

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the petition of)
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)
for arbitration to establish an interconnection) Case No. U-11151
agreement with Ameritech Michigan.)
_____)

In the matter of the petition of)
AMERITECH MICHIGAN for arbitration)
to establish an interconnection agreement with) Case No. U-11152
AT&T Communications of Michigan, Inc.)
_____)

At the February 28, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

On August 1, 1996, AT&T Communications of Michigan, Inc., (AT&T) filed a petition for arbitration regarding the terms, conditions, and prices for interconnection and related arrangements with Ameritech Michigan pursuant to Section 252(b) of the federal Telecommunications Act of 1996 (the federal Act), 47 USC 252(b). The next day, Ameritech Michigan filed its petition seeking Commission arbitration of interconnection issues with AT&T. The cases were consolidated and processed in accordance with the Commission's July 16, 1996 order in Case No. U-11134.

In its November 26, 1996 order in these cases, the Commission approved an interconnection agreement adopted by the arbitration panel, with certain modifications. The Commission further required the parties to file an interconnection agreement consistent with the arbitration panel's conclusions as modified by the Commission, within 10 days of that order. To date, Ameritech Michigan and AT&T have filed five agreements, each of which contains disputed provisions. Additionally, only the most recently submitted agreement (filed January 29, 1997) carries the signatures of both parties.

The Commission Staff (Staff) initiated discussions with Ameritech Michigan and AT&T regarding the unresolved issues. On February 21, 1996, following a meeting with the parties, the Staff filed recommendations concerning the appropriate resolution of the remaining outstanding issues. On February 24, 1997, Ameritech Michigan and AT&T filed responses to the Staff's recommendations.

Discussion

The Staff points out that the latest agreement contains two disputed issues, neither of which was specifically addressed in the arbitration proceedings: (1) the difference, if any, between a port, as defined in the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., and the unbundled local switching element under the federal Act; and (2) the appropriate prices for the unbundled shared transport element.

a. Definition of Unbundled Local Switching Capability Element

The Staff recommends that the Commission determine that there is no difference between the definition of "port" in MCL 484.2102(x); MSA 22.1469(102)(x) and the Federal Communications Commission's (FCC) definition of "local switching capability" found in the FCC's February 7,

1997 order in CC Docket 97-1, ¶ 16, and codified in 47 CFR 51.319. Accordingly, the Staff recommends that the Commission delete the reference in the contract to a “Michigan port” and that the prices in Advice No. 2438B should be implemented in the unbundled local switching port-basic line port portion of the pricing schedule. Because the rates in Advice No. 2438B are currently under review in Case No. U-11280, the Staff states, Ameritech Michigan or AT&T may address any specific concerns that they may have in that proceeding.

Ameritech Michigan agrees that the rates specified in Advice No. 2438B for ports should be incorporated into the interconnection agreement for unbundled local switching. Ameritech Michigan also concurs that any reference to a Michigan port should be deleted. Although Ameritech Michigan states its view that the rates for unbundled local switching recommended by the Staff do not cover the cost of providing that service, the company states that it is willing to accept the Staff’s recommendation on an interim basis, until the completion of Case No. U-11280.

However, Ameritech Michigan argues that the Commission should not require the parties to follow the modified rate schedule that was attached to the Staff’s comments. The company states that, although Advice No. 2438B includes rates for both basic line and ground start line ports, the Staff’s attachment strikes out those portions. Ameritech Michigan states that, consistent with the Staff’s recommendation, those elements should be included in the pricing schedule. Additionally, Ameritech Michigan states, the items for which prices have not yet been determined should remain on the pricing schedule with the designation “TBD” (to be determined). It states that the parties have agreed on definitions and classifications for these services, and only need to determine prices, which will be accomplished in Case No. U-11280.

Ameritech Michigan asserts that, in keeping with the Staff’s recommendation, and to avoid further confusion, the Commission should direct the parties to amend the switching section of the

pricing schedule attached to the January 29, 1997 signed version of the contract by the following:

(1) delete “Line Side Port Without Vertical Features . . . 54 cents” on page five of the pricing schedule, (2) insert the rates established in Advice No. 2438B for “Basic Line Port, Per Port and Ground Start Line Port, Per Port” also on page 5, and (3) delete “Michigan Ports” on page 7.

AT&T argues that the port component that must be unbundled under Michigan law is not identical to the local switching capability element described in the federal rules. According to AT&T, its position is supported by Ameritech Michigan’s submissions regarding definitions and costs included in the Michigan defined “port” in Cases Nos. U-11155 and U-11156. In addition to recognizing a distinction between Michigan and federal ports, AT&T asserts, Ameritech Michigan included local usage costs with the Michigan defined port, including all traffic sensitive set-up and duration related costs for a local call and certain costs for trunk facilities and tandem switching.

However, AT&T states that if the Commission adopts the Staff’s position that a statutory port in Michigan is the same as the local switching capability element defined by the FCC and if it is also clear that AT&T is entitled to the full capability of the switch when it purchases the switching element, AT&T does not oppose the Staff’s recommendation. AT&T also recognizes that the final, cost-based prices will be established in Case No. U-11280.

The Michigan Telecommunications Act defines “port” as follows:

“Port” except for the loop, means the entirety of local exchange, including dial tone, a telephone number, switching software, local calling, and access to directory assistance, a white pages listing, operator services, and interexchange and intra-LATA toll carriers.

MCL 484.2102(x); MSA 22.1469(102)(x).

The FCC rules define “local switching capability element” as including:

(A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;

(B) trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and

(C) all features, functions, and capabilities of the switch, which include, but are not limited to:

(1) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as telephone number, white page listing, and dial tone; and

(2) all other features that the switch is capable of providing, including, but not limited to custom calling, custom local area signaling service features, and centrex, as well as any technically feasible customized routing functions provided by the switch.

47 CFR 51.319(c)(1)(i).

The Commission finds that there is no functional difference between the port as defined by Michigan statute and the local switching capability element as defined in 47 CFR 51.319. Therefore, the pricing schedule should be amended to reflect the prices in Advice No. 2438B for the basic line port. Reference to Michigan ports should be deleted. As to the other markings on the schedule attached to the Staff's comments, the Commission finds that those items have not been submitted for arbitration. Thus, the parties are free to agree on those terms, subject to the Commission's approval of the contract submitted in compliance with this order.

b. Pricing of Shared Transmission Facilities

The Staff states that Ameritech Michigan proposes a flat rate for shared transmission facilities, based on its position that any sharing of these facilities would be at the option of and arranged between other providers, not including Ameritech Michigan. The Staff further states that Ameritech Michigan's proposed rates for these facilities do not change when traffic volume changes, which results in the competing carriers' bearing the risk of underutilized facilities.

On the other hand, the Staff notes that AT&T proposes that its traffic be carried on existing interoffice facilities of Ameritech Michigan and that the applicable rates be the minute-of-use rates included in Ameritech Michigan's switched transport tariff. Payments to Ameritech Michigan would then depend on the actual traffic carried on these facilities. If AT&T volumes justify dedicated facilities, the company could pursue that option.

To resolve this issue, the Staff recommends that the Commission adopt AT&T's proposed rates, charges, and prices from Ameritech Michigan's FCC Tariff No. 2, Sections 6.1.3, entitled "Rate Categories," and 6.9.1, entitled "Switched Transport" (including the current 37th Revised Page 207, 7th Revised Page 207.1, and 4th Revised Page 207.2 as of 2-21-97). The Staff states that Ameritech Michigan's proposal is inconsistent with the FCC's intention to maximize competing carriers' flexibility in combining new technologies with existing facilities. In the Staff's view, the FCC would not have drawn a distinction between interoffice facilities dedicated to a particular customer or carrier and those shared by more than one customer or carrier if it had intended that the same rates must apply to both. Finally, the Staff asserts, the usage-sensitive prices included in Ameritech Michigan's switched transport tariff are the appropriate alternative for the shared interoffice facilities that Ameritech Michigan is required to offer.

AT&T responds that the Staff's recommendations are consistent with the position that AT&T has maintained throughout the proceedings, accurately state the disagreement between the parties, and should be adopted by the Commission.

Ameritech Michigan responds that the Staff's position misapprehends the actual dispute between the parties. According to Ameritech Michigan, it has not declined to share transport facilities with competing carriers where capacity is available, nor does it insist that a flat rate must be imposed for transport facilities. In fact, Ameritech Michigan asserts, it will offer two pricing

options to requesting carriers that share these facilities. The first option is a flat rate circuit capacity charge that is based on the pro-rated capacity of the facility. Requesting carriers may order one circuit (DS-O) or multiple circuits. However, Ameritech Michigan argues, based on current network design and architecture, if 24 or more circuits are ordered a dedicated DS-1 facility should be provided.

Therefore, Ameritech Michigan argues, the Staff's recommendation should be modified to require that footnote 10 in Item V.E., Pricing Schedule 9, be changed to clarify that, at AT&T's option, it can share up to 24 DS-Os with Ameritech Michigan on a pro-rata basis based on the rates in Ameritech Michigan's FCC Tariff No. 2, Section 7.5.9. This pro-rata flat rate charge would apply to shared transport facilities between Ameritech Michigan's central offices, as well as to those facilities between an Ameritech Michigan central office and AT&T's wire center.

Additionally, Ameritech Michigan states that a minute-of-use pricing option exists for AT&T for shared transport facilities between two Ameritech Michigan central office switches where AT&T obtains unbundled switching network elements (trunk ports). Ameritech Michigan argues that the usage-based price option should include the two interoffice facilities rate elements in Ameritech Michigan's FCC Tariff No. 2, Section 6.9.1, tandem-switched termination per minute of use and tandem-switched facility per access minute per mile.¹ See Ameritech Michigan's FCC Tariff No. 2, 37th Revised Page 207. In Ameritech Michigan's view, the Commission should require that the usage sensitive option in Item V.E. be revised to permit AT&T to order up to 24 DS-Os per trunk port on a per-minute-of-use basis.

¹In a letter dated February 25, 1997, AT&T states that it appears that Ameritech Michigan's per minute pricing is consistent with AT&T's position on the rate elements that should be included, but that no limit should be placed on AT&T use of the unbundled transport element. However, AT&T complains that Ameritech Michigan has, in effect, raised a new issue by changing what it is offering to AT&T.

In Ameritech Michigan's view, rate elements related to switching must be excluded from the price for shared interoffice transmission facilities because the federal Act requires that these facilities be unbundled from switching and other services. Therefore, Ameritech Michigan argues, the Staff's recommendation should be clarified to exclude any switching related rate elements from the price for shared transmission facilities.² According to Ameritech Michigan, its position is consistent with the requirements of Section 271 of the federal Act, 47 USC 271, as reflected in 47 CFR 51.319(d), which requires that interoffice transmission facilities be an unbundled network element and defines shared transmission facilities as those facilities between switches.

Ameritech Michigan further states that, consistent with FCC requirements, the interconnection agreement treats switching and interoffice transmission separately. On the other hand, Ameritech Michigan argues, AT&T's definition of "common transport" includes switching, which is not consistent with the FCC's requirements.

The Commission finds that Ameritech Michigan's modifications and new proposals should be rejected. There is nothing in the federal Act that supports limiting shared transport facilities to any particular number. Whether it makes economic sense to request a dedicated line rather than shared transport is a judgment that the competing carrier should be allowed to make.

As to the pricing, the Commission finds that the FCC's requirement that unbundled transport (without switching) be made available does not preclude a carrier from requesting switched transport. However, it is unclear whether the dispute on this issue has been accurately identified. According to AT&T's letter, the rate elements included in Ameritech Michigan's proposed per-

²According to Ameritech Michigan, the rate elements that should be excluded are its FCC Tariff No. 2, 4th Revised Page 207.2 (tandem switching per access minute) and its FCC Tariff No. 2, 48th Revised Page 214 (bundled local switching).

minute-of-use pricing appear acceptable to AT&T. Those elements also appear to be consistent with the Staff's recommendations, except for the exclusion of the switching element. The Commission finds that the parties' agreement on pricing, if any, should be implemented. Otherwise, the Staff's recommendations on the pricing of shared or common transport should be adopted.

The Commission FINDS that

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. The Staff's recommendations to resolve the remaining disputed issues should be adopted as provided in this order.

THEREFORE, IT IS ORDERED that:

A. The recommendations submitted by the Commission Staff are adopted as provided in this order.

B. Within seven days of the date of this order, Ameritech Michigan and AT&T Communications of Michigan, Inc., shall submit a signed copy of the interconnection agreement that comports with the Commission's decisions in this order and the November 26, 1996 order in this case.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

John G. Strand
Chairman

(SEAL)

I dissent, as discussed in my separate
opinion.

John C. Shea
Commissioner

David A. Svanda
Commissioner

By its action of February 28, 1997.

Dorothy Wideman
Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

I dissent, as discussed in my separate opinion.

Commissioner

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By its action of February 28, 1997.

Executive Secretary

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DISSENTING OPINION OF COMMISSIONER JOHN C. SHEA

(Submitted on February 28, 1997 concerning order issued on same date.)

I cannot join in the order signed by the majority today for the reasons I stated in my November 1, 1996 dissenting opinion in Case No. U-11138. Simply put, there has not been a proceeding under the only law that this Commission may implement, namely the Michigan Telecommunica-

tions Act (the “MTA”), to determine the rightness of the conclusions and mandates in the accompanying order.

The greatest failing of the pseudo-federal process adopted by the majority is the absolute lack of a record to help determine what elements should be in an interconnection agreement. The majority’s decision that "there is no functional difference," Order at 5, between the statutory definition of “port” found in the MTA and the Federal Communications Commission rule defining "local switching capability element," *id.*, has no articulated basis. The MTA definition is self-contained and limited to the words there stated. The FCC rule provides that its definition “include[s], but [is] not limited to” the items set forth in the rule. On the most fundamental basis, therefore, the FCC definition may incorporate things not expressed which are not part of the MTA definition. It is nowhere made clear by what legal authority the majority has determined to interpret a definition promulgated by a Federal agency. Contrary to the majority’s decision, all of these matters can and should be addressed under Michigan law. Since they were not, I respectfully dissent.

John C. Shea, Commissioner

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Suggested Minute:

“Adopt and issue order dated February 28, 1997 adopting the Commission Staff’s recommendations for resolving the remaining disputed issues in the interconnection agreement between AT&T Communications of Michigan, Inc., and Ameritech Michigan, as set forth in the order.”