

Fioretti – Attachment A

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MICHIGAN PUBLIC SERVICE
FILED

JUL 05 2001

COMMISSION

July 5, 2001

Ms. Dorothy F. Wideman
Executive Secretary Division
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-11830

Dear Ms. Wideman:

This is in response to the letter of June 27, 2001, submitted by Mr. Trabaris on behalf of AT&T and McLeod USA ("movants"), who seek to supplement the record in the above-referenced docket. The movants seek to submit a proposed contract "Appendix Performance Measurements" offered by Ameritech Michigan to implement the Commission's April 17, 2001 Order in this docket. However, movants fail to describe the context in which that offer was made, and most significantly fail to attach the proposed "Amendment to Interconnection Agreement," which would incorporate that Appendix into the Interconnection Agreement. Based on this incomplete and misleading submission, the movants contend that Ameritech Michigan does not intend to comply with this Commission's April 17 Order or to pay performance remedies to CLECs. Ameritech Michigan categorically denies that accusation, and as we show below, the movants have misrepresented and misconstrued the contract proposal.

On April 17, 2001, the Commission issued an order in which it adopted, with some modifications, the remedy plan proposed by Ameritech Michigan. Both Ameritech Michigan and the movants filed petitions for rehearing of certain aspects of that order, as is their right under law. While the rehearing petitions remain pending, Ameritech Michigan proposed a contract Amendment to its interconnection agreements. The contract Amendment that was provided to AT&T¹, but which AT&T fails to disclose to the Commission in its letter, clearly provides that the Amendment would become effective 10 days after it was approved by the Michigan Public Service Commission (par. 5 of Amendment). Moreover, the contract Amendment provides that: "Performance Measure remedies shall be available based on performance data from the next full month following the Amendment's Effective Date" (par. 6 of Amendment). To avoid any appearance of delay, we have revised the Amendment's Effective date to be 10 days after filing of the Amendment with the Commission. This change was

¹ It is unclear why AT&T failed to refer to the contract Amendment in its June 27, 2001 letter to the Commission. Its filing in Case No. U-12320 dated June 29, 2001 included both the Amendment and the Appendix which it received from Ameritech on June 14, 2001. See AT&T Exhibits KWM-2 (June 14, 2001 cover email from Ameritech), KWM-3 (contract Amendment), and KWM-4 (contract Appendix).

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communicated to AT&T last week. In short, Ameritech Michigan clearly intends to comply with the April 17 Order, and to pay remedies in accordance with that Order's terms, so long as the Order remains in effect. To avoid further confusion, Ameritech Michigan strongly recommends that CLECs read the contract Amendment before they jump to the conclusions contained in movants' June 27, 2001 letter.

Turning to the Appendix, although the movants do attach proposed Section 1.6 of the Appendix to their June 27 letter, they misconstrue its intent and purpose. To eliminate any further confusion about its intentions, Ameritech Michigan has issued a revised version of its proposed contract Appendix which we attach hereto. The intent of section 1.6 was *not* to evade compliance with Commission orders now or at any future date, as the movants suggest. In fact, the first sentence of section 1.6 stated that state commission orders "shall be . . . incorporated into this Agreement by reference and shall supersede and supplant all performance measurements previously agreed to by the parties."

To avoid any further confusion, Ameritech Michigan will modify its proposed Appendix Performance Measures. The revised version is substantially the same as agreed to by the parties in similar proceedings in Illinois and Ohio. This new language is contained in a new section entitled "2. Results of Collaborative Process."

That said, neither party to the appendix can know exactly what the Commission may order in the future, and both parties already know that the Commission's existing order is already subject to rehearing requests filed by *both sides*. Therefore, Section 2.2, like former section 1.6, contains a mutual reservation of any rights *both parties* may have to challenge Commission orders in this area. Without such a reservation, one party may argue that the other waived, in advance, its legal rights to challenge a future remedy order – or its current petition for rehearing of the April 17 Order. Note that this sentence states: "The parties expressly reserve all of their rights to challenge...". It does not state and it was not intended to suggest that, out of the blue, one party may decide it does not want to pay remedies or obey Commission orders anymore. Rather, the last sentence simply reserves whatever rights *either* party may have to argue, in an appropriate forum, that a Commission-ordered remedy plan is not appropriate. Ameritech Michigan and the movants have rights according to law to seek revision of Commission orders, and we do not seek to cut off the legal rights of any party.

Finally, Ameritech Michigan has made two additional corrections to its proposed Appendix language. The original Appendix proposal contained a standard provision in Section 1.5 regarding delays or problems caused by a CLEC's Service Bureau Provider. Given that this matter is pending before the Commission we have added reservation language to new Section 1.6 of the Appendix. The original Appendix also contained a section 2.1 that stated liquidated damages were to be the sole and exclusive remedy for failure to meet performance measures. This was a standard liquidated-damages provision, but it is now obsolete given the Commission's approval of the remedy plan. The remedy plan expressly states that it is "not intended to foreclose other noncontractual legal and regulatory claims and remedies that may be available to a CLEC" and Ameritech Michigan stands firmly behind that commitment. Accordingly, the revised offer does not contain any language regarding exclusivity.

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As a result, we urge the Commission to either deny movants' attempt to supplement the record of this proceeding, or to include the revised version of the proposed contract Appendix language (attached hereto), *and* the implementing Amendment, instead of the version of the Appendix submitted by the movants.

Very truly yours,



Craig A. Anderson

cc: Service List

**AMENDMENT
TO INTERCONNECTION AGREEMENT**

By and Between

AMERITECH MICHIGAN

AND

[fill in name]

The Interconnection Agreement, dated _____ (“the Agreement”), by and between Ameritech Michigan (“AMERITECH”) and _____ (“CLEC”) is hereby amended as follows:

- (1) Addition of Appendix PERFORMANCE MEASUREMENTS
- (2) Table of Contents modified to add additional Appendix
- (3) This Amendment shall not modify or extend the Effective Date or Term of the underlying Agreement, but rather, shall be coterminous with the underlying Agreement.
- (4) This Amendment is intended to supersede and replace all provisions in the Agreement related to Performance, including, but not limited to: Performance Measurements, Performance Benchmarks, Performance Breaches, Standards of Performance, Installation and Maintenance Intervals, Performance Activities and all associated remedies, liquidated damages, time frames and reporting periods. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT, and such terms are hereby incorporated by reference and the Parties hereby reaffirm the terms and provisions thereof.
- (5) This Amendment shall be filed the Michigan Public Service Commission (“PSC”) and shall become effective ten (10) days following such filing.
- (6) Performance Measure remedies shall be available based on performance data from the next full month following the Amendment's Effective Date.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this _____ day of _____, 2001, by Ameritech, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

[fill in name]

**SBC Telecommunications, Inc.
as agent for Ameritech Michigan**

By: _____

By: _____

Title: _____

Title: President – Industry Markets

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Date: _____

Date: _____

APPENDIX PERFORMANCE MEASUREMENTS

DRAFT – FOR NEGOTIATION PURPOSES ONLY
AS OF JULY 5, 2001

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DRAFT – FOR NEGOTIATION PURPOSES ONLY
AS OF JULY 5, 2001

APPENDIX PERFORMANCE MEASUREMENTS

1. INTRODUCTION

- 1.1 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.
- 1.2 As used herein, AM-MI means the applicable above listed ILEC doing business in Michigan.
- 1.3 As used herein, **Collaborative Process** shall mean the OSS and performance measurement collaborative process established pursuant to Michigan Public Service Commission Case number U11830.
- 1.4 As used herein, **Service Bureau Provider** means a company which has been engaged by CLEC to act as its agent for purposes of accessing SBC-LEC's OSS application-to-application interfaces.
- 1.5 The performance measurements contained herein, notwithstanding any provisions in any other appendix in this Agreement, are not intended to create, modify or otherwise affect parties' rights and obligations with respect to OSS access. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, nor is it evidence that AM-MI is limited to providing any particular manner of access. The parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and PUC decisions/regulations, tariffs, and within this interconnection agreement.
- 1.6 In addition to the exclusions described in the performance measures and remedy plans developed within the Collaborative Process, and unless otherwise ordered by the applicable state commission, AM-MI shall not be obligated to pay liquidated damages or assessments for noncompliance with a performance measurement to the extent that such noncompliance was the result of delays or other problems resulting from actions of a Service Provider Bureau Provider acting as CLEC's agent for connection to SBC-LEC's OSS, including Service Bureau Provider provided processes, services, systems or connectivity.

2. RESULTS OF COLLABORATIVE PROCESS

- 2.1 The parties agree that the performance measurements, remedy plans and Business Rules developed under the Collaborative Process, shall be incorporated, when finalized, into this Agreement by reference. The parties agree to accept and abide by the Performance Measurement Remedy Plan and Schedule, and the state-specific Business Rules, as posted on SBC/Ameritech's Internet website.
- 2.2 The parties agree that performance measurements, remedies and Business Rules may be revised through the Collaborative Process, and the parties agree to incorporate such changes that are voluntarily agreed to by all parties to the Collaborative Process when finalized. In the event a party disputes the adoption of a proposed revision from the Collaborative Process, the party seeking such adoption may raise the issue with the state Commission for resolution. Until a final state Commission order resolving the issue is effective, the parties agree to abide by the performance measures, remedy plans and Business Rules implemented by Ameritech in response to the Collaborative Process as then posted on SBC/Ameritech's Internet website. Each party reserves its rights, notwithstanding anything to the contrary, to seek appropriate legal and/or equitable review and relief from such state Commission order, and compliance with and implementation of any such order shall not represent a voluntary or negotiated agreement under Section 252 of the Act or otherwise, and does not in any way constitute a waiver by such party of its position with respect to such order, or of any rights and remedies it may have to seek review of such order or otherwise contest the applicability of the performance measures and remedy plan. The parties expressly reserve all of their rights to challenge any liquidated damage/remedy award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and AM-MI does not at this time so agree.