

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of AMERITECH MICHIGAN's)	
submission on performance measures, reporting,)	
and benchmarks, pursuant to the October 2, 1998)	Case No. U-11830
order in Case No. U-11654.)	
_____)	

At the September 3, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

On May 27, 1999, the Commission issued an order requiring Ameritech Michigan to implement certain performance measurements and to provide reports regarding its success at meeting the Commission approved standards. On June 28, 1999, Ameritech Michigan filed a petition for rehearing and clarification of the May 27 order, along with the affidavit of its Director of Performance Measures and Analysis, Salvatore Fioretti.

On July 19, 1999, AT&T Communications of Michigan, Inc., (AT&T) and MCI WorldCom, Inc., (MCI) filed replies to Ameritech Michigan's petition.

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 asserts that facts and circumstances have arisen after those considered by the Commission, that unintended consequences will flow from the Commission's May 27 order, and that some portions of the order were not based on a "completely accurate assessment of its predicates." Additionally, Ameritech Michigan asserts that there is new evidence concerning the impossibility of complying with some of the order's requirements within the time frames provided.

AT&T responds that Ameritech Michigan has not met the standard required to obtain rehearing of a Commission order, because it fails to show that the Commission has committed a material error, or that new facts and circumstances or unintended effects merit a rehearing. AT&T argues that Ameritech Michigan relies on the order itself as a new fact or circumstance that would support granting rehearing.

With one exception discussed below, the Commission agrees with AT&T's assessment that Ameritech Michigan has not met the standard for granting rehearing.

Request for Deferral

Ameritech Michigan argues that the pending proposed merger of SBC Communications Inc. (SBC) and Ameritech Michigan's parent, Ameritech Corporation, provides ample reason for the Commission to

alter its findings or to delay implementation of the May 27 order. It complains that the Ohio and Texas Commissions have adopted performance measures for the merged companies that are similar to each other but differ in material respects from those adopted by the Commission. Likewise it states, Ameritech subsidiaries operating in other jurisdictions have agreed to implement performance measures that are consistent in large part with those approved in Texas.

Moreover, Ameritech Michigan argues, the Federal Communications Commission (FCC) is likely to adopt a set of performance measures that may be part of the approval process for the merger. Uniformity of requirements over a regional area, asserts Ameritech Michigan, is a primary objective for the FCC. In that manner, a competitive local exchange company (CLEC) may be able to compare performance of an SBC entity in California with the Ameritech entity in Michigan. To adopt performance measures that are not consistent over large regions, argues Ameritech Michigan, will result in the unintended consequence of impeding competition. Therefore, Ameritech Michigan requests that the Commission defer requiring implementation of its May 27 order, pending the FCC's final ruling.

In addition, Ameritech Michigan suggests that the Commission should defer implementation of its May 27 order until the FCC has made a final ruling concerning its Notice of Proposed Rulemaking in CC Docket No. 98-56 (NPRM) issued April 17, 1998. Ameritech Michigan argues that if in a final rulemaking, the FCC adopts Ameritech Michigan's position as stated in its comments in that proceeding, a conflict with those measures adopted by the Commission would result.

AT&T points out that Ameritech Michigan has not claimed that there is an actual conflict between the Commission's May 27 order and a decision by any other agency. AT&T argues that the Commission should reject Ameritech Michigan's argument for deferral based on its claim that it has made proposals in

other states and before the FCC which, if adopted, would result in more limited performance measurement. AT&T argues that the fact that the Commission's decision differs in some respects with the earlier Ohio decision does not require that the Commission alter its decision, particularly absent a showing that compliance with the Ohio decision would preclude compliance with the May 27 order. In AT&T's view, Ameritech Michigan seeks to implement the lowest common denominator, the lowest of standards proposed in all other jurisdictions.

MCI argues that Ameritech Michigan should not be permitted to use the now long-pending FCC NPRM or the pending merger approval to delay implementation of the approved performance measures and standards. MCI notes that the SBC/Ameritech merger provides that its performance requirements and self-executing remedies do not supersede state performance measurements rulings, except to the extent that remedies paid under a state plan would offset those proposed as part of the proposed merger conditions filed with the FCC.

MCI argues that should there be any need for modifications in order for Ameritech Michigan to implement uniform requirements across its multiple regions, MCI would prefer that the modifications bring measurements from other jurisdictions in line with the Commission's order rather than the other way around. MCI suggests that there may be some measurements from the SBC-state collaboratives that could augment the measures mandated by Michigan. But, MCI argues, discussions about such additions should not delay implementation of the May 27 order.

The Commission finds that Ameritech Michigan's request that the Commission allow the company to defer implementation of the performance measurements adopted in the May 27 order due to variations in measurements that have been or may be adopted in other states or before the FCC should be denied.

The Commission's May 27 order set forth those performance measures that the Commission believed were necessary for the Commission to adequately address its responsibilities to determine whether Ameritech Michigan is providing CLECs service equal to that which Ameritech Michigan provides itself or its affiliates. The order contemplated that future modifications might occur after the performance measures adopted were in place and functioning properly. That condition has not yet occurred due to Ameritech Michigan's failure to comply promptly with the Commission's order.

The Commission is of the opinion that, at this juncture, there is no sound reason to wait for another state or federal agency to act before Ameritech Michigan should begin implementation of the adopted performance measurements. If, after the pending proceedings have concluded, Ameritech Michigan should desire alterations in some of the performance measures, it may seek approval for such changes by petition to this Commission or to the body enacting conflicting measurements. However, Ameritech Michigan is placed on notice that the Commission will not approve alternatives that fail to adequately address competitive concerns. Rather, for any proposed alteration to the Commission's approved performance measurements, Ameritech Michigan bears the burden of demonstrating how the change better measures critical elements or provides a less burdensome alternative that delivers the same or better information aimed at assisting competition than the measurement adopted by the Commission.

As noted by AT&T, Ameritech Michigan does not begin to argue that the Commission lacks authority to adopt performance measurements for the company to implement. There is no indication that the FCC will adopt performance measures that will preempt the Commission's jurisdiction on these issues. In fact, the NPRM indicates just the opposite, that the FCC intends for the states to review and adopt performance measures that address local concerns. For all these reasons, the Commission

concludes that the fact that there are actions pending or completed in other jurisdictions does not provide sufficient reason to defer implementation of the May 27 order.

Request for Delay

Ameritech Michigan also seeks rehearing concerning requirements that it asserts cannot be implemented within the 60 days mandated by the May 27 order. It references the Fioretti affidavit for “specific reasons” that the company requires more time to implement the requirements. Ameritech Michigan’s rehearing petition, p. 6.

AT&T responds that the Commission should not grant Ameritech Michigan’s request for additional time to comply with the May 27 order. It points out that Ameritech Michigan has provided no specific analysis, studies, or quantitative measurement to provide a sufficient factual basis for the six-month extensions it seeks. AT&T finds suspect the relatively uniform six months’ extension that Ameritech Michigan requests for nearly every category.

MCI argues that the extensions requested by Ameritech Michigan are far too long, particularly in view of the lack of detailed explanation concerning the need for such extensions, or how the difficulties will be addressed.

The Commission finds that Ameritech Michigan’s request for substantial delays in implementing the performance measurements adopted in the May 27 order are insufficiently supported by specific, identified problems and their solutions to support granting the company’s request. Moreover, the Commission is concerned about the effect of Ameritech Michigan’s delay in implementation. As stated in the May 27 order, the Commission will be at a disadvantage in evaluating Ameritech Michigan’s performance when asked to comment on the company’s next application to the FCC for relief from the

prohibitions against interLATA service unless there are approved measurements in place and there has been adequate experience with Ameritech Michigan's performance under those standards.

Requests for Modification or Clarification

1. Appropriate Exclusions and Retail Analogs for Wholesale Service

In Ameritech Michigan's view, the Commission has misinterpreted certain of the company's proposed provisions related to retail analogs for the average installation interval for unbundled network elements (UNEs), force majeure, employee-originated trouble reports for repair and maintenance measures, repair personnel-generated ordering and provisioning, call attempts blocked due to requesting carrier, 9-1-1 update fill errors, and collocation.

In this section of the rehearing petition, AT&T argues, Ameritech Michigan has merely raised again arguments that it made before the Commission issued the May 27 order. For example, Ameritech Michigan seeks to exclude from certain reporting measurements trouble or installation data generated by its own field personnel. That issue was specifically addressed by the Commission's order. Such re-argument in the guise of requests for clarification, says AT&T, should be rejected.

MCI responds that, for the majority of the requested modifications, Ameritech Michigan has failed to provide persuasive argument that a change is required. However, for certain measurements, MCI states, some modifications would be acceptable. For example, MCI states that in measuring and comparing pre-ordering response time for retail and wholesale service, it may be acceptable to use an emulation, designed without delaying reporting, if the process is described in detail and the CLECs have input into the emulations scenarios. It states, however, that any query type available on any interface today for Ameritech Michigan and CLECs should be measured immediately.

MCI also states that, although it believes that appropriate retail analog surrogates can be found for the average reject notice interval, average firm order confirmation interval, percent flow through, and rate of order rejection, use of benchmarks until those surrogates can be determined would be acceptable.

With one exception, the Commission is not persuaded that any modification should be made to the performance measurements that the Commission adopted in its May 27 order. For example, Ameritech Michigan has not provided sufficient information concerning what an “emulation” would entail, and how that might compare to measuring a retail analog. The Commission further finds that Ameritech Michigan’s complaints concerning retail analog difficulties are misplaced. For most of those measurements, the Commission prescribed benchmarks to be met. For the remaining measures, the Commission was persuaded that a retail analog could be identified and measured to establish whether parity exists. Ameritech Michigan raises no persuasive arguments that the order must be modified in this respect.

However, the Commission is persuaded that its adoption of the disaggregation set out in the NPRM may have inadvertently required the company to disaggregate dispatch from non-dispatch orders on measurements for which the distinction has no meaning. Therefore, the Commission concludes that Ameritech Michigan may delete any requirement to separate dispatch from non-dispatch orders for electronic operations that occur prior to the order being identified as dispatch or non-dispatch, such as order rejection. However, this modification does not include completion notices.

2. Future Modification of Measurements

Ameritech Michigan requests that the Commission clarify its conclusions regarding future modifications of the performance measures and standards adopted in the May 27 order. Ameritech Michigan states that it seeks clarification that any additional measures resulting from negotiations referenced in the

order will “not form the basis for any Commission action other than in the context of a dispute between the two parties involved.” Ameritech Michigan’s rehearing petition, p. 8.

MCI responds that if any clarification is called for, the Commission should state that the AT&T request pertaining to the CLEC negotiation with Ameritech Michigan of additional measurements and business rules for calculating those measurements applies to all CLECs. It asserts that all parties, jointly or individually, should be able to bring unresolved issues to the Commission for expedited resolution. Discussions among the parties should not be limited to modifications required for uniformity with whatever conditions are placed on the SBC/Ameritech merger.

The Commission finds that no clarification of the May 27 order is necessary on this issue. In the comments that the Commission received, many parties expressed a concern that the Commission not consider its work completed for all time, but provide some process through which additions, modifications, or deletions could occur. The Commission adopted a suggestion by AT&T that parties be required to first negotiate with Ameritech Michigan concerning additions or modifications for at least 30 days before bringing the issue to the Commission for resolution. That provision was intended to encourage parties to resolve differences on their own through collaboration and negotiation. Failing that, the Commission stands ready to decide any matters in dispute. Further, the Commission reserved the right to examine, on its own motion, the performance measures and to determine whether additions or modifications are needed.

Other Issues

In its May 27 order, the Commission adopted Ameritech Michigan’s proposal that an independent third-party auditor conduct an annual, central audit (covering data for all CLECs for the year), using the

auditor's procedure design. The Commission further directed that the audit cover not only the measurements of service provided to CLECs, but also all those items for which the incumbent must measure its performance for itself or any affiliated CLEC. The initial audit was directed to occur at the conclusion of calendar year 1999. The Commission further found that Ameritech Michigan should meet with interested CLECs and the Commission (Staff) to establish a consensus on clear objectives for the auditor.

The Commission has received no information that steps to convene such meetings with the Staff and CLECs has commenced. The Commission therefore directs Ameritech Michigan to commence such discussions within 30 days.

Further, in its May 27 order, the Commission addressed Ameritech Michigan's concerns about misleading results that may occur from small samples of CLEC transactions. The Commission found that Ameritech Michigan could use any permutation test for which it could demonstrate reasonable validity for small sample sizes. However, the Commission agrees with Ameritech Michigan that the limited numbers of actual CLEC operations and transactions from which to extract actual measurements can make performance assessments difficult and incomplete.

The Commission notes that the CLEC simulation model used by Bell Atlantic in the state of New York has received very favorable comments from Bell Atlantic, CLECs, and the New York Public Service Commission. The Commission strongly urges that the discussions among Ameritech Michigan, CLECs, and the Staff regarding the independent audit parameters establish a similar simulation model. This will allow accurate and reliable testing of performance measurements, even when actual CLEC experience is lacking due to small transaction volumes.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, 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 AACRS, R 460.17101 et seq.

b. Ameritech Michigan's petition for rehearing or clarification should be denied, except for the elimination of any requirement to disaggregate orders, other than completion notices, based on whether it requires a dispatch for measurements that take place before it is known whether the order requires a dispatch.

c. Ameritech Michigan should immediately implement the performance measurements adopted in the Commission's May 27, 1999 order.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan's petition for rehearing or clarification of the Commission's May 27, 1999 order is denied, except that any requirement to disaggregate orders, other than completion notices, based on whether a dispatch is required is modified to exclude those electronic operations that occur prior to the event being identified as requiring a dispatch.

B. Ameritech Michigan shall immediately implement the performance measurements adopted in the Commission's May 27, 1999 order.

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

/s/ Robert B. Nelson
Commissioner

By its action of September 3, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

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Case No. U-11830

Suggested Minute:

“Adopt and issue order dated September 3, 1999 granting in part and denying in part Ameritech Michigan’s petition for rehearing, as set forth in the order.”