

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
MCI TELECOMMUNICATIONS)
CORPORATION,) File No. E-97-19A
Complainant)
v.)
ILLINOIS BELL TELEPHONE COMPANY,)
INDIANA BELL TELEPHONE COMPANY,)
INC.,)
MICHIGAN BELL TELEPHONE)
COMPANY,)
OHIO BELL TELEPHONE COMPANY,)
WISCONSIN BELL, INC., d/b/a/)
AMERITECH OPERATING COMPANIES)
and AMERITECH COMMUNICATIONS,)
INC.,)
Defendants.

MEMORANDUM OPINION AND ORDER

Adopted: October 16, 2000

Released: October 19, 2000

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant in part a formal complaint filed by MCI Telecommunications Corporation¹ against the Ameritech Operating Companies²

1 Effective September 14, 1998, MCI Telecommunications Corp. merged with WorldCom, Inc. to form MCI WorldCom, Inc. All references herein to MCI after September 14, 1998, refer to MCI WorldCom, Inc.

2 The Ameritech Operating Companies are: Illinois Bell Telephone Company; Indiana Bell Telephone Company, Inc.; Michigan Bell Telephone Company; The Ohio Bell Telephone Company; and Wisconsin Bell Inc. Ameritech Answer at 1. This Order refers to them collectively as Ameritech. We note that effective October 6, 1999, Ameritech Corp. merged with SBC Communications, Inc. As a result of the merger, Ameritech is a wholly owned subsidiary of SBC Communications, Inc.

concerning Ameritech's 1-800-AMERITECH service (the Service). This Service permits Ameritech's local subscribers to place local and long distance calls originating both inside and outside of the Ameritech service area. Section 271 of the Communications Act of 1934 (Act) generally bars each Bell Operating Company ("BOC") -- including Ameritech -- from providing long distance ("interLATA") service originating in the region where it provides local service, unless and until the Commission determines that various conditions relating to competition in local telephone service are satisfied.³ Ameritech has not received Commission approval to provide long distance service in any state in its service region. This complaint presents the question whether the 1-800-AMERITECH service violates section 271.

2. The evidence demonstrates that Ameritech: (1) designed and developed a combined service offering for its local service customers that includes a long distance component; (2) relied on its brand name in marketing the combined offering; (3) promoted the combined offering through bill inserts to Ameritech's local calling subscriber base; (4) served as the exclusive point of contact for the customer for all service inquiries for the combined offering; (5) maintained the exclusive right to market the Service; (6) selected the long distance carrier; (7) precluded the long distance carrier from contacting 1-800-AMERITECH customers without Ameritech's prior consent; (8) reserved the right to substitute its own services in place of the contracting provider; and (9) established the prices, terms, and conditions under which the long distance component would be offered. Applying Commission and judicial precedent in this area,⁴ we conclude, based on the totality of circumstances presented in the record, that Ameritech's 1-800-AMERITECH offering violates section 271. Because we find that Ameritech violated section 271, we do not reach other claims raised by MCI regarding other alleged violations of the Act by Ameritech.

II. BACKGROUND

3. In late November of 1996, Ameritech began offering its 1-800-AMERITECH service, which permits its subscribers to place local, long distance and international calls from anywhere in the country by accessing a dialing platform through the Service's toll-free number.⁵ Ameritech promoted the Service as a way for its customers to make calling-card calls from

³ 47 U.S.C. § 271(a). Section 271(a) provides: "Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section." 47 U.S.C. § 271(a). InterLATA service "means telecommunications between a point located in a local access transport area [LATA] and a point located outside such area." 47 U.S.C. § 153(21). LATAs are contiguous geographic areas established by a Bell Operating Company (BOC) such that no exchange area includes points within more than one metropolitan statistical area or state. 47 U.S.C. § 153(25). Ameritech's in-region states are Illinois, Indiana, Michigan, Ohio and Wisconsin.

⁴ See *AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd 21438 (1998) ("*Qwest Teaming Order*"), *aff'd sub nom.*, *U S WEST Communications, Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), *cert. denied*, 120 S.Ct. 1240 (2000).

⁵ Ameritech Answer, ¶ 4.

payphones without paying excessive fees.⁶ Thus, the promotional materials asserted that, by dialing 1-800-AMERITECH, customers were “guaranteed low rates . . . for all domestic long distance calls.”⁷ Similarly, advertisements mailed to Ameritech’s local-service customers asserted that, by using the Service, callers could ensure that they would “never be surprised by exorbitant calling card charges again.”⁸ Other advertisements promoted the Service as a way for consumers to have control over which long distance company carries their calls, and to ensure that their calls would not be blocked by pay phone operators.⁹

4. In September 1996, Ameritech sent a notice of solicitation to approximately 144 long distance carriers, seeking in-region, interLATA transport to support the 1-800-AMERITECH service.¹⁰ Among other things, the notice of solicitation proposed a requirement that the IXC supporting the Service would show its calls on the Ameritech bill associated with an Ameritech-provided service,¹¹ that the IXCs’ contracts with Ameritech be on a month-to-month basis, that the contracts be terminable by Ameritech on 10 days’ notice, and that cancellation could be effected on a LATA-by-LATA basis.¹² From the responses that it received, Ameritech chose WiTel Communications Group (WiTel), which Ameritech states was the only carrier that submitted a qualifying response to the notice of solicitation.¹³ Ameritech itself is the carrier for both local and intraLATA calls for its 1-800-AMERITECH service.¹⁴ Ameritech’s interLATA affiliate, Ameritech Communications, Inc. (ACI), carries the interLATA calls originating outside Ameritech’s region (out-of-region interLATA traffic) pursuant to Ameritech’s F.C.C. Tariff No. 2.¹⁵ At the time MCI filed its complaint, WiTel carried the in-region, interLATA calls.¹⁶ Subsequently, Ameritech terminated its contract with WiTel and chose TelTrust Communications

⁶ Ameritech’s Answer to MCI Interrogatories, June 9, 1997, Exh. 3 (News Release, Nov. 25, 1996).

⁷ Ameritech Letter to Tonya Rutherford, Jan. 15, 1999, Att. 2 at 1 (January 15, 1999 Letter). *See also* News Release, Nov. 25, 1996.

⁸ Ameritech Answer, Exh. 1.

⁹ Ameritech Answer, Exh. 1; *see also* News Release, Nov. 25, 1996.

¹⁰ Ameritech Answer, ¶ 25.

¹¹ Notice of Solicitation at 3.

¹² Notice of Solicitation at 3-4.

¹³ Ameritech Answer, ¶ 25.

¹⁴ Ameritech Answer, ¶ 5.

¹⁵ Ameritech Answer, ¶ 6. Section 271(b) permits a BOC, upon passage of the Telecommunications Act of 1996, to provide interLATA calls originating outside of its local service territory through a structurally separate affiliate. 47 U.S.C. § 271(b), 272.

¹⁶ Ameritech Answer, ¶ 11; Stipulations of Fact at 2.

Services (TelTrust) as the sole IXC to support the Service.¹⁷ Under the TelTrust agreement, Ameritech reserved the right not only to contract with other IXCs, but also to utilize its own and its affiliates' resources to provide similar services.¹⁸

5. Ameritech's name and trademark have been far more prominently featured in advertisements promoting the Service than the identity of the long distance carriers involved. The toll-free number for the Service conspicuously links Ameritech's name to the service. Similarly, the promotional materials that Ameritech mailed to its local-service subscribers prominently feature Ameritech's name and logo. Only in smaller type does the mailer identify the carriers that actually transmit the calls, stating that "in-region intraLATA calls will be handled by Ameritech," and that "[a]ll other calls will be handled by Ameritech Long Distance or WilTel."¹⁹ Although the brochure to which the calling card was attached in Ameritech's initial mailing stated that interLATA calls would be handled by Ameritech Long Distance or WilTel, the calling card itself did not identify any carrier other than Ameritech.²⁰ Other promotional materials used to market 1-800-AMERITECH included television and radio commercials and a print advertisement. Following the initial launch of the Service, these ads mentioned WilTel, but they did not identify it as the carrier for in-region, interLATA calls.²¹ Subsequently, the promotional materials were changed to state that in-region carrier services are provided by the IXC supporting the Service.²²

6. When a customer accesses the platform by dialing 1-800-AMERITECH, she hears, "Welcome to 800-AMERITECH," and then receives a prompt to enter the called number, her calling card number and a personal identification number. Once the calling card number is verified and the customer places a call, she hears "Thank you for using 800-AMERITECH" when placing local, intraLATA toll, or out-of-region, interLATA calls. When placing in-region, interLATA calls, the customer hears a thank-you message that mentions the supporting carrier by name. In-

¹⁷ On January 9, 1998, Ameritech again solicited bids for IXCs to carry the in-region interLATA traffic for the 1-800-AMERITECH service. Through this process, Ameritech ultimately chose TelTrust. January 15, 1999 Letter, Att. 1.

¹⁸ Letter to Magalie Roman Salas, September 16, 1999, Att. at 11 (§ 2.13) (TelTrust Agreement).

¹⁹ Ameritech Answer, Exh. 1.

²⁰ Ameritech Answer, Exh. 1.

²¹ The 30-second television commercial contains the following written statement (on the screen for approximately 3 seconds in the middle of the commercial): "Ameritech handles calls when authorized. Other calls carried by WilTel." The radio commercial contains the following statement (at the end of the commercial): "Ameritech guarantees lawful calling card rates and handles calls where authorized. Other calls carried by WilTel." The print advertisement contains the following statement (at the bottom of the page in six-point Times Roman print): "Ameritech guarantees lawful calling card rates and handles calls where authorized. Other calls handled by WilTel." Attachments to Letter from Frank Michael Panek, Ameritech Counsel, to Diane Griffin Harmon, FCC Counsel (July 14, 1997) (Ameritech Factual Supplement). All three promotional materials advertise 1-800-AMERITECH in conjunction with Ameritech's calling card. See, e.g., Print Advertisement ("Now the card that connects also protects. (When you dial 1-800-AMERITECH)"). *Id.*

²² January 15, 1999 Letter, Att. 2 at 9.

region, interLATA calls are routed to the supporting IXC's network in the same manner as such calls would be routed to any other long distance carrier's network by Ameritech.²³

7. The Service is promoted, among other means, through bill inserts sent to Ameritech's local customer base.²⁴ The record before us indicates that Ameritech serves as both the initial and exclusive customer care contact for the 1-800-AMERITECH service.²⁵ The TelTrust agreement prohibits TelTrust from communicating with the 1-800-AMERITECH customers without prior written consent from Ameritech.²⁶ The Service is billed through the customer's Ameritech monthly service bill.²⁷

III. DISCUSSION

A. Section 271 claim.

8. MCI's primary contention in this proceeding is that the 1-800-AMERITECH service violates section 271 of the Act because it amounts to the provision of in-region interLATA service before Ameritech has received approval from the Commission to offer such services. Section 271(a) states "[n]either a Bell operating company nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section."²⁸ The statute permits a BOC to provide interLATA service originating within its local service area on a state-by-state basis only upon application to the Commission and approval from the Commission pursuant to section 271(d). Section 271 thus "both gives the BOCs an opportunity to enter the long distance market and conditions that opportunity on the BOCs' own actions in opening up their local markets."²⁹ Congress intended section 271 to create a strong incentive for the BOCs to comply with new obligations in sections 251 and 252 of the Telecommunications Act of 1996,³⁰ which, in turn, were designed to facilitate competition in local markets (including interconnection, unbundling and resale). The statute creates this "powerful incentive" by conditioning BOC entry

²³ Ameritech Factual Supplement.

²⁴ January 15, 1999 Letter, Att. 2 at 21.

²⁵ See ¶ 23 below.

²⁶ TelTrust Agreement at 1 (§ 1.03).

²⁷ TelTrust Agreement, Att. A at 22.

²⁸ 47 U.S.C. § 271(a).

²⁹ *U S WEST Communications*, 177 F.3d at 1060.

³⁰ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et. seq.*, amended the Communications Act of 1934.

into the in-region, long-distance market on compliance with a checklist of local market-opening criteria and other requirements.³¹

9. Ameritech has not received approval from the Commission to provide long distance service in any state in its region.³² It is therefore subject to the general section 271(a) prohibition on the offering of such services. MCI's claim under section 271 presents the generic issue, previously addressed by the Commission in the *Qwest Teaming Order* and affirmed by the Court of Appeals, of whether a challenged offering, for which a BOC does not actually transmit in-region, interLATA traffic, may nevertheless amount to the "provision" of interLATA service for purposes of section 271. In that case – as in this case – the relevant BOCs were offering a combined service that included their own local and intraLATA toll service bundled with interLATA transport provided by an unaffiliated long distance carrier.

10. In the *Qwest Teaming Order*, we stated that the determination of whether a non-transmitting BOC violated section 271 turns on "whether a BOC's involvement in the long distance market enables it to obtain competitive advantages, thereby reducing its incentive to cooperate in opening its local market to competition."³³ Thus, the "provision" of interLATA

³¹ *U S WEST Communications*, 177 F.3d at 1060; 47 U.S.C. § 271(c). See also *AT&T Corp. v. FCC*, 220 F3d 607, 612 (D.C. Cir. 2000) (conditional long distance entry pursuant to section 271 is designed "[t]o encourage

BOCs to open their markets to competition as quickly as possible"). The Commission's decision in the *Qwest Teaming Order* contains a more extensive explanation of the market-opening incentives behind section 271. 13 FCC Rcd 21438, 21441-47, ¶¶ 3-7 (1998).

³² Ameritech has twice applied to the Commission for section 271 authorization to provide in-region, interLATA service in Michigan. Ameritech's first section 271 application, filed Jan. 17, 1997, was dismissed by the Commission at Ameritech's request. *Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 2088 (Com. Car. Bur. 1997). On August 19, 1997, the Commission denied Ameritech's second application, filed May 21, 1997. *Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543 (1997) (*Ameritech Michigan 271 Order*).

³³ *Qwest Teaming Order*, 13 FCC Rcd at 21465, ¶ 37. The Commission recently applied the test articulated in the *Qwest Teaming Order* in the context of approving a transfer of radio licenses associated with U S WEST's merger with Qwest. *In the Matter of Qwest Communications International, Inc. and U S WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, FCC 00-231, 2000 WL 821252 (F.C.C.) (Rel. June 26, 2000). The Commission concluded that Qwest's proposed divestiture of interLATA customers, services and assets in U S WEST's service region was a legitimate, arms-length transaction, and, as a transitional device designed to minimize disruption to customers, would allow the merger to proceed in compliance with the requirements of section 271. See also *AT&T Corp. v. BellSouth Corp.*, Memorandum Opinion and Order, DA 99-609 (Com. Car. Bur. Mar. 30, 1999) (Com. Car. Bur. 1999) (staff-level decision holding that BellSouth's pre-paid calling card did not violate section 271 on the basis of findings that, *inter alia*, (1) the card did not involve a continuing, presubscribed relationship that would allow BellSouth to gain meaningful information about card purchasers and to exploit that relationship in customer (continued....)

services, within the meaning of section 271(a), “must encompass activities that, if otherwise permitted, would undermine Congress’s method of promoting both local and long distance competition by prohibiting BOCs from full participation pursuant to section 271’s competitive checklist.”³⁴ In order to determine whether a BOC’s long distance-related activities ran afoul of section 271, we found it instructive in the *Qwest Teaming Order* to balance the following, non-exclusive factors: “whether the BOC obtains material benefits (other than access charges) uniquely associated with the ability to include a long-distance component in” the challenged offering; whether the BOC is effectively holding itself out as a provider of long distance service; and whether the BOC is performing activities and functions that are typically performed by those who are legally or contractually responsible for providing interLATA service to the public.”³⁵ In evaluating the challenged BOC actions, “we consider the totality of its involvement, rather than focus on any one particular activity.”³⁶ We apply the same fact-based test to MCI’s claim that the 1-800-AMERITECH service amounts to the prohibited provision of in-region interLATA service.

11. In the *Qwest Teaming Order*, one of the principal factors that led us to find a section 271 violation was that the challenged offerings would have afforded the defendants a “significant jumpstart when they do obtain 271 authorization.”³⁷ Thus, by developing an extensive customer base for the challenged services, the defendant carriers could “pre-position” those customers for a seamless transition to the long distance services of the carriers’ section 272 affiliates once the carriers received section 271 authority to begin in-region interLATA service.

12. As with the arrangements at issue in the *Qwest Teaming Order*, we find that the 1-800-AMERITECH service permits Ameritech to obtain material benefits uniquely associated with the ability to include a long distance component in the 1-800-AMERITECH service. The Service permits Ameritech to accumulate a significant base of customers who rely on the Service. After receiving section 271 authority, Ameritech would be well positioned to substitute the interLATA service of its section 272 affiliate for that of the IXC currently supporting the Service. In so doing, Ameritech could build up goodwill as a full service provider with its local-service customers who already routinely placed their long distance calling-card calls through the 1-800-AMERITECH service before gaining section 271 approval from the Commission.³⁸ The ability of Ameritech to avail itself of a ready base of customers that is positioned for migration to its

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retention or win-back efforts; and (2) the card served a segment of the telecommunications market that is replete with similar prepaid offerings sponsored by non-carriers, thereby reducing the risk that consumers would perceive BellSouth as offering in-region, interLATA services).

³⁴ *Qwest Teaming Order*, at 21462, ¶ 30.

³⁵ *Id.* at 21465-66, ¶ 37.

³⁶ *Id.* at 21465-66, ¶ 37.

³⁷ *Id.* at 21467, ¶ 41 (internal quotation omitted).

³⁸ See *U S WEST Communications*, 177 F.3d at 1060 (“By offering one-stop shopping for local and long distance under their own brand name and with their own customer care . . . U S WEST and Ameritech could build up goodwill as full service providers, positioning themselves in these markets before section 271 allows them actually to enter.”)

eventual interLATA service is a troublesome material benefit uniquely associated with the ability to include a long-distance component in the 1-800-AMERITECH service.

13. Our concern in this regard is heightened by the structure of Ameritech's agreements with the IXC's that have provided in-region interLATA transmission to the Service. The TelTrust agreement, for example, states that Ameritech "may at any time and for *any or no* reason terminate this Agreement, in *whole* or in *part*, by giving seventy-five (75) days prior written notice . . ." ³⁹ In addition, Ameritech reserved the right not only to contract with other IXC's, but it also reserved the right to utilize its own and its affiliates' resources to provide similar services. ⁴⁰ Read together, these contract provisions give Ameritech the right to replace TelTrust's services with the services of Ameritech's section 272 affiliate once the Commission grants Ameritech authorization to provide long distance services in-region. ⁴¹ Thus, as in the *Qwest Teaming Order*, Ameritech structured the agreement in such a way that it would be "well-poised to substitute the long distance service offered by [its] section 272 affiliate, when [it] obtain[s] section 271 approval, into the [1-800-AMERITECH] package in the future." ⁴²

14. In the *Qwest Teaming Order*, we found that the challenged offerings allowed the defendant carriers to "enhance [their] goodwill in the marketplace" and to "add value" when dealing with their customers in a way that further cemented their relationships with their end users before their markets were open to meaningful competition. ⁴³ This, in turn, makes it even more difficult for competitors successfully to enter the market. The TelTrust agreement flatly prohibits TelTrust from communicating with the 1-800-AMERITECH customers in any manner without the prior written consent of Ameritech. ⁴⁴ Thus, Ameritech enjoys a significant competitive advantage in building goodwill with the 1-800-AMERITECH customers, including with regard to the provision of long distance services. As a result, once Ameritech receives Commission authorization to offer long distance service in-region, the 1-800-AMERITECH customers, who receive local service from Ameritech, may be more inclined to select Ameritech as their presubscribed long distance carrier as well.

³⁹ TelTrust Agreement at 2 (§ 1.06).

⁴⁰ TelTrust Agreement at 2 (§ 2.13).

⁴¹ Ameritech's initial notice of solicitation provides further evidence that the Service would permit Ameritech to enjoy, almost immediately, a considerable jumpstart for its in-region long distance operations as it received section 271 authority in each state. For example, the notice of solicitation proposed that Ameritech could cancel the IXC's service with only 10 days' notice, and it would have permitted Ameritech to effect such a cancellation on a LATA-by-LATA basis. Notice of Solicitation at 2. Thus, the notice of solicitation envisioned that Ameritech quickly would move, on a state-by-state basis, its 1-800-AMERITECH customers, and the traffic they generate, to its section 272 affiliate's network.

⁴² *Qwest Teaming Order*, 13 FCC Rcd at 21467, ¶ 41. See *U S WEST Communications*, 177 F.3d at 1060. We note that, under the totality of circumstances test, this factor alone is not dispositive in determining whether a BOC has violated section 271 of the Act.

⁴³ *Qwest Teaming Order*, 13 FCC Rcd at 21468, ¶ 42.

⁴⁴ TelTrust Agreement at 1 (§ 1.03).

15. Another troubling aspect of the Service is the manner in which Ameritech has promoted it to its local subscriber base. In addition to advertising the offering through various media outlets, Ameritech has availed itself of a communication channel that is uniquely available to it as the monopoly provider of local service within its region – bill inserts and other mailings that draw on its subscriber list.⁴⁵ Thus, Ameritech can promote the Service to virtually every subscriber on its network, and it can do so using a customer database that is either unavailable to any one of its competitors in the local service market or available only at a significant additional charge. Moreover, through the use of bill inserts, Ameritech can effectively promote the Service at a slight fraction of what a stand-alone mailing would cost one of its competitors, even if those competitors had access to Ameritech’s subscriber mailing list.

16. Ameritech’s participation in the long distance market through its 1-800-AMERITECH service enables it to obtain significant competitive advantages in a way that is similar to what we found objectionable in the *Qwest Teaming Order*. We recognize that the service offering at issue in this case may not be as strong a disincentive to the opening of Ameritech’s local markets as were the pre-subscribed combined service offerings at issue in the *Qwest Teaming Order*. Nevertheless, we believe that this Service allows Ameritech to build up goodwill with its local-service customers as a full-service provider prior to receiving section 271 approval. This permits Ameritech a significant competitive advantage that could reduce its incentive to open its local market to competition.⁴⁶ We find that the provision of the 1-800-AMERITECH service runs counter to the incentive structure established by Congress in section 271.

17. Under the analytical framework set forth in the *Qwest Teaming Order*, we also inquire whether Ameritech is effectively holding itself out to customers as a provider of long distance services, and whether Ameritech is engaged in various actions typically performed by those who resell interLATA service. In the *Qwest Teaming Order*, for example, we found that, through the challenged services, the defendant carriers were holding themselves out in such a manner because they had “taken several specific steps to brand [the challenged offerings] as their exclusive combined service offerings.”⁴⁷ Thus, the defendants held the “exclusive right to market and sell Qwest’s long distance services in conjunction with the marketing and sale of their own local services,” and they served as the initial point of contact for customers experiencing problems with the long distance service portion of the offerings.⁴⁸ In reviewing the *Qwest Teaming Order*, the Court of Appeals specifically noted the reasonableness of our conclusion that, viewed as a whole, the challenged promotional materials could lead consumers to believe that the BOC was providing in-region long distance service.⁴⁹

⁴⁵ January 15, 1999 Letter, Att. 2 at 21.

⁴⁶ See *U S WEST Communications*, 177 F.3d at 1060.

⁴⁷ *Qwest Teaming Order*, 13 FCC Rcd at 21471, ¶ 45.

⁴⁸ *Id.* at 21471, ¶¶ 45-46.

⁴⁹ *U S WEST Communications*, 177 F.3d at 1061.

18. We begin our analysis of whether Ameritech holds itself out as providing long distance service with the toll-free number through which subscribers reach the Service. The vanity number⁵⁰ is plainly calculated to cause customers to associate Ameritech with all of the services offered through the 1-800-AMERITECH platform. Thus, the number allows Ameritech to link the Service's long distance offering (as well as its other offerings) with the carrier's accumulated customer good will and its established reputation as a local service provider.⁵¹

19. Examination of Ameritech's promotional materials for the Service also informs our decision on whether Ameritech holds itself out as providing long distance service. These materials prominently display the Ameritech brand, creating the impression that 1-800-AMERITECH is an offering for which the carrier provides all components of the service offered, including long distance.⁵² Other statements in the materials foster this impression. For example, in a letter displaying only the Ameritech logo, the carrier states that the 1-800-AMERITECH service ensures customers will have their "calls carried at Ameritech's low rates every time."⁵³ Similarly, a mailer that accompanies the new Ameritech calling cards explains that the benefits of using the 1-800-AMERITECH service include "gain[ing] control of who carries your local and long distance calls" and "pay[ing] a GUARANTEED low rate of \$0.25 per minute for all domestic long distance calls billed to your Ameritech Calling Card."⁵⁴ The same mailer encourages calling card customers to "dial 1-800-AMERITECH every time you make a local or long distance calling card call" and "[start] using the Ameritech Calling Card to save money on all your calls – local, long distance, and international."⁵⁵

20. In the promotional materials for the Service, Ameritech directly analogizes the Service to AT&T's and MCI's calling card offerings by comparing the rates of the three services for an eight-minute call.⁵⁶ In that regard, Ameritech admits that customers are generally aware

⁵⁰ A vanity number is a telephone number for which the letters associated with the number's digits on a telephone handset spell a name or word of value to the number holder. *In re Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9058 ¶ 1 (1998) (*Toll Free Service Access Codes Order*).

⁵¹ As the Commission stated in the *Toll Free Service Access Codes Order*, vanity numbers "are of value to their subscribers because they can generate high visibility and consumer recognition when used in advertising." *Id.*, at 9064, ¶ 11. *Cf.* Complainant's Reply Brief at 4 (arguing that Ameritech name in 800 number reinforces impression that Ameritech is sole carrier supporting Service).

⁵² *See generally* January 15, 1999 Letter, Att. 2; Ameritech Answer, Exh. 1.

⁵³ January 15, 1999 Letter, Att. 2 at 1. *See also* Ameritech Answer, Exh. 1 ("by dialing 1-800-AMERITECH your calls will be carried at *our* low rates").

⁵⁴ *Id.* The mailer makes the following statements: "when you dial 1-800-AMERITECH you have control over who carries your local and long distance calls;" "Just dial 1-800-AMERITECH and you're guaranteed to get low local and long distance calls;" and "By dialing 1-800-AMERITECH you can enjoy great local and long distance rates - all itemized on just one monthly bill." *Id.*

⁵⁵ January 15, 1999 Letter, Att. 2 at 3.

⁵⁶ *See* January 15, 1999 Letter, Att. 2 at 9. The comparison indicates a 29% savings off of AT&T's calling card rates and a 27% customer savings off of MCI's calling card rates when the customer uses the 1-800- (continued....)

that they can choose their long distance carrier on an *ad hoc* basis "by dialing an 800 number associated with the customer's chosen carrier (e.g., MCI's '1-800-ANYCALL' or AT&T's '1-800-CALLATT')." ⁵⁷ By dialing these numbers, which are heavily promoted by the respective carriers, customers reach an IXC that actually provides interLATA transmission service regardless of where the call originates. Ameritech asserts, however, that because of disclosures in its promotional materials for the Service, those materials do not hold Ameritech out as similarly providing long distance service. ⁵⁸ We are not persuaded by this argument, based as it is on the relatively inconspicuous disclaimers in Ameritech's marketing materials. It requires too fine of a line to distinguish between the "holding out" accomplished by MCI's and AT&T's vanity-number services and the "holding out" accomplished by 1-800-AMERITECH.

21. Ameritech points out that several portions of its promotional materials indicate that it handles only the calls it is authorized to carry and that Ameritech Communications, Inc., or the supporting contract carrier handles all other calls. ⁵⁹ Thus, in their original form, Ameritech's promotional materials stated merely that "other calls are handled by WiTel." ⁶⁰ The materials have since been changed to state: "In region carrier services provided by Teltrust. Out of region carrier services provided by Ameritech Communications, Inc." ⁶¹ We are troubled by the proportional dissimilarity in type size between the prominence of the Ameritech brand name, including the number of times that the Ameritech brand name is associated with long distance service and rates, and the in-region service disclaimer and their proximity. The disclosures essentially are relegated to a hidden portion of the promotional materials.

22. Ameritech further asserts that "the customer's bill clearly indicates the carrier for each call, confirming the distinction and eliminating any possible confusion." ⁶² While that much is true, when we examine the Service as a whole and the manner in which Ameritech promotes it, we conclude that, through its 1-800-AMERITECH offering, Ameritech holds itself out as providing in-region long distance service. The Ameritech vanity access number all but ensures that the offering, and all of its components, generally will be perceived as Ameritech-provided services. Indeed, the notice of solicitation even proposed a requirement that all calls placed through the Service would show up on Ameritech's bill as being associated with an Ameritech-provided service. ⁶³ Furthermore, given the prominence of Ameritech's brand on the promotional (Continued from previous page) _____

AMERITECH service. *Cf. Shared Tenant Services*, 627 F. Supp. at 1101 (MFJ Court finding that the BOCs would be directly competing with the IXCs through rate comparisons).

⁵⁷ Ameritech Answer, ¶ 26.

⁵⁸ Ameritech Supplemental Reply Brief at 6.

⁵⁹ Ameritech Answer, Exh. 1; January 15, 1999 Letter, Att. 2 at 1.

⁶⁰ Ameritech Answer, Exh. 1.

⁶¹ January 15, 1999 Letter, Att. 2 at 9. Even this more complete disclosure regarding TelTrust appears in exceptionally small print compared to the prominence of Ameritech's brand name in the promotional materials.

⁶² Ameritech's Initial Brief at 5.

⁶³ Notice of Solicitation at 3.

materials and in the system's voice prompts,⁶⁴ the fact that Ameritech does not furnish the in-region, interLATA transmission for the Service likely will be lost on all but a few sophisticated consumers.⁶⁵ In affirming the *Qwest Teaming Order*, the Court of Appeals noted that viewing the promotional materials as a whole could "lead consumers to link long-distance service to the BOCs, particularly as long distance was offered only as part of a full-service package with a BOC brand name."⁶⁶ The same is true here.

23. In addition, as with the arrangements at issue in the *Qwest Teaming Order*, the record reveals that Ameritech serves as both the initial, and apparently the only, customer care contact for the 1-800-AMERITECH service. Our examination of the record reveals no instance – nor has Ameritech identified any – in which Ameritech employees are instructed to pass customer inquiries or complaints to the IXC supporting the service. When a customer probes for information about which carrier transmits in-region interLATA calls, the operator scripts in the record instruct the Ameritech employees simply to answer the question by identifying the contract carrier.⁶⁷ It does not appear that Ameritech employees ever refer to the supporting IXC a customer complaint about long distance rates or service. By contrast, when faced with a question about cellular service, Ameritech operators are instructed to refer the customer to the toll-free number for Ameritech's cellular business unit.⁶⁸ Ameritech's provision of customer care for all aspects of the service, including the long distance component, supports the conclusion that, in connection with the 1-800-Ameritech service, Ameritech is performing activities typically performed by a reseller.

24. Additionally, Ameritech controls the exclusive right to market the 1-800-AMERITECH service. Notably, the TelTrust agreement states that TelTrust "can perform no advertising or promotion of 1-800-AMERITECH without the prior written consent of Ameritech other than in the normal course of providing the service."⁶⁹ The agreement further requires that TelTrust obtain Ameritech's written consent before even mentioning its arrangement with Ameritech in any promotional materials.⁷⁰ As noted above, the agreement also prohibits TelTrust from "communicat[ing] with the 1-800-AMERITECH customers in any manner without the prior

⁶⁴ Ameritech Factual Supplement.

⁶⁵ The MFJ Court similarly found that BOC advertisements for long distance service in connection with BOC-provided calling cards that did not indicate that the BOCs were not providing the long distance service were misleading and inconsistent with the MFJ's prohibitions. *United States v. Western Elec. Co.*, 698 F. Supp. 348, 356 n.42 (D.D.C. 1988). The MFJ Court was concerned that customers would be misled into believing the BOCs were carrying their long distance calls. *Id.* at 356 n.38.

⁶⁶ *U S WEST Communications*, 177 F.3d 1057.

⁶⁷ Ameritech's Answers to MCI's Interrogatories, Exh. 1.

⁶⁸ *Id.*

⁶⁹ TelTrust Agreement at 1 (§ 1.03).

⁷⁰ TelTrust Agreement at 12 (§ 2.16).

written consent of Ameritech.”⁷¹ Taken together, these provisions make it clear that Ameritech controls the exclusive right to market and sell, under the 1-800-AMERITECH name, its own local and intraLATA toll services and its contract carrier’s long distance services.

25. We also note that Ameritech appears to have had a significant degree of involvement in the design and development of the long distance component of its 1-800-AMERITECH service. Ameritech chose the IXC that would carry the in-region long distance traffic based on requirements that are very similar to those established in the notice of solicitation. Indeed, the final terms of the agreement related to certain pricing and usage rates do not differ from the terms in the notice of solicitation.⁷² Thus, the supporting IXC simply agreed to participate in the offering under the pricing and usage terms and conditions that Ameritech had already established on its own.

26. These factors bolster our conclusion that Ameritech effectively is holding itself out to consumers as a provider of long distance service, and that it is engaged in various actions typically performed by a reseller. The similarities are striking between Ameritech’s activities here and its activities that were found unlawful in the *Qwest Teaming Order*.

27. On balance, based on the totality of the circumstances discussed above, we conclude that, through the 1-800-AMERITECH service, Ameritech is "providing" in-region, interLATA service in violation of section 271. The Service affords Ameritech material benefits uniquely associated with the inclusion of long distance service in the offering. It permits Ameritech to accumulate a significant base of customers who rely on the Service; it enables Ameritech to build up goodwill as a full service provider with its local-service customers by prohibiting the IXC supporting the Service from communicating with 1-800-AMERITECH customers without Ameritech’s prior written consent, and by availing itself of a communication channel that is uniquely available to Ameritech as the monopoly provider of local service within its region – bill inserts and other mailings that draw on its subscriber list. Through the Service and the many associated promotional materials that prominently bear Ameritech’s brand, the carrier essentially holds itself out as providing long distance service. And, in connection with the Service, Ameritech performs numerous functions, including marketing and customer care that are typically performed by a reseller of long distance service. All of these factors point to the conclusion that, through the Service, Ameritech is “providing” in-region, interLATA service.

⁷¹ TelTrust Agreement at 1 (§ 1.03). In addition, the original RFP, which resulted in Ameritech choosing WilTel as the participating IXC, states that the service provider "must provide, at Ameritech's request, 800

AMERITECH customer and call detail for Ameritech's marketing efforts in support of 800 AMERITECH." Letter from Julian P. Gehman, Attorney for Ameritech, Att. at 12.

⁷² Compare Notice of Solicitation at 3 (stating that the “[s]ervice provider shall charge surcharge and usage rates that are no more than 10% higher than the average of the surcharge and usage rates charged by AT&T, MCI and Sprint..”) with January 15, 1999 Letter, Att. 2 at 19 (stating that rates for the 1-800-AMERITECH calling card result in 29% and 27% savings compared to AT&T and MCI, respectively).

B. Other claims.

28. MCI also argues that (1) the 1-800-AMERITECH service amounts to an unreasonable practice in violation of section 201(b); (2) MCI was excluded from providing transport services to support the Service in a discriminatory manner in violation of section 202(a) and (3) the structure of the Service violates Ameritech's equal access obligations under section 251(g). Because we find that Ameritech violated section 271, we need not and do not reach the claims raised by MCI regarding alleged violations of other provisions of the Communications Act.⁷³

IV. CONCLUSION

29. As discussed above, we find that Ameritech, through its 1-800-AMERITECH service, is providing in-region, interLATA services without authorization in violation of section 271 of the Act. We do not reach other statutory claims raised by MCI.

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 208, and 271 of Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, 271, that the Formal Complaint filed by MCI Telecommunications Corporation IS GRANTED to the extent that it alleges that the 1-800-AMERITECH service violates section 271.

31. IT IS FURTHER ORDERED that MCI, pursuant to section 1.722 of the Commission's rules, 47 C.F.R. § 1.722, MAY FILE a supplemental complaint concerning damages relating to our findings in this Order within 60 days of the date of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁷³ See, e.g., *Qwest Teaming Order*, 13 FCC Rcd at 21476, ¶ 53.