

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to investigate Ameritech Michigan's provision)
of intraLATA toll service to customers of)
competing basic local exchange service providers.)
_____)

Case No. U-11525

At the November 5, 1998 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

OPINION AND ORDER

In an order dated September 12, 1997, the Commission initiated the present case to investigate whether Ameritech Michigan's pattern of providing intraLATA toll services is consistent with applicable law and the public interest. Ameritech Michigan's provision of intraLATA toll service became an issue when Brooks Fiber Communications of Michigan, Inc., (Brooks) filed a complaint in Case No. U-11350 alleging that Ameritech Michigan had violated the Michigan Telecommunication Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq. (the Act), by refusing to continue to provide intraLATA toll service if a customer switched to a different provider of basic local exchange service. The complaint charged that Ameritech Michigan had demanded termination penalties be paid whenever customers that had signed long-term contracts pursuant to Ameritech Michigan's ValueLink program elected to switch providers of basic local exchange service. MCI

Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, MCI) intervened in Brooks' complaint case.

After Brooks reached a settlement with Ameritech Michigan that would allow ValueLink Customers to switch to Brooks without incurring the termination penalty, Brooks moved to withdraw its complaint without prejudice.¹ MCI stated its non-objection to the settlement after it was able to obtain the same arrangement with Ameritech Michigan. However, the Staff opposed Brooks' motion because of concerns about the anticompetitive nature of the pattern of Ameritech Michigan's provision of intraLATA toll service.

In its September 12, 1997 order in Case No. U-11350, the Commission found that Brooks should be allowed to withdraw its complaint, but determined that a separate case should be commenced to address the issues concerning whether Ameritech Michigan's pattern of providing intraLATA toll was lawful and consistent with the public interest. The Commission required Ameritech Michigan to publish notice of the investigation and to file testimony describing the company's provision of intraLATA toll service to customers of competing and incumbent basic local exchange providers. In addition, the Commission provided an opportunity for interested persons to file testimony or other evidence concerning the outlined issues.

Pursuant to the September 12, 1997 order, a prehearing conference was held on October 2, 1997 before Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). At that time, the ALJ

¹After Brooks reached a settlement with Ameritech Michigan, but before any Commission action on that settlement, LCI International Telecom Corporation also filed a complaint docketed as Case No. U-11498, raising similar issues. Because LCI is not a facilities-based provider, Ameritech Michigan claimed the issues were different and needed to be resolved separately. However, Ameritech Michigan and LCI eventually also reached a settlement of their issues. In its December 12, 1997 order in Case No. U-11498, the Commission granted the parties' request for dismissal with prejudice.

granted intervenor status to Attorney General Frank J. Kelley (Attorney General), AT&T Communications of Michigan, Inc. (AT&T), MCI, the Michigan Exchange Carriers Association (MECA), Climax Telephone Company, Allendale Telephone Company, and Lennon Telephone Company. In addition, LCI International Telecom Corporation (LCI) filed a late petition to intervene, which the ALJ granted. The Commission Staff (Staff) also participated in this case.

The parties engaged in extensive discovery, much of which was subject to disputes concerning the extent of information that must be made available. The record contains no less than five hearings during which the ALJ ruled on the various parties' motions to compel and to strike. On January 8, 1998, the Commission issued an order dealing with several applications for leave to appeal discovery rulings. At that time, the Commission closed discovery and ordered that the case proceed.

Thereafter, evidentiary hearings were held on February 19, 20, and 23, 1998. Following the close of the record, Ameritech Michigan, AT&T, MCI, LCI, MECA, the Attorney General, and the Staff filed briefs. On March 18, 1998, Ameritech Michigan, AT&T, MCI, LCI, MECA, and the Attorney General filed reply briefs.

On May 20, 1998, the ALJ issued his Proposal for Decision (PFD), in which he summarized the evidence and arguments of the parties and recommended that the Commission refrain from requiring Ameritech Michigan to provide "stand-alone"² intraLATA toll service. He further recommended that the Commission find that Ameritech Michigan had violated certain provisions of the Act in connection with its ValueLink contracts. Finally, the ALJ found that, based on the lack of other

²Stand-alone intraLATA toll service, as used in this order, refers to the provision of intraLATA toll service to a customer without regard to the identity of that customer's basic local exchange service provider.

intraLATA toll providers offering an adjacent exchange toll calling plan (AETCP) in the Frontier Exchange, Ameritech Michigan violated Section 312(4) of the Act, MCL 484.2312(4); MSA 22.1469(312)(4) when it withdrew from providing intraLATA toll service to that exchange. Therefore, the ALJ recommended that the Commission order Ameritech Michigan to provide intraLATA toll service in the Frontier Exchange until such time as the company can show that another provider offers AETCP.

On June 3, 1998, exceptions to the PFD were filed by Ameritech Michigan, MCI, LCI, and the Staff. On June 17, 1998, Ameritech Michigan, AT&T, MCI, LCI, MECA, the Attorney General, and the Staff filed replies to exceptions.

Post-Hearing
Positions of the Parties

Ameritech Michigan

Ameritech Michigan states that the ALJ appropriately concluded that Ameritech Michigan should not be required to provide intraLATA toll service on a ubiquitous basis to all customers of local exchange companies (LECs) that might request that service. However, Ameritech Michigan argues, the ALJ impermissibly went beyond the threshold issue and in doing so “departed from logic, law and the record . . . in an effort to create a solution for a problem which simply does not exist.” Ameritech Michigan’s exceptions, p. 2.

Ameritech Michigan points out that its failure to provide timely intraLATA toll service to competitive LECs was based on the technical problems for doing so, the cost to solve those problems, and the limited demand for the solution. However, the company states that it now has the ability to provide intraLATA toll on a limited, interim basis, and it commits that it will make available to all competitive LECs the same interim provisions for continuing intraLATA toll service

to any ValueLink customer that desires to use a competitive LEC for basic local exchange service. According to Ameritech Michigan, the settlements and their availability to all comers makes it unnecessary to order the company to provide intraLATA toll service. Moreover, Ameritech Michigan argues, except for the provisions of MCL 484.2306; MSA 22.1469(306) (Section 306), under which the Commission may order a provider of toll service to interconnect with a provider under terms that are fair and just to both providers, there is no statutory obligation for any LEC provider to provide toll service. Ameritech Michigan insists that Section 306 is not applicable in this case, based on the Staff's admission that all basic local exchange providers in the state are also making intraLATA toll service available to their customers.

Ameritech Michigan goes on to argue that the ALJ's conclusions that the company should be prohibited from using ValueLink toll contracts or from assessing early termination fees on those customers that change local exchange carriers in the future are without support in the record or reasoned analysis. Ameritech Michigan argues that there is nothing in Subpart C of Article 3 of the Act that authorizes the Commission to prohibit the use of ValueLink contracts or any other intraLATA toll offering. MCL 484.2312 and 484.2312a; MSA 22.1469(312) and 22.1469(312a). In its view, such a prohibition or abrogation of these contracts would violate both the Act and the Constitution. Moreover, Ameritech Michigan argues, ValueLink contracts do not and cannot violate MCL 484.2101(2); MSA 22.1469(101)(2), as that section merely sets forth the purposes of the Act and does not create any substantive rights or restrictions.

Ameritech Michigan further objects to the ALJ's finding that its tariffs for the ValueLink offerings were deceptive or misleading. It asserts that none of its competitors could identify anyone that claimed to have been misled by the lack of tariff language requiring that a customer be an Ameritech Michigan basic local exchange customer to be able to receive the ValueLink offerings.

Ameritech Michigan takes the position that the intraLATA toll market is a competitive one, despite the Staff's presentation to the contrary. Aside from its criticisms of the Staff's assessment that Ameritech Michigan is a dominant provider in an oligopoly³, the company asserts that what makes a market competitive is not the number of competitors or their relative market shares, but rather whether any competitor has the ability to exert market power in that market. In other words, Ameritech Michigan argues, a competitive market exists where there are actual or potential entrants into the market who would expand or enter the market if a firm were to raise prices above a competitive threshold. It argues that the Commission has no jurisdiction to enforce or consider the antitrust provisions in the Michigan Antitrust Reform Act. The enforcement of that statute, argues Ameritech Michigan, is left to the Attorney General or persons injured by any violations of the statute. See MCL 445.777 and 445.778; MSA 28.70(7) and (8).

Ameritech Michigan also objects to the finding in the PFD that LCI experienced a seven-month delay in entering the basic local exchange market due to the ValueLink contracts. Ameritech Michigan points to the correspondence admitted as exhibits in this case to demonstrate that LCI was engaged in the basic local exchange market well before it settled its concerns with Ameritech Michigan. Exhibits I-17 and I-18. Moreover, Ameritech Michigan asserts, the record reflects that the settlement between Ameritech Michigan and LCI addressed the 46 customers that LCI allegedly placed on hold because of ValueLink contracts and was reached prior to LCI's filing a complaint. Further, because LCI is not a facilities-based provider, as both MCI and Brooks are, the solution for

³Ameritech Michigan asserts that the Staff's market study was fundamentally flawed and that, therefore, the Staff's conclusions are meaningless. Moreover, Ameritech argues, the Staff's study is irrelevant to the issues in this case.

the technical problems related to providing intraLATA toll service to LCI customers required a different solution. Ameritech Michigan asserts that it did nothing to delay LCI's market entry.

Ameritech further objects to the ALJ's recommendation that the company be required to reverse its discontinuance of intraLATA toll service to the Frontier Exchange. The company asserts that it abandoned service in the Frontier Exchange only after the Staff withdrew its objection to the abandonment in Case No. U-10367. Ameritech Michigan states that Frontier Telephone Company (Frontier) has implemented 1+ dialing parity and that local exchange customers in the Frontier Exchange can choose from 21 different intraLATA toll service providers. Therefore, Ameritech Michigan argues, there is no reason in fact or law to require the company to return to an exchange that it has abandoned.

Moreover, Ameritech Michigan argues, there is no support in the Act for requiring that another toll provider make identical alternative offerings before Ameritech Michigan may withdraw from an exchange. Rather, Ameritech Michigan argues, MCL 484.2313(1); MSA 22.1469(313)(1) requires merely that at least one other provider be rendering toll service, whether pursuant to an AETCP or otherwise. To hold otherwise, argues Ameritech Michigan would impede a provider's ability to alter its service offerings without being considered to have abandoned a service within an exchange.

Ameritech Michigan reasons that, because all intraLATA toll providers are providing toll service (i.e., calling between two exchanges), the only difference between its intraLATA toll service and the same service provided by competitors is pricing. The company submits that the Commission would violate basic economic principles if it determines that AETCP is a separate service, because such a holding would define a service by pricing alone.

Further, Ameritech Michigan asserts that it did not alter its AETCP service. It says that the terms, conditions, and rates applicable to the AETCP have not changed. The only change to

Ameritech Michigan's AETCP is that it no longer offers that service in the Frontier Exchange because it no longer offers intraLATA toll in that exchange. According to the company, the Commission's June 19, 1991 order in Case No. U-9569 required that Ameritech Michigan make the AETCP available to all end user customers to whom the company provides intraLATA toll service, including those customers of MECA member companies that are in a primary exchange carrier (PEC) to secondary exchange carrier (SEC) relationship with Ameritech Michigan. In the company's view, when it no longer provides intraLATA toll to a customer, there is no longer a requirement that the company offer an AETCP to that customer.

In its replies to exceptions, Ameritech Michigan urges the Commission to respect the limitations on the scope of this case that were established in the September 12, 1997 order. It claims that its competitors have consistently attempted to widen the scope of this case to include "wide-ranging demands for competitive favoritism, particularly regarding competition among providers in the intraLATA marketplace." Ameritech Michigan's replies to exceptions, p. 2. Ameritech Michigan argues that these competitors seek to use the regulatory process to drive Ameritech Michigan out of the business of intraLATA toll service.

Additionally, Ameritech Michigan asserts the Commission is not under a statutory mandate to maximize the number of providers of toll service. Rather, Ameritech Michigan argues, the statute is designed to ensure that all persons in the state have toll service available to them, but has left the public's choice of provider up to the market, not regulation. According to Ameritech Michigan, the record reflects that intraLATA toll service is universally available within the state. Thus, the company argues, Section 306 and Section 312, MCL 484.2306 and 484.2312; MSA 22.1459(306) and (312) are not applicable, and the Commission may close the investigation.

The Staff

Although the Staff agrees with most of the PFD, it objects to the ALJ's recommendation that the Commission take no action to require Ameritech Michigan to provide intraLATA toll service to customers of competitive LECs. In the Staff's view, the Commission should direct Ameritech Michigan to provide stand-alone intraLATA toll service where Ameritech Michigan already provides toll service, e.g. to other independent LECs and to competitive LECs to which Ameritech Michigan has agreed to provide the service, like Brooks, MCI, and LCI. The Staff insists that Ameritech Michigan would incur little if any costs to provide stand-alone intraLATA toll service in areas in which the technical connections and capabilities already exist.

The Staff further takes the position that by not providing all customers of Brooks, MCI, and LCI the opportunity to take intraLATA toll service from the company, Ameritech Michigan adversely affects the public interest and reduces the general availability of toll service to the public by limiting the choice of toll service providers. The Staff states that pursuant to Section 205(2) of the Act, MCL 484.2205(2); MSA 22.1469(205)(2), the Commission may require Ameritech Michigan to provide intraLATA toll service to all customers under like terms and conditions or it may require other changes in how toll service is provided. In the Staff's view, Ameritech Michigan essentially took the position that it could pick and choose which competitive LECs could ensure that their customers would be allowed to receive intraLATA toll service from Ameritech Michigan. The Staff asserts that based on the record evidence in this case, Ameritech Michigan would need to make only a modest investment in order to provide intraLATA toll to customers taking basic local exchange service from competitive LECs.

The Staff further states in its replies to exceptions that it does not agree with the ALJ's conclusion that Ameritech Michigan should not be allowed to use ValueLink contracts. In its view,

as long as the company does not use those contracts to discriminate unlawfully between customers, ValueLink contracts should be allowed.

MCI

MCI takes exception to the ALJ's failure to require Ameritech Michigan to provide proper notice of its intention to implement dialing parity in particular exchanges. MCI asserts that the lack of proper notice prevented it from effectively marketing its services and preparing its own system for dialing parity. MCI argues that Ameritech Michigan should provide notice of dialing parity implementation at the same time that Ameritech Michigan knows of its plans or at least six months in advance.

MCI asserts that the Commission should find that Ameritech Michigan has engaged in an uncompetitive act by its failure to provide proper notice. As a remedy for this alleged wrong, MCI recommends that the Commission order a "fresh look" period for all services in areas that become subject to dialing parity, with that fresh look to begin on the date that dialing parity is provided in the last Ameritech Michigan exchange in the state, and that the Commission order Ameritech Michigan to provide a minimum of six months' notice of exchanges in which dialing parity will be implemented.

In its replies to exceptions, MCI argues that Ameritech Michigan's abandonment of service in the Frontier Exchange was an act of cream skimming. Although withdrawal from certain exchanges might be acceptable if a competitive market existed and rate deaveraging along geographic lines were permissible, that is not the current market condition. According to MCI, Ameritech Michigan's abandonment of high cost areas will force competitors to either deaverage rates or abandon service in those same areas. MCI posits that neither of these alternatives is in the public interest.

MCI further asserts that when Ameritech Michigan threatened to impose termination liabilities on its ValueLink customers that chose a competing provider for basic local exchange service, Ameritech Michigan unlawfully leveraged its intraLATA toll service. MCI argues that because it is Ameritech Michigan that was unable to continue providing service under the ValueLink contracts, the customer should not be the one held liable for termination penalties.

MCI requests that the Commission find that Ameritech Michigan has violated the Act by the actions discussed above and order Ameritech Michigan to cease and desist from those actions. Further, MCI requests the Commission order Ameritech Michigan to refrain from withdrawing intraLATA toll service from any exchange until it obtains approval of that withdrawal from the Commission, and to provide service once more in the Frontier Exchange. In addition, MCI argues, the Commission should order that none of the costs incurred in this proceeding be passed through to Ameritech Michigan's customers in any manner. Finally, MCI argues, the Commission should initiate an additional investigation into Ameritech Michigan's provision of intraLATA toll and allow for reasonable discovery in the additional proceeding.

LCI

LCI excepts to the PFD to the extent that Ameritech Michigan might argue that the prohibition on use of ValueLink contracts is limited to future contracts and that it may thus impose early termination penalties on its current contracts. LCI requests that the Commission explicitly state that the prohibition against future use of ValueLink contracts includes imposing early termination penalties, financial or otherwise, upon customers seeking to switch their intraLATA toll service provider.

In its replies to exceptions, LCI argues that it was impeded in its market entry by Ameritech Michigan's unlawful interpretation of its ValueLink contracts. These contracts, argues LCI, contain significant early termination penalties, the amounts of which have grown tremendously. A 1995 ValueLink contract had a contract early termination fee of \$10 for each remaining month of the contract. Pursuant to the 1997 version of ValueLink, a customer would pay the sum of the remaining minimum commitment.

Because Ameritech Michigan's tariffs do not require that a ValueLink customer also be a basic local exchange customer, argues LCI, Ameritech Michigan's later insistence that changing local service providers constitutes an early termination of the intraLATA toll contract was anti competitive behavior, particularly since the inability to continue the provision of intraLATA toll service to these customers was due to Ameritech Michigan's network structure. The options offered to LCI were not acceptable, until Ameritech Michigan eventually settled the dispute seven months later. After the settlement, LCI states, it signed up 11 Ameritech Michigan ValueLink customers for LCI's basic local exchange service.

Further, LCI argues that contrary to the position taken by Ameritech Michigan, the Commission has ample statutory authority to prohibit Ameritech Michigan from imposing the early termination penalties on ValueLink contracts. LCI asserts that Section 205 of the Act, MCL 484.2205(2); MSA 22.1469(205)(2), provides the Commission with authority to require a company to alter the manner in which it provides telecommunications services, if the company is providing those services in a manner that violates the act, a Commission order, or is adverse to the public interest. Thus, says LCI, if the Commission finds that imposition of the early termination penalties is adverse to the public interest in a competitive local exchange market, it may require Ameritech Michigan to cease requiring those penalties be paid.

It states that there is no dispute that intraLATA toll service is regulated, as Ameritech Michigan has not requested that its service pursuant to ValueLink contracts be deregulated, as provided in MCL 484.2208; MSA 22.1469(208).

AT&T

In its replies to exceptions, AT&T argues that, despite Ameritech Michigan's protestations to the contrary, the availability of Ameritech Michigan's intraLATA toll service to customers of competitive LECs is still an issue.

AT&T challenges Ameritech Michigan's commitment to voluntarily provide intraLATA toll service to customers of competitive LECs as an attempt to derail the case. AT&T asserts that Ameritech Michigan is merely promising to do that which it is required to do by virtue of its tariffs and the law. AT&T asserts that having been caught in behavior that was "unequivocally unlawful," Ameritech Michigan seeks to exculpate itself by volunteering to do that which it should have been doing all along.

AT&T further argues that Ameritech Michigan's claim that it has offered to provide ValueLink toll plan services to customers of other local exchange carriers is not supported by the record and is untrue. It asserts that only in unsworn statements contained in Ameritech Michigan's brief and exceptions has the company vaguely offered to provide intraLATA toll service to all competitive LEC customers. Without evidence of the commitment on the record, argues AT&T, a Commission order assuming the validity of that commitment would not be based on competent, material, and substantial evidence.

Moreover, AT&T argues, Ameritech Michigan has conditioned its offer to provide intraLATA toll service to customers of competitive LECs to instances in which the facilities for doing so

currently exist. AT&T argues that Ameritech Michigan may attempt to excuse any failure to honor its voluntary commitment by claiming that technical limitations precluded the service.

Further, AT&T argues that the Commission has jurisdiction to require changes in how intraLATA toll services are provided pursuant to Section 205(2) of the Act. MCL 484.2205(2); MSA 22.1469(205)(2). It argues that Section 312(1) does not limit the Commission's ability to order a change in how intraLATA toll service is provided, as that section only relates to the Commission's review or setting of rates for toll service. Moreover, AT&T argues, the cited section begins with "Except as provided in this act . . ." Thus, it argues, the provisions of Section 205 allow the Commission to order a change in the manner in which intraLATA toll service is provided if it finds that the manner in which those services are now provided is not in the public interest. AT&T argues that a finding that Ameritech Michigan has violated antitrust provisions in Michigan statutes, far from being irrelevant as claimed by Ameritech Michigan, supports finding that the service is being provided in a manner that is adverse to the public interest.

Moreover, AT&T argues, Ameritech Michigan has violated provisions of the Act by making false, misleading, or deceptive statements or representations (including the omission of material information) regarding the rates, terms, or conditions of providing a telecommunication service. MCL 484.2502(a); MSA 22.1469(502)(a). In AT&T's view, Ameritech Michigan's tariffs, which do not include a requirement that ValueLink customers must also be Ameritech Michigan's basic local exchange customers, and the company's failure to alert its ValueLink customers that changing basic local exchange providers might subject the customer to termination penalties in the contract constitute violations of this section. Further, AT&T points out, Ameritech Michigan's failure to provide ValueLink intraLATA toll service as tariffed is a violation of law.

AT&T further argues that, in the same manner, Ameritech Michigan has violated the provisions in the Michigan Consumer Protection Act that prohibit false and misleading representations.

MCL 445.903; MSA 19.418(3).

Finally, AT&T argues, the PFD's finding that Ameritech Michigan is a dominant provider of both local exchange and intraLATA toll services is both supported by the record and relevant to this investigation. Assessing Ameritech Michigan's conduct, argues AT&T, must be done in the context of the current market conditions. Because of Ameritech Michigan's dominance, AT&T argues, it has greater ability to abuse its position or leverage markets. According to AT&T, a sufficiently high market share (over 70%) will support a presumption of monopoly power.

AT&T points out that, according to the testimony of William J. Celio, Director of the Commission's Communications Division, Ameritech Michigan has about 5.3 million basic local exchange access lines in Michigan in comparison to about 200,000 access lines served by the competitive LECs. 9 Tr. 962. Thus, argues AT&T, Ameritech Michigan has over 96% of the basic local exchange market in its service territories. Additionally, Mr. Celio estimated that Ameritech Michigan serves about 70% of the intraLATA toll market. 9 Tr. 963. Based on this dominance, AT&T argues, Ameritech Michigan has engaged in unlawful tying arrangements with the ValueLink contracts, by tying basic local exchange service to the special contracts for intraLATA toll service. In answer to Ameritech Michigan's argument that other providers bundle services, AT&T argues that not every combination of product is illegal, only the bundling that, because of market power, effectively requires a customer to buy an unwanted product or service to obtain a wanted product or service.

MECA

MECA identifies its primary interest in this proceeding as maintaining the availability of AETCP in exchanges where MECA's members and other SECs provide basic local exchange service.

MECA notes that Ameritech Michigan's initial testimony suggests that the Commission should look favorably upon allowing Ameritech Michigan to withdraw from the MECA exchanges. Despite Ameritech Michigan's protestations that it does not seek such an alteration of the current situation in this case, MECA states that any discussion concerning the Frontier Exchange could set precedent for future withdrawal of toll service. MECA agrees with Ameritech Michigan that issues concerning the SEC/PEC arrangements now in place are not ripe for Commission decision.

However, MECA disagrees with Ameritech Michigan's interpretation of the law, which might allow the PEC to discontinue offering an AETCP in MECA exchanges. Specifically, MECA argues that the sections in which Ameritech Michigan finds permission to withdraw also contain substantial limitations and conditions that must be met before withdrawal may be permitted. MECA urges the Commission to reject Ameritech Michigan's position that after 1+ dialing parity is implemented in an exchange, Ameritech Michigan's participation in the marketplace is voluntary. MECA requests that the Commission reaffirm its position that discontinuance of toll service to an exchange may occur only after following the safeguards provided in the Act and defer deciding any issues regarding AETCPs and withdrawal from exchanges until a proper case.

MECA further argues that the Commission should reject Ameritech Michigan's position that AETCP are not a separate service within the meaning of Section 313 of the Act, MCL 484.2313; MSA 22.1469(313), which limits withdrawal from an exchange unless one or more providers are furnishing the same telecommunication service to the customers of that exchange. In MECA's view, the ALJ was correct in finding that AETCP are significantly different from intraLATA toll

service voluntarily offered by Ameritech Michigan, because of its inception by Commission order, which the Legislature adopted and codified in Section 312 of the Act, MCL 484.2312; MSA 22.1469(312). Moreover, MECA argues, Ameritech Michigan's assertion that it has not altered its AETCP fails to acknowledge that deleting a service in its entirety from an exchange alters that service.

Attorney General

The Attorney General argues in his reply to exceptions that the ALJ's recommendation that the Commission should prohibit Ameritech Michigan from using ValueLink contracts until the company can demonstrate that the contracts do not constitute a barrier to entry into the telecommunication market is supported by the record and reasoned analysis. In the Attorney General's view, the ALJ's conclusions were based on the persuasive evidence presented by the Staff and other parties that the ValueLink contracts deter customers from switching basic local service providers. As such, he argues, the contracts stifle competition and have a significant adverse effect on the public interest.

Discussion

1. Service to Other Providers' Customers

There are two general situations in which Ameritech Michigan may be called upon to provide intraLATA toll service to customers that obtain their basic local exchange services from a provider other than Ameritech Michigan. The first situation is in those exchanges in which Ameritech Michigan is in a PEC/SEC relationship with the local exchange service provider. The second situation is one in which a customer of a competitive LEC requests intraLATA toll service from Ameritech Michigan, or, in the case of the ValueLink customers, those customers of Ameritech

Michigan's intraLATA toll service desiring to keep that service although also desiring to switch local exchange service providers. It is with the second situation that this section is concerned.

The Commission finds that Ameritech Michigan is required to provide intraLATA toll service to any requesting customer within the geographic area in which Ameritech Michigan provides intraLATA toll service. Ameritech Michigan's tariffs for provision of intraLATA toll service do not include a requirement that the customer also be Ameritech Michigan's customer for basic local exchange service. Thus, for Ameritech Michigan to fail to provide the service upon request is a violation of its tariffs. Moreover, as the Commission found in its June 25, 1997 order in Case No. U-10340, to allow Ameritech Michigan to withhold intraLATA toll service to customers located within a geographic area in which Ameritech Michigan provides intraLATA toll service to its own basic local exchange customers would be contrary to the public interest and the antidiscrimination provisions of the Act and the federal Telecommunications Act of 1996, 47 USC 151 et seq. Consistent with the June 25, 1997 order, the Commission finds that Ameritech Michigan may not lawfully refuse to provide intraLATA toll service to customers located in a geographic area in which it offers that service merely because that customer receives basic local exchange service from another provider.

2. ValueLink Contracts

The Commission finds that there is no need to prohibit Ameritech Michigan from entering into contracts under its ValueLink program. Nor is there need to prohibit the company from enforcement of the early termination penalty provisions of those contracts. However, the Commission finds that by attempting to invoke the early termination penalty provisions for the sole reason that a customer desired to switch basic local service providers, Ameritech Michigan violated the Act. As

noted earlier, there is no provision in the ValueLink tariffs that requires a ValueLink customer to be an Ameritech Michigan local exchange service customer. Although the Commission appreciates Ameritech Michigan's position that the technical feasibility of providing intraLATA toll service to customers of a different LEC needed to be worked out, any inability to perform under the contract was Ameritech Michigan's responsibility, not the customer's. Thus, to impose substantial penalties on a customer because that customer chose to use a different basic local exchange service provider cannot be justified under Ameritech Michigan's tariffs.

However, the Commission is not persuaded that Ameritech Michigan may not use ValueLink contracts and impose the termination liability provisions of those contracts as a general rule. The record reflects that generally ValueLink customers are business persons that are reasonably educated and sophisticated with regard to available telecommunication services. When a ValueLink customer chooses to terminate its contract, Ameritech Michigan may lawfully impose the contract penalty provisions. But if the contract must be terminated based on the customer's choice of local exchange service providers, the penalty may not be imposed. As Ameritech Michigan points out, other providers have similar programs in which customers are given a discount for agreeing to a specific minimum use for a particular minimum period of time. To prohibit Ameritech Michigan from the ability to offer such plans would unduly impair the company's ability to compete with other providers.

3. Market Entry Delay

The ALJ found that Ameritech Michigan's actions resulted in a seven-month delay for LCI to enter the market. As noted earlier, Ameritech Michigan objects to this finding and LCI supports it. Based on this record, the Commission is persuaded that LCI's ability to enter the basic local

exchange market was impaired by the actions that Ameritech Michigan took with regard to its ValueLink customers. LCI's entry into the market was not prohibited entirely in the seven-month period that was required to reach an agreement, because LCI was successful in marketing to other customers during that time. However, Ameritech Michigan's actions caused a substantial delay in LCI's ability to market its product to ValueLink customers. As noted above, Ameritech Michigan has committed to continue providing intraLATA toll service to ValueLink customers despite the customers' choice to use a different basic local exchange provider. Moreover, these parties have reached a settlement, and no further action is warranted.

4. Service in the Frontier Exchange

The Commission rejects the ALJ's recommendation that Ameritech Michigan be required to provide intraLATA toll service to the Frontier Exchange. Ameritech Michigan provided notice of its intent to withdraw. Although the Staff initially challenged the action in Case No. U-11367, it later withdrew that challenge. Based on that sequence of events, Ameritech Michigan withdrew from providing intraLATA toll service to the Frontier Exchange. The Commission finds that it would be inappropriate to now effectively re-open the case and order Ameritech Michigan to return to an exchange that it has abandoned in reliance on the lack of any objection.

However, Ameritech Michigan may not rely on the present decision as precedent to support a withdrawal from any other exchange. The Commission notes that there has been no judgment on the merits of Ameritech Michigan's withdrawal of intraLATA toll service from the Frontier Exchange. Rather, the Commission finds that withdrawal of any basic local exchange or toll service from an exchange must be preceded by compliance with all statutory requirements.

MCL 484.2313; MSA 22.1469(313) provides:

(1) A telecommunication provider that provides either basic local exchange or toll service, or both, may not discontinue either service to an exchange unless 1 or more alternative telecommunication providers are furnishing the same telecommunication service to the customers in the exchange.

(2) A telecommunication provider proposing to discontinue a regulated service shall file a notice of the discontinuance of service with the commission, publish the notice in a newspaper of general circulation within the exchange, and provide other reasonable notice as required by the commission.

(3) Within 30 days after the date of publication of the notice required by subsection (2), a person or other telecommunication provider affected by a discontinuance of services by a telecommunication provider may apply to the commission to determine if the discontinuance is authorized pursuant to this act.

The Commission finds that, pursuant to Section 313(1), before a telecommunication provider may lawfully discontinue providing basic local exchange service or toll service to an exchange in which it presently serves, the provider must demonstrate that another provider is offering the same services to customers within that exchange. Those services must include an optional toll calling plan that follows the structures of the AETCP, although not necessarily the rates, as provided in the June 19, 1991 order in Cases Nos. U-9568 and U-9569. Accordingly, before Ameritech Michigan may exit an exchange, it must demonstrate that there is another provider that offers customers in that exchange the option to purchase a one-half hour block-of-time, a two-hour block-of-time, or unlimited calling for a flat rate, although it is not necessary for the rates to be the same as those charged by the exiting provider.

The Commission further finds that the statute does not provide for a partial withdrawal from an exchange. Rather, any withdrawal from an exchange must completely remove the provider from serving customers within the affected exchange.

Finally, the Commission agrees that no change to Ameritech Michigan's AETCP is warranted at this time. Therefore, Ameritech Michigan's provision of AETCP should remain in place as provided in MCL 484.2312; MSA 22.1469(312).

5. Other Issues

After a review of the evidence and arguments presented, the Commission is persuaded that the remaining issues need not be addressed at this time. For example, the issues concerning dialing parity are not within the intended scope of this case and are more appropriately addressed elsewhere.

Additionally, the Commission notes that much time and energy was spent in this case to establish the level of competition in the current telecommunications market in Michigan and Ameritech Michigan's market share. However, in the context of this case, the Commission is not persuaded that it is necessary to determine Ameritech Michigan's intraLATA toll market share with precision.

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. Ameritech Michigan's refusal to provide intraLATA toll service to customers of other basic local exchange service providers that are located in a geographic area in which Ameritech Michigan provides intraLATA toll service to its own basic local exchange service customers is contrary to the

public interest and violates the antidiscrimination provisions of state and federal telecommunications laws.

c. Ameritech Michigan's imposition of early termination penalties on a ValueLink customer based solely on that customer's taking basic local exchange service from a provider other than Ameritech Michigan is contrary to the public interest and Ameritech Michigan's tariffs.

d. Before Ameritech Michigan may withdraw basic local exchange or toll service from an exchange it must comply with the requirements of the Act.

e. No changes to the AETCP are warranted at this time.

f. This proceeding should be closed.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan shall offer intraLATA toll service to customers of other basic local exchange service providers that are located within a geographic area in which Ameritech Michigan provides intraLATA toll service to its own basic local exchange service customers.

B. Ameritech Michigan shall not impose the early termination penalties in its ValueLink contracts based on the customer's desire to employ a different provider for basic local exchange service.

C. Ameritech Michigan must comply with applicable statutory requirements before it may withdraw service from any exchange.

D. The proceeding is closed.

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

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

By its action of November 5, 1998.

/s/ Dorothy Wideman
Its Executive Secretary

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

Chairman

Commissioner

By its action of November 5, 1998.

Its Executive Secretary

In the matter, on the Commission's own motion,)
to investigate Ameritech Michigan's provision)
of intraLATA toll service to customers of)
competing basic local exchange service providers.)
_____)

Case No. U-11525

Suggested Minute:

“Adopt and issue order dated November 5, 1998 finding that Ameritech Michigan violated the Michigan Telecommunications Act with respect to the provision of intraLATA toll service to customers of competing basic local exchange service providers, as set forth in the order.”