the direction of persons specified " $\underline{3}$ / These provisions

<u>2</u>/ Proposed Protective Order at 2.

<u>3</u>/ <u>Id.</u> at 3.

could be interpreted to permit access by virtually anyone employed by Ameritech. Moreover, with respect to counsel, these provisions could be interpreted to permit access by all in-house counsel, including those that advise Ameritech on business matters.

The protective order's provisions regarding the purposes for which the information could be used also are vague and excessively open-ended. The protective order would permit the information gathered to be used for "the purposes of analyzing compliance with applicable law and preparing or analyzing submissions in conjunction with this docket." 4/ This provision could be interpreted to permit the use of the information for purposes other than gauging Ameritech's compliance with Section 271 and in proceedings other than this Section 271 proceeding. Furthermore, even if the protective order were made more restrictive, some of the information sought by Ameritech may be simply too competitively sensitive for it to be adequately safeguarded within Ameritech.

Moreover, Ameritech's proposal seeks information in a form not relevant to the Commission's Section 271 determination. Ameritech's proposal seeks information on a CLEC-specific and geographically disaggregated basis. 5/ For purposes of Section 271, however, the relevant inquiry -- beyond Ameritech's compliance with Section 271 which is the actual inquiry under Section 271 -- is whether competition in the local exchange market has developed in the aggregate throughout the state. Company-specific and location-specific information is not relevant to Commission's Section 271 determination. 6/

II. To the Extent the Commission Believes it Needs Market Condition Information from CLECs, the Commission Should

<u>4</u>/ <u>Id.</u> at 2.

<u>5</u>/ Ameritech Proposal at 5, n.5. For example, as discussed below, Ameritech proposes that CLECs provide information on an exchange-by-exchange or major-market-area basis.

 $[\]underline{6}$ / The only aspect of Section 271 for which CLEC-specific information could be relevant is the "Track A" inquiry under Section 271(c)(1)(A). Ameritech, however, should already have all the information it needs to address that inquiry since it is a party to the interconnection agreements at issue in that provision.

Protect the Confidentiality of the Information Provided and Minimize the Burden on CLECs.

To the extent the Commission believes it needs market condition information from CLECs to help it evaluate Ameritech's compliance with Section 271, the Commission should take steps to protect the confidentiality of the information provided and minimize the burden on CLECs. Specifically, the Commission should: (1) require CLECs to provide the information directly to Commission Staff, rather than Ameritech, and (2) have Staff aggregate the information for use in this proceeding.

In addition, the Commission should require CLECs to report only information that is: (1) not available to the Commission from other sources, (2) currently kept by competitive carriers, and (3) consistent with the information that the FCC requires in its local competition reporting requirements. The Commission should not require CLECs to provide any more information, at any greater level of detail, than the FCC requires. 7/ For example, the Commission should permit CLECs to provide information on a state-wide basis as required by the FCC, 8/ not on an exchange-by-exchange or major-market-area basis as Ameritech has proposed. 9/ The Commission also should not require information to be provided by any CLECs other than those required to comply with the FCC's local competition reporting requirements. 10/

By taking these steps, the Commission would protect the confidentiality of the information, ensure that the information gathered was in a form relevant to this proceeding, and avoid imposing unnecessary, resource-intensive reporting requirements on CLECs. For these reasons, CompTel and TRA

^{7/ &}lt;u>Local Competition and Broad Band Reporting, Federal Communications Commission News Release</u>, "FCC Adopts Data Collection Program to Asses Local Telecommunications Competition and Broadband Deployment," CC Docket No. 99-301 (rel. March 24, 2000) ("<u>FCC News Release</u>"). The text of the FCC's order was not available at the time this letter was prepared.

^{8/} Id. at 2.

^{9/} Ameritech Proposal at 5, n.5.

^{10/} FCC News Release at 2.

urge the Commission to keep the foregoing considerations in mind when determining the scope and nature of the information to be provided by CLECs in this proceeding, and the means by which the Commission will collect and disclose such information.

Respectfully submitted,

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