



Washington D.C., February 13, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Room TW-B204F
Washington, DC 20554

Dear Ms. Dortch:

Re: The Ameritech Operating Companies Petition for Pricing Flexibility; Request for Confidential Treatment

Pursuant to the Commission's decision in Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GC Docket No. 96-55 (FCC 98-184), released Aug. 4, 1998 ("Confidential Information Order") and in accordance with the Commission's rules related to the Freedom of Information Act, 47 C.F.R. §§ 0.457 and 0.459, the Ameritech Operating Companies¹ (Ameritech) request confidential treatment of certain data filed in conjunction with their petition filed on February 13, 2004, wherein Ameritech requests pricing flexibility for specific MSAs pursuant to Section 69.727 of the Commission's rules.

Statement pursuant to 47 C.F.R. § 0.459(b)

(1) Identification of the specific information for which confidential treatment is sought.

Ameritech requests that the pages marked "Confidential" in the attached document be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. The marked pages contain information regarding the identity of collocators in specific Ameritech wire centers. It also contains revenue information at the MSA level for the services that are the subject of the Ameritech Petition.

¹ The Ameritech Operating Companies are Illinois Bell Telephone Company (Ameritech Illinois), Indiana Bell Telephone Company (Ameritech Indiana), Michigan Bell Telephone Company (Ameritech Michigan), the Ohio Bell Telephone Company (Ameritech Ohio), and Wisconsin Bell, Inc. (Ameritech Wisconsin).

(2) Identification of the Commission proceedings in which the information was submitted or a description of the circumstances giving rise to the submission.

Petition of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin for Pricing Flexibility Under Section 69.727 of the Commission's Rules for specific MSAs, filed February 13, 2004.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The data provided by the Ameritech Operating Companies identifies the entities collocating in specific Ameritech wire centers. Ameritech believes that this data represents confidential carrier information which is known to Ameritech by virtue of Ameritech provision of collocation services to those carriers and which is subject to the limitations on use and disclosure under the terms of Section 222(b) of the Communications Act, as amended. 47 U.S.C. § 222(b). The data provided by Ameritech also displays Ameritech access service revenues disaggregated at the MSA level which Ameritech considers to be confidential business information, the disclosure of which, would cause Ameritech competitive harm.

(4) Explanation of the degree to which the information concerns a service that is subject to competition; and

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

If competitors of the collocators were provided this information, which again identifies the entities collocating in specific Ameritech wire centers, it could aid competitors in determining where to target their competitive efforts. It would indicate market concentration and, by inference, strategic planning of individual carriers. The Ameritech MSA level revenue information pertains to special access services which, consistent with the Commission's acknowledgment of increased competition in its *Pricing Flexibility Order*,² are subject to competition and/or potential competition in the Ameritech MSAs involved. Disclosure of this information would enable competitors to identify Ameritech's most lucrative markets and to target their efforts accordingly.

² In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, FCC 99-206, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262, CC Docket No. 94-1, CCB/CPD File No. 98-63 and CC Docket No. 98-157, 14 FCC Rcd 14221 (rel. Aug. 27, 1999) ("Pricing Flexibility Order").

- (6) **Identification of any measures taken by the submitting party to prevent unauthorized disclosure; and**
- (7) **Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

This information has been maintained on a confidential basis and would not ordinarily be disclosed to parties outside the company.

- (8) **Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

The material should be withheld from public disclosure as long as the data in question would provide a basis for competitors to gain insight into the collocators' business decisions. Ameritech cannot determine at this time any date on which this information would become "stale" for such a purpose. The Ameritech revenue information should be withheld from public disclosure indefinitely as its commercial value to competitors is not likely to diminish.

- (9) **Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.**

Under applicable Commission and Court rulings, the subject material must be kept free from public disclosure. Exemption 4 of the Freedom of Information Act shields information which is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. See Washington Post Co. v. U.S. Department of Health and Human Services, 690 F. 2d 252 (D.C. Cir. 1982). The attached information clearly satisfies the first two elements of that test. With respect to the third element of the above test, information is considered to be "confidential" if disclosure is likely to (1) impair the government's ability to obtain necessary information in the future, or (2) harm substantially the competitive position of the person from which the information was obtained. National Parks and Conservation Ass'n. v. Morton, 498 F. 2d 765, 770 (D.C. Cir. 1974).

The Commission has specifically held that disclosure of data gathered by the Commission under its audit authority would be likely to impair the government's future ability to obtain such data, notwithstanding the statutory authority to compel production. See In the Matter of Martha H. Platt On Request for Inspection of Records, FOIA Control Nos. 90-63 (October 3, 1990).

The Commission has recognized that competitive harm can result from the disclosure of confidential business information that gives competitors insight into a company's costs, pricing plans, market

strategies, and customer identities. See In re Pan American Satellite Corporation, FOIA Control Nos. 85-219, 86-38, 86-41, (May 2, 1986).³

The Commission has granted Ameritech a similar request for confidential treatment of the information subject to this request. See, The Ameritech Operating Companies Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, *Protective Order*, February 3, 2003.

Protective Order Requested

Ameritech acknowledges that the Bureau is directed by the Commission's Confidential Information Order, at paras. 35-42, to routinely employ the standard protective order detailed in the Confidential Information Order for materials submitted under a request for confidential treatment unless complete confidentiality is requested. If any person (other than an agency employee working directly on the matter in connection with which these documents are submitted) requests an inspection or requests a copy of the documents or any portion of them, please provide me sufficient advance notice prior to any such disclosure to allow Ameritech to pursue appropriate remedies to preserve the confidentiality of the information. The Ameritech Companies filing pricing flexibility petitions herewith are also submitting redacted public versions of such filings.

Should you have any questions please contact me on (202) 326-8903. My office address is 1401 I St. N.W., Suite 400, Washington D.C. 20005. Thank you for your attention to this matter.

Very truly yours,

/s/ Davida Grant

Davida Grant
Senior Counsel

Attachments

³ Further, the Commission has ruled that not only should such data be protected but also that information must be protected through which the competitively sensitive information can be determined. Allnet Communications Services, Inc. Freedom of Information Act Request, FOIA Control No. 92-149, Memorandum Opinion and Order (released August 17, 1993) at p.3. The Commission's decision was upheld in a memorandum opinion of the U.S. Court of Appeals for the D.C. Circuit, which affirmed a U.S. District Court decision protecting the information. Allnet Communications Services, Inc. v. FCC, Case No. 92-5351 (memorandum opinion issued May 27, 1994, D.C. Cir.).