

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to consider the total service long run incremental)	
costs and to determine the prices of unbundled)	Case No. U-11280
network elements, interconnection services, resold)	
services, and basic local exchange services for)	
AMERITECH MICHIGAN.)	
_____)	

At the September 30, 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

ORDER GRANTING REHEARING IN PART

On July 14, 1997, the Commission issued an order modifying and approving a total service long run incremental cost (TSLRIC) study for Ameritech Michigan and approving rates, terms, and conditions for Ameritech Michigan to provide unbundled network elements, interconnection services, and resale services. Ameritech Michigan submitted tariff sheets to implement the order. On August 13, 1997, Ameritech Michigan, AT&T Communications of Michigan, Inc. (AT&T), and MCI Telecommunications Corporation (MCI) filed petitions for rehearing. On September 3, 1997, the same parties filed answers.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the

Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

Ameritech Michigan argues that rehearing should be granted because the July 14, 1997 order contained erroneous findings and conclusions, would cause unintended consequences, and should be modified in light of facts and circumstances arising after the close of the record. As the primary example of subsequent circumstances, Ameritech Michigan cites the decision four days after the order in Iowa Utilities Bd v FCC, No. 96-3321 et al., 1997 US App LEXIS 18183, at *106 (CA 8, July 18, 1997), aff'g in part and vacating in part Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCCR 13,042 (1996)(first report and order). According to Ameritech Michigan, the court in Iowa Utilities held that rates must cover the costs of providing unbundled network elements, interconnection, and resale services. Ameritech Michigan also reads the Iowa Utilities decision to stand for the proposition that competing carriers providing local exchange service through an incumbent's unbundled network elements must assume more risk than if they chose to use resale services. Ameritech Michigan says that aspects of the Commission order are not consistent with those principles.

In reply, AT&T and MCI argue that the Iowa Utilities decision recognizes that each state retains substantial discretion to set rates for unbundled network elements, interconnection, and resale services and that no one method can be prescribed by the Federal Communications Commission (FCC) for all states. They both argue that the Commission's July 14, 1997 order applied the cost standards required by state and federal law and was a proper exercise of discretion. MCI adds that although the Eighth Circuit's decision constrained the FCC's exercise of its jurisdiction, this Commission did not rely on the FCC's rules in making its determinations in the July 14, 1997 order.

In issuing the July 14, 1997 order, the Commission was undertaking a complex task with little precedent to guide it. The case presented a number of regulatory concepts with which the parties and the Commission have had limited past experience.¹ Those concepts included unbundled network elements, resale services, TSLRIC principles, and a competitive framework for the local exchange market. Unfortunately, the record in this case did not anticipate all of the issues that affected the cost studies and failed, in some respects, to be comprehensive. Disputes over the disclosure of sensitive information also impeded the process.

Because the issues to be decided were new and complex and the record was less than perfect, the Commission is sensitive to arguments that the process may have created unintended consequences. Consequently, the Commission finds that there is justification for conducting further proceedings to provide an opportunity to create a more thorough record on five of the issues raised in Ameritech Michigan's petition for rehearing: (1) unbundled local switching, (2) cost of capital, (3) depreciation lives, (4) shared and common cost allocations, and (5) resale. See Ameritech Michigan petition for rehearing at 2-5, 7-11. For similar reasons, the Commission determines that the issue of fill factors, as discussed in MCI's petition for rehearing, should also be placed at issue during the proceedings on rehearing. See MCI petition for rehearing at 22-24. The Commission believes that there is good reason to reexamine and clarify these issues and to allow the parties an additional opportunity to bring more information to light.

A good example of the need for more information is the unbundled local switching issue. Despite a prior case raising this issue and four rounds of comments in this case, the record does not provide an unequivocal indication as to whether the unbundled local switching rates recover the costs of the vertical features of the switch, or whether additional charges are necessary for the costs of those features. On rehearing, Ameritech

¹The Commission's prior experience with some of these concepts occurred in the context of arbitration. The arbitration process in Michigan is an abbreviated process and relies on a baseball-style methodology that may or may not provide guidance for future decision-making.

Michigan will bear the burden of demonstrating that the Commission order was incorrect on this as well as the other issues. Its demonstration must go beyond summary statements by experts that the present charges do not cover those costs.

Inter-office transport is another significant issue that should be reconsidered on rehearing. In the July 14, 1997 order at 28-30, the Commission adopted the substance of the positions advanced by MCI, AT&T, and the Commission Staff (Staff), which proposed that Ameritech Michigan make available its transport facilities for the common use of itself and its competing providers on a usage-sensitive basis. The Commission adopted the Staff's proposal to price common transport on the same basis as Ameritech Michigan's switched transport tariff. The Commission directed Ameritech Michigan to implement common transport as an unbundled network element in its tariffs.

Thereafter, Ameritech Michigan submitted tariff provisions for unbundled inter-office transport, in which it proposed a "Common Transport-Like Service." The tariff priced the service by reference to the minute-of-use rates for the tandem-switched termination, tandem-switched facility, tandem-switching, and residual interconnection charges in the Ameritech operating companies' FCC tariff. The tariff also contains a number of conditions that drew objections from the other parties in this case.

In its petition for rehearing, AT&T argues that the Commission should reject Ameritech Michigan's proposed common transport-like service because it does not comply with the Commission's order. MCI's objections are similar. AT&T and MCI both object to paying exchange access charges. AT&T and MCI also object to the tariff provision restricting common transport-like service to local service calls. AT&T argues that the undifferentiated use of common transport as an unbundled network element means that there should not be restrictions on how the competing provider uses the element or combines it with other elements in providing retail services to its own customers. MCI argues that there is no need to adopt the FCC access rates

on an interim basis (until the next cost study) because the existing TSLRICs for tandem transport facilities mileage and tandem transport termination are an adequate basis for computing rates.

After the parties filed petitions for rehearing, but before they filed answers, the FCC issued an order in Implementation of Local Competition Provisions in the Telecommunications Act of 1996, FCC 97-295 (Aug. 18, 1997)(third order on reconsideration and further notice of proposed rulemaking). In its answer to the petitions for rehearing, Ameritech Michigan does not concede that the FCC's order is lawful, but it does concede that the order will affect how it implements unbundled transport. Although Ameritech Michigan says that it intends to challenge the FCC's order, it also says that it will comply with the order in the meantime. For this purpose, Ameritech Michigan requests that the Commission reopen the record to receive its new proposal for common transport. Until the Commission rules on its proposal, Ameritech Michigan states, its common transport-like service, as set forth in its tariffs, should go into effect because it conforms to the Commission's July 14, 1997 order.

The Commission accepts Ameritech Michigan's representation that the issue of common transport should be reconsidered in light of the FCC's order. This issue will be added to the list of issues to be examined in proceedings on rehearing, in which Ameritech Michigan should file its new proposal for unbundled inter-office transport.

Many of the issues raised by MCI and AT&T pertain to the propriety of the tariffs that Ameritech Michigan submitted to implement the July 14, 1997 order. In some instances, Ameritech Michigan has offered clarifications or revisions. In other instances, Ameritech Michigan responds that the tariff provisions are no different from those that it filed at the outset of this case, that the Commission approved those

provisions in the July 14, 1997 order,² and that the objections on rehearing raise issues that should have been addressed during the earlier proceedings.

The Commission concludes that tariff provisions that do not differ from those approved as part of Ameritech Michigan's original compliance submission have been resolved for purposes of this case and may not be explored further during proceedings on rehearing.³ However, issues raised in AT&T's and MCI's petitions for rehearing that relate to tariff provisions submitted for the first time after the July 14, 1997 order may be addressed during proceedings on rehearing.

To summarize, the scope of further proceedings on rehearing shall be limited to the four cost inputs to the TSLRIC models (cost of capital, depreciation lives, fill factors, and shared and common cost allocations), the recovery of the cost of vertical features as part of unbundled local switching, unbundled common transport, resale, and certain tariff matters. The Commission finds that the parties' petitions for rehearing should be denied in all other respects and should not be relitigated in this case.

With respect to the issue of shared transport, Ameritech Michigan put forward a proposed schedule requiring it to submit a proposed tariff and supporting cost studies and affidavits, to be followed by an initial round of comments, response comments, and reply comments. With some modifications, the Commission determines that the timetable is appropriate for all issues within the scope of rehearing. The Commission establishes the following filing deadlines:

Rehearing proposals to resolve issues	October 20, 1997
Initial round of comments on proposals	November 10, 1997

²In the July 14, 1997 order at 22, the Commission stated: "Having reviewed the proposed tariffs (with the changes in [Ameritech Michigan's] April 21, 1997 reply comments) in light of the parties' comments, the Commission concludes that they are acceptable, except as otherwise explained in this order."

³A nonexclusive list of examples of tariff provisions that are beyond the scope of the rehearing proceedings is found in Ameritech Michigan's proposed tariff M.P.S.C. No. 20R, Part 19, and includes Section 1, Original Sheet No. 5; Section 2, Original Sheet No. 4; Section 2, Original Sheet No. 6; and Section 6, Original Sheet No. 7. These examples are raised in MCI's petition for rehearing at 4-5, 6, 7, 12-13.

Response comments

November 21, 1997

Reply comments

December 5, 1997

A prehearing conference will be held on October 14, 1997 to resolve any other procedural matters necessary to bring the proceedings on rehearing to a conclusion.

Except for the issue of unbundled common transport (for which Ameritech Michigan acknowledges a responsibility to comply with the FCC's order), the party seeking rehearing on an issue will have the burden of specifically demonstrating why the July 14, 1997 order was in error and how it should be changed.⁴ To meet this burden, it must file a proposal to resolve the issue by the October 20, 1997 deadline. Each proposal should include proposed tariff provisions and other documentation necessary to support its position. The proposals as well as the subsequent comments or affidavits should not merely restate a party's position in general terms, but they should supply new information that was not previously in the record.

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.; 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 petitions for rehearing should be granted in part and denied in part, as discussed in this order.
- c. Additional proceedings on rehearing, limited in scope to the issues identified in this order, should be conducted.

THEREFORE, IT IS ORDERED that:

- A. The petitions for rehearing are granted in part and denied in part, as discussed in this order.

⁴AT&T and MCI are not precluded from offering a common transport proposal as part of the October 20, 1997 proposals to resolve issues on rehearing.

B. Additional proceedings on rehearing, limited in scope to the issues identified in this order, shall be conducted as set forth in this order.

C. A prehearing conference shall be held at the offices of the Commission, 6545 Mercantile Way, Lansing, Michigan, at 9:00 a.m. on October 14, 1997.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

John G. Strand
Chairman

(S E A L)

John C. Shea
Commissioner

David A. Svanda
Commissioner

By its action of September 30, 1997.

Dorothy Wideman
Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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network elements, interconnection services, resold)
services, and basic local exchange services for)
AMERITECH MICHIGAN.)
_____)

Case No. U-11280

Suggested Minute:

“Adopt and issue order dated September 30, 1997 granting in part and denying in part the petitions for rehearing of an order dated July 14, 1997 modifying and approving cost studies submitted by Ameritech Michigan on the Commission's own motion and requiring further proceedings to be conducted regarding the cost studies, as set forth in this order.”