

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 82-0192 (HHG)
WESTERN ELECTRIC COMPANY,)	
INC., et al., and)	
)	
AMERICAN TELEPHONE &)	
TELEGRAPH COMPANY,)	
)	
Defendants.)	

PRELIMINARY MEMORANDUM OF THE UNITED STATES IN SUPPORT OF MOTION FOR A MODIFICATION OF THE DECREE TO PERMIT A TRIAL, SUPERVISED BY THE DEPARTMENT OF JUSTICE AND THE COURT, IN WHICH AMERITECH COULD PROVIDE INTEREXCHANGE SERVICE FOR A LIMITED GEOGRAPHIC AREA, WITH APPROPRIATE SAFEGUARDS, WHEN ACTUAL COMPETITION AND SUBSTANTIAL OPPORTUNITIES FOR ADDITIONAL COMPETITION IN LOCAL EXCHANGE SERVICE DEVELOP

The United States has moved for a modification of the decree to permit a trial, supervised by the Department of Justice and the Court, in which Ameritech could provide interexchange service for a limited geographic area, with appropriate safeguards, when there is actual local exchange competition (including facilities-based competition) and there are substantial opportunities for additional local exchange competition as evidenced by actual marketplace facts. This proposed modification, in our view, will be a very important step toward the goal of increased competition in local and long distance telephone service and presents a significant opportunity for the Court to advance the public interest in competition. Our proposal is the result of an

extensive negotiation and comment process, in which state regulators and a wide range of interested persons have made significant contributions, and Ameritech has agreed to major modifications of its original proposal. The proposed order that the United States is filing with the Court today has the support of AT&T, a decree party and major competitor in the interexchange market; MFS, a provider of alternative local exchange service; and Consumers Union, a major consumer group; and we expect it to draw more support.

In the accompanying Motion To Establish Briefing Schedule, the United States is asking that the court establish a schedule for the filing of a detailed memorandum by the United States and for full and expeditious responses and replies concerning this important proposal by all interested persons. The purpose of this Preliminary Memorandum is to explain why the Department views the proposed modification as a critical step in the transition to competition under the decree, and to outline briefly its terms and conditions.

COMPETITIVE SIGNIFICANCE OF THE PROPOSED MODIFICATION

The decree entered in this case has played and continues to play an extremely important role in the transition of telecommunications markets from regulated monopoly to full competition. The decree separated AT&T's potentially competitive businesses from the local exchange monopolies, and since then has ensured that, so long as those bottleneck monopolies continue to

exist, they cannot be used to thwart competition in other markets.

From the time the Court required the addition of a provision for removing the line of business restrictions under the standard set forth in VIII(C) of the decree, however, it has been recognized that the development of competition in local exchange services would provide even more effective protection for competition in other markets. The proposed modification both builds upon and encourages the efforts of some state legislatures and regulatory commissions to introduce competition in local exchange services, which in turn may lead to a world in which competition renders the line of business restrictions unnecessary. The Department has worked closely, not only with the commissions and/or staffs of the two states, Illinois and Michigan, that would be involved in the trial embodied in the proposed modification, but also with those of the other three states in the Ameritech region.

The proposed modification takes the form of a carefully supervised trial in a limited geographic area, with a right to terminate the trial, because the transition to competition in local exchange services will be complex. No set of conditions for promoting such competition could hope to address in advance the dozens of complicated implementation issues that will require resolution before meaningful competition is a practical reality, rather than merely a theoretical possibility. To say that unbundling must take place, for example, begs the questions of

the price of the unbundled network elements, the relation between those prices and the retail price of the bundled service and what sort of volume discount structure can be applied to either set of prices. The answers to these questions in turn will determine the marketplace effectiveness of the unbundling.

The Department believes that the process that would be set in place by the proposed modification will itself serve to encourage the development of competition for local exchange services. It would be taken as an encouraging sign by the states that are working to open up local exchange services to competition. And it would establish a mechanism to identify, understand, and address the many implementation issues that will arise in the transition to competition.

TERMS AND CONDITIONS OF THE PROPOSED MODIFICATION ORDER

A. General Structure

The proposed modification would allow Ameritech to offer interLATA service on a provisional basis from the LATAs encompassing the Chicago, Illinois, and Grand Rapids, Michigan, areas in accordance with three basic principles:

First, steps to foster the emergence of local competition must be taken.

Second, the effectiveness of these steps must be tested by actual marketplace facts -- by competitive conditions -- prior to Ameritech's entry into the interexchange market.

Third, Ameritech's offering of interLATA service will be accompanied by appropriate

safeguards and by close supervision by the Department.

The proposal contemplates a three-stage process. First, the accompanying motion presents the basic governing structure of the proposed trial to the Court for approval, after briefing by all interested persons and hearing by the Court. Second, before any interLATA service could actually begin, the Department would have to evaluate competitive conditions in the marketplace and determine that those conditions, in conjunction with the other safeguards in the order, ensure that there is no substantial possibility that commencement of the experiment could impede competition in interLATA service. (See ¶¶ 9-11.) Third, after interLATA service begins, the Department would retain a wide range of supervisory powers, including the authority to terminate the experiment at any time if conditions warranted. (See ¶ 15-17.) The Court would retain discretion to take any necessary actions at any point, including review of any determinations made by the Department. (See ¶ 51.)

B. Conditions for Entry

Under the proposed modification, Ameritech would be able to seek Department approval to offer interLATA service only after (1) arrangements for unbundling, resale of local services, interconnection, number portability, and nondiscriminatory number assignment have been implemented and all the necessary steps have been taken to ensure implementation of intraLATA toll dialing parity prior to the offering of interLATA service (¶ 9); and (2) Ameritech has filed a compliance plan for implementing equal

access and separate subsidiary requirements, and for withdrawing from interLATA service if the trial were terminated (§ 10). The Department would then investigate, obtain necessary information, and solicit comments from state regulators and interested parties. To assist it in its task, the Department may enlist the services of independent experts, at Ameritech's expense.

To approve commencement of interLATA service, the Department would have to find that actual competition to provide local exchange service exists in the Trial Territory, that regulatory changes and market conditions offer substantial opportunities for additional competition as evidenced by actual marketplace facts, and that the combination of these two factors, along with all of the protections outlined in the order, sufficiently safeguard competition. (§ 11) This determination would require meaningful opportunities to compete as a matter of economic reality, not simply a removal of legal barriers to local competition. It would require, for example, both that other local exchange carriers be certified, and that the certification process not operate to pose significant barriers to other potential entrants. In determining whether the tariffs filed by Ameritech under paragraph 9(c) of the order allow non-facilities-based competition, the Department would require not simply that the tariffs theoretically permitted resale of particular local services, but also that, as a matter of economic reality, there were meaningful opportunities for commercially feasible non-facilities-based competition in business and residential service,

either by directly reselling Ameritech services, or by connecting Ameritech loops to Ameritech ports, or both. The standard set forth in paragraph 11 is intended to ensure that neither business nor residential customers would be harmed by the grant of trial authority. It is not yet clear how competition in local exchange services will develop, and local exchange alternatives may be available to large business customers sooner than to residential customers. It is possible as well that the existence of competitive alternatives for the former would not provide adequate protection against anticompetitive behavior with respect to the latter. Therefore, the Department's application of Paragraph 11 necessarily will entail a practical assessment of actual market facts, and a judgment by the Department that neither class of customers will be harmed by the trial.

The proposed modification also will entail extensive cooperation and consultation between the Department and appropriate state regulatory agencies. The modification will leave to the state authorities their existing authority to resolve many issues that will be critical to the emergence of local competition. The order specifies certain state regulatory actions that the Department regards as minimally necessary to achieve competition in local exchange markets, but leaves considerable discretion to the states on precisely how the details will be resolved. The Department, however, retains full responsibility for evaluating the effects that state regulatory decisions (including decisions regarding such matters as entry,

unbundling and pricing) will have on competition; if an adequate degree of competition does not develop, the Department must and will take that into account in evaluating whether and how the trial should proceed.

C. Post-Entry Safeguards

The order contains a series of safeguards to protect competition during the trial period:

1. Department Supervision

The Department would have supervisory power to order Ameritech to discontinue conduct that impedes interLATA competition in the Trial Territory (§ 15) or to discontinue interLATA service in the territory (§ 16). Such supervision could be exercised not only for violations of the order, but also for any other conduct that may impede competition for interLATA services. Among the types of conduct that would likely trigger the exercise of such power would be discrimination by the Ameritech local exchange operations against other carriers, or cross-subsidization. Ameritech's trial authority could also be revoked if other market conditions, such as the failure of opportunities for local competition to materialize, indicate that continuation of the trial would impede competition for interLATA, intraLATA toll, or local exchange telecommunications or for exchange access services. The Department would also be able, subject to Court review as appropriate, to modify or eliminate safeguards that are no longer necessary in light of further

developments, or to modify the geographic scope of the Trial Territory within the two trial states. (¶ 17)

2. Lease-Only Provision

Ameritech's interexchange subsidiary would not be able to use its own facilities for long distance transport, but instead would have to lease such transport from unaffiliated carriers. (¶ 19)

3. Separate Subsidiary

Ameritech would keep its long distance operations in a separate subsidiary with its own officers and personnel, its own financial and accounting records, and its own facilities, other than certain enumerated shared services, which would be subject to cost accounting procedures. (¶ 20)

4. Equal Access / Nondiscrimination

Ameritech's local exchange operations would be required to provide exchange access, interconnection, and local exchange service that are equal in "type, quality and pricing" to that which it provides to its interexchange subsidiary. Ameritech's local operations must also interconnect, disseminate technical information, and provide services relating to interoperability in a non-discriminatory manner. (¶¶ 21-24) Ameritech's interexchange subsidiary would be able to purchase local exchange services and unbundled network elements on the same terms and conditions available to competing local exchange carriers and sell or resell local services. (¶ 25) Ameritech's local exchange operations could not make its order, maintenance, and other

telecommunications service support systems available to its interexchange subsidiary unless it offered equivalent support systems to unaffiliated carriers. (¶ 26) The same would be true of billing services. (¶ 27) Provisions are made for the nondiscriminatory availability of geographic number portability, publication and distribution of white pages telephone directories, customer name and address lists, and CPNI. (¶¶ 28-31)

5. Marketing

The marketing provisions of the order (¶¶ 33-46) deal with two distinct issues: (1) equal access obligations of Ameritech's local exchange operations, and (2) making one-stop shopping arrangements (i.e., the ability of customers to get their local and long distance calling from one, full-service carrier) available to business and residential customers, respectively. The equal access obligations embody the basic principles of existing obligations, with modifications to ensure that those principles will be effectuated when Ameritech competes in the provision of interLATA services. The provisions regarding one-stop shopping are intended to avoid giving an inappropriate competitive advantage or imposing an unfair handicap on any carrier. The order allows Ameritech to offer one-stop shopping to business or residential customers only when at least one other carrier is marketing services on a comparable basis.

D. The Role of the Court

The Court would retain authority to review the Department's determinations, including the determinations regarding the initiation of the trial; types of additional interexchange services that Ameritech may be allowed to offer pursuant to Paragraph 7(e); expansion of the trial territory or modification of the safeguards imposed in Paragraphs 19-47. In addition, the Department's decisions to authorize initiation of the trial or expansion of the trial territory will not be effective until 30 days after the decision. This delay will afford an opportunity for the court to hear any objections that may be raised, and for aggrieved parties to seek an order to stay the beginning of the trial.

CONCLUSION

The proposed decree modification provides for a carefully supervised trial of interexchange service by Ameritech that will promote local exchange competition and ensure appropriate safeguards during a transition period. This is one of the most significant decree matters to come before the Court in the post-divestiture period and represents the Department's efforts to represent and promote the public interest in competition under the decree. We are committed to facilitate this Court's review of the proposed modification so that the trial may begin as soon as the necessary conditions are in place, and we will fully carry out our responsibilities under the proposed order.

The United States has filed a Motion To Establish Briefing Schedule, and believes that the suggested schedule should allow sufficient time for all interested persons to express their views, while facilitating prompt consideration by the Court of this important matter. The United States accordingly requests that, after briefing is completed, the Court schedule a hearing on the the United States' motion at its earliest convenience.

Respectfully submitted,

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