

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
AIRTOUCH CELLULAR, INC. , for arbitration)	
of interconnection terms, conditions, and prices)	Case No. U-11973
from AMERITECH MICHIGAN .)	
_____)	

At the August 17, 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

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On April 29, 1999, AirTouch Cellular, Inc., (AirTouch) filed a petition for arbitration of an interconnection agreement with Ameritech Michigan, pursuant to Section 252 of the federal Telecommunications Act of 1996 (the FTA), 47 USC 252, the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq. (the MTA), and the Commission’s July 16, 1996 order in Case No. U-11134, which established the procedures for arbitrating interconnection agreements.

On May 4, 1999, an arbitration panel was appointed consisting of Theodora M. Mace, Thomas R. Lonergan, and Rodney P. Gregg. By letter dated May 10, 1999, the arbitration panel presented the parties with a schedule. Pursuant to that schedule, Ameritech Michigan filed its response to AirTouch’s

petition on May 26, 1999. Included in Ameritech Michigan's response was a motion to dismiss the petition for arbitration on the grounds that it was not timely filed.

On June 11, 1999, the parties each filed a Proposed Decision of the Arbitration Panel (PDAP). The PDAP filed by AirTouch was accompanied by a response to Ameritech Michigan's motion to dismiss (with supporting affidavits), a request to dismiss Ameritech Michigan's response to the petition for arbitration, and a motion to strike each of four additional issues raised by Ameritech Michigan. On June 16, 1999, Ameritech Michigan submitted a response to AirTouch's request to strike those four issues and filed a motion to strike the affidavits that AirTouch submitted with its response to Ameritech Michigan's initial motion to dismiss.

Thereafter, on June 18, 1999, the parties appeared before the arbitration panel for oral presentations related to those PDAPs. Prior to hearing argument on the remaining contested issues, the panel (1) denied Ameritech Michigan's motion to dismiss the petition for arbitration, (2) rejected the request to dismiss Ameritech Michigan's response to the petition, (3) granted the motion to strike the affidavits submitted by AirTouch, except for a portion of John L. Clampitt's affidavit, and (4) granted the motion to strike the additional issues raised by Ameritech Michigan, with the exception of one issue related to the Section 15.1 of the proposed interconnection agreement.

A Decision of the Arbitration Panel (DAP) was issued on July 16, 1999, in which the panel identified seven issues that were still in dispute. For each of those issues, the panel stated its decision and the

underlying rationale for that decision. AirTouch and Ameritech Michigan filed objections to the DAP on July 23, 1999.¹

II.

DISCUSSION

AirTouch's petition for arbitration listed nine issues that remained unresolved despite the parties' negotiations. Although three of those issues were subsequently resolved by the parties, the panel's June 18, 1999 ruling allowed Ameritech Michigan to add one additional issue. Moreover, Ameritech Michigan has reasserted its claim that the petition for arbitration should be dismissed in its entirety. Thus, eight issues remain for resolution by the Commission, each of which is addressed below.

Ameritech Michigan's Motion to Dismiss

Because their interconnection agreements covering Ohio and Michigan were set to expire within a short time of each other, AirTouch and Ameritech Corporation (the parent company for both Ameritech Ohio and Ameritech Michigan) conducted--on an intermittent basis--informal discussions regarding new agreements for each of those two states. As the termination dates for those existing agreements grew closer, the parties stepped up their efforts. Specifically, AirTouch submitted a letter dated October 22, 1998, in which it formally requested the commencement of concurrent negotiations designed to establish new interconnection agreements for both states.

¹On August 6, 1999, Ameritech Michigan filed a motion to strike portions of AirTouch's objections. The Commission has reviewed that filing and concludes that Ameritech Michigan's motion should be denied.

To facilitate those concurrent negotiations, AirTouch's letter designated November 23, 1998 as the "effective date" of its formal request to commence negotiations with Ameritech Michigan. AirTouch's reason for beginning negotiations on the Ohio agreement approximately one month earlier than for the Michigan agreement was its belief that, by staggering those commencement dates, issues resolved in the Ohio negotiations could be applied to the interconnection agreement covering Michigan. See, Appendix F attached to the petition for arbitration, p. 1. Based on the statutory requirement that petitions for arbitration of any unresolved issues must be filed between 135 and 160 days after the commencement of negotiations, AirTouch further assumed that the use of these two commencement dates would give it until April 1, 1999 to file a petition in Ohio and until May 2, 1999 to make such a filing in Michigan, if necessary.

Ameritech Michigan appeared to concur with the approach and timetable envisioned by AirTouch. For example, during the course of negotiations Ameritech Michigan repeatedly referred to "early May" as the end of the period during which a petition for arbitration could be filed with the Commission. Supplemental application of John C. Clampitt, p. 2. Moreover, recognizing that May 2, 1999 would fall on a Sunday, Ameritech Michigan expressed concurrence with AirTouch's belief that the last practical day for filing such a petition would be Friday, April 30, 1999. Id. In reliance on those comments, AirTouch waited until April 29, 1999 before filing its petition for arbitration involving Ameritech Michigan.

Subsequent to that filing, and to the apparent surprise of AirTouch, Ameritech Michigan requested dismissal of the petition on the grounds that it had been filed nearly one month late. In support of its request, Ameritech Michigan noted that Section 252(b)(1) of the FTA requires each petition for arbitration to be filed with the appropriate state commission between 135 and 160 days after "the date on

which an incumbent local exchange carrier receives a request for negotiation under this section.” 47 USC 252(b)(1). Because the October 22, 1998 letter mentioned the need to commence formal negotiations regarding interconnection agreements for both Ohio and Michigan, Ameritech Michigan argued that its receipt triggered the start of the 160-day limit, notwithstanding the statement on page 2 of that letter to the effect that the request to begin negotiations regarding Michigan would not be effective until November 23, 1998.

As noted earlier, the arbitration panel denied Ameritech Michigan’s request for dismissal. In reaching its conclusion, the panel relied “primarily on the language in the [FTA] that pertains to the duty of the parties to negotiate in good faith” and found that “the letter that was sent in October but that contained the November 23rd date” put Ameritech Michigan on notice that “that was how the proceedings would go forth and that would dictate the window within which a request for arbitration might be filed.” Tr. 31-32. The arbitration panel also stated that its ruling “might have been different had no November 23rd date been indicated in that letter.” Tr. 31.

Ameritech Michigan objects to the arbitration panel’s ruling and offers three arguments in support of its claim that the petition for arbitration was untimely under Section 252(b)(1) of the FTA. First, Ameritech Michigan contends that the 160-day period is a “fixed, statutory interval” that begins running as soon as the request to negotiate is received and which cannot be extended due to an alleged lack of good faith. Ameritech Michigan’s objections to the DAP, p. 4. Second, Ameritech Michigan claims that none of its actions led to AirTouch’s failure to meet the 160-day deadline. Rather, it asserts, the problem arose solely from AirTouch’s unilateral decision to adopt the “unique procedure” of using a single letter to

initiate two separate negotiations. Id. Third, it argues that the FTA provides state commissions with no discretion to consider petitions to arbitrate that are filed after the deadline imposed by Section 252(b)(1).

Notwithstanding Ameritech Michigan's claims to the contrary, the Commission finds that the arbitration panel correctly denied this request for dismissal. Each of Ameritech Michigan's arguments incorrectly assumes, as a starting point, that the October 22, 1998 letter constitutes a formal request to immediately initiate negotiations for a new interconnection agreement concerning the state of Michigan.

That letter states, in pertinent part:

I appreciate your suggestion that our teams re-initiate discussions of the terms of new interconnection agreements for the states of Ohio and Michigan.

* * *

We obviously, for some time, have been discussing the terms of these proposed agreements. However, my records do not reflect that we ever formally made a request that would trigger the negotiation/arbitration time periods under Section 252 of the [FTA]. This letter, therefore, serves as a formal request by AirTouch Cellular for negotiation (commencing immediately) of a new interconnection agreement with Ameritech Information Industry Services covering the state of Ohio, pursuant to Sections 251 and 252 of the [FTA].

While we wish to complete negotiations of agreements for both Ohio and Michigan, we request that initial negotiations focus on the Ohio agreement (in part because we have already shared with you the issues matrix for Ohio). Once we resolve issues under the Ohio contract, we should be able to apply that resolution to the Michigan agreement. Thus, in order to stagger the negotiations appropriately, AirTouch Cellular submits a request (effective November 23) for negotiation of a new interconnection agreement with Ameritech Information Industry Services covering the state of Michigan, pursuant to Sections 251 and 252 of the [FTA].

Appendix F attached to the petition for arbitration, pp. 1-2. Based on the above-quoted language, the Commission finds that the October 22, 1998 letter did not constitute a request to immediately initiate

negotiations for a new interconnection agreement concerning the state of Michigan. The Commission therefore concludes that AirTouch's April 29, 1999 petition should not be dismissed.

Nonsymmetrical Reciprocal Compensation

AirTouch and Ameritech Michigan both agreed to pay the other the following rates for the transport and termination of traffic on their respective networks:

End Office Switching:	\$0.004053 per minute of use
Tandem Switching:	\$0.000698 per minute of use
Tandem Transport:	\$0.000260 per minute of use
Tandem Transport Facility Mileage:	\$0.000006 per minute per mile

However, a dispute arose regarding whether the structure of the network operated by AirTouch justified receiving payment of all four of those components for each call that terminates on its system. Specifically, Ameritech Michigan asserted that AirTouch's mobile switching centers (MSCs), otherwise known as mobile telephone switching offices (MTSOs), often act as end office switches only. As a result, Ameritech Michigan continued, many of the calls that are initiated on Ameritech Michigan's system and that terminate on AirTouch's network should not give rise to the payment (by Ameritech Michigan to AirTouch) of fees for the tandem switching and transport elements. In contrast, AirTouch claimed that the multi-function capabilities of its MSCs and MTSOs allow its network to operate in a way that is very similar to Ameritech Michigan's system. As a result, AirTouch proposed that it receive reciprocal compensation in precisely the same manner as Ameritech Michigan.

The arbitration panel found that the function of AirTouch's MSCs and MTSOs was comparable to that of Ameritech Michigan's tandem switches. It further determined that the geographic scope of the respective systems was similar. As a result, the panel concluded that AirTouch's proposed language

regarding reciprocal compensation, which would result in treating AirTouch's MSCs and MTSOs the same as Ameritech Michigan's tandem switches, should be adopted.

Ameritech Michigan objects to that conclusion and claims that AirTouch should not receive the full tandem rate as reciprocal compensation. In support of its claim, Ameritech Michigan argues that the geographic scope of AirTouch's MSCs and MTSOs is not equal to that of its own tandem switches. Specifically, it notes that although it has 9 tandem switches serving approximately 70 counties in Michigan, AirTouch has 6 MSCs or MTSOs covering only about 20 counties. Ameritech Michigan further argues that the companies' switches function in a way that justifies paying AirTouch only 86% of the sum of the four rate elements discussed above for transporting and terminating calls originating on Ameritech Michigan's network.

The Commission disagrees with these arguments and finds that, as recommended by the arbitration panel, the reciprocal compensation provided for by the interconnection agreement should be symmetrical.

In support of their competing positions, both Ameritech Michigan and AirTouch cite the following language from the Federal Communications Commission's (FCC) First Report and Order, Implementation of the Local Competition Provisions the Telecommunications Act of 1996:

[S]tates may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent [local exchange carrier's (LEC)] tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC's tandem interconnection rate.

FCC No. 96-325, 11 FCCR 15449 (1996), ¶ 1090. This language does not require that AirTouch's MSCs or MTSOs operate in precisely the same manner as Ameritech Michigan's tandem switches. Rather, they need only perform functions "similar to" those performed by Ameritech Michigan's tandems. Id. Likewise, the provision quoted above does not require that those MSCs or MTSOs cover the exact geographical areas served by Ameritech Michigan's corresponding tandem switches. Instead, the AirTouch facilities need only serve geographic areas that are "comparable" to those served by Ameritech Michigan's corresponding tandem switches.²

Information submitted by the parties supports AirTouch's claim that its MSCs and MTSOs function in a manner that is similar to, and possibly better than, Ameritech Michigan's facilities. For example, it was noted that "interconnection at one AirTouch MSC allows [Ameritech Michigan] access to AirTouch's entire network." Tr. 42. In contrast, interconnection at one of Ameritech Michigan's tandem switches "is limited to access to the end offices that reside behind that specific tandem" and interconnection at an Ameritech Michigan end office "is limited to the NXXs that reside on it." Id. As for geographic area served, the record indicates that (due to its use of wireless technology) AirTouch's coverage is "continuous" within each county where one of its MSCs or MTSOs provide service, whereas each of Ameritech Michigan's tandem switches generally serves scattered exchanges. Tr. 43.

The Commission thus finds that AirTouch's network performs functions similar to Ameritech Michigan's tandem and end office switches and that each of AirTouch's MSCs or MSTOs serves a

²In its presentation to the arbitration panel, as well as in its PDAP and objections to the DAP, Ameritech Michigan makes much of the fact that it provides service in more counties than AirTouch. However, that fact has no bearing on this case. As can be seen from the above-quoted portion of the FCC's First Report and Order, the appropriate analysis involves a comparison of the "incumbent LEC's tandem switch" to the "new entrant's" corresponding facilities, rather than a comparison of the parties' respective total service territories. See, FCC No. 96-325, supra, at ¶ 1090.

geographic area that is comparable to or greater than that served by one of Ameritech Michigan's tandem switches. It therefore concludes that the symmetrical reciprocal compensation proposed by AirTouch and recommended by the panel should be incorporated into the interconnection agreement.³

Denial of TSLRIC Rates for Facilities and Signaling

The parties also failed to reach agreement regarding how to recover from each other the costs of providing interconnection facilities and services, including SS7 signaling.⁴ In resolving this issue, the arbitration panel adopted AirTouch's proposal to (1) impose reciprocal compensation for the use of these facilities and services, (2) rule that the appropriate rates to charge are the total service long run incremental costs (TSLRIC) of providing these facilities and services, and (3) use Ameritech Michigan's unbundled network element (UNE) rates--set forth in Tariff M.P.S.C. No. 20R, Part 19--as a proxy for those TSLRIC costs until specific TSLRIC figures are determined. However, the panel went on to rule that, with regard to SS7 service, Ameritech Michigan should be required to offer AirTouch only what it provides other carriers through its UNE tariffs. If AirTouch wants more than what is available through those tariffs, it should make use of (and pay the corresponding rates for) signaling services provided under Ameritech Michigan's access tariff.

³As a result of the Commission's findings on these issues, it concludes that AirTouch's proposed definitions of a Type 2A Facility and a Type 2B Facility (as tandem or end office facilities, respectively) should also be adopted.

⁴As explained by AirTouch witness Clampitt, two general types of trunkside signaling exist. These are (1) "in-band signaling," which is predominantly provided in a multi-frequency format, and (2) "out-of-band" signaling, which is referred to as SS7 signaling. Tr. 52. According to Mr. Clampitt, the only type of signaling provided for in the interconnection agreement with Ameritech Michigan is SS7 signaling. See, id.

Ameritech Michigan objects to the arbitration panel's conclusion that TSLRIC-based rates should be used to recover the cost of interconnection facilities and signaling service, and further objects to the panel's directive to use its UNE rates as a proxy for those rates until TSLRIC figures are established in Case No. U-11831 or some subsequent proceeding. According to Ameritech Michigan, neither the use of its interconnection facilities nor its provision of SS7 service is required to be priced at TSLRIC under Section 252(d) of the FTA. Thus, Ameritech Michigan contends, its federal access rates should be assessed instead. It further asserts that because 47 CFR § 51.513(c)(7) requires proxy-based rates for signaling (such as SS7) to be tied to the LEC's federal interstate access tariff, it was improper for the panel to recommend the use of UNE rates as a temporary proxy. Ameritech Michigan goes on to argue that by requiring the use of TSLRIC rates (as well as requiring the use of UNE rates on an interim basis), the Commission would effectively be setting rates for toll access service in violation of Section 310(1) of the MTA. For these and other reasons, Ameritech Michigan contends, the Commission must reject the panel's recommendations regarding the rates for using interconnection facilities and SS7 signaling.

The Commission disagrees with Ameritech Michigan and concludes that it should adopt the methodology recommended by the arbitration panel.⁵ In reaching this conclusion, the Commission relies on the FCC's pronouncement in its First Report and Order that:

[I]n establishing the rates for transmission facilities that are dedicated to the transmission of traffic between two networks, state commissions should be guided by the default price level we are adopting for the unbundled element of dedicated transport. . . . For example, if the providing carrier provides one-way trunks that the interconnecting carrier uses exclusively for sending traffic to the providing carrier, then the interconnecting carrier

⁵In reaching this decision, the Commission rejects AirTouch's request to "clarify" the DAP by releasing AirTouch from the requirement that it pay Ameritech Michigan's access rates for any signaling service it seeks which exceeds the service that would otherwise be available through the LEC's UNE tariffs.

is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks.

FCC No. 96-325, supra, at ¶ 1062. This language clearly indicates that, notwithstanding Ameritech Michigan's claims to the contrary, the FCC authorized state commissions to set the price of using interconnection facilities at the providing carrier's TSLRIC for those facilities (or, absent the existence of TSLRIC-based rates, at the LEC's corresponding UNE rates). The Commission further finds that, as asserted by AirTouch and recognized by the panel, signaling is part of interconnection and therefore should not be viewed solely as a separate access service. As stated by Mr. Clampitt, "simply interconnecting the two networks does not allow anything to happen unless you're able to signal between switches" because "without signaling, a switch cannot transfer a call outside of itself." Tr. 51.

For these reasons, the Commission finds that the panel's proposed resolution of this dispute should be adopted and pricing for interconnection facilities and signaling services should be set at Ameritech Michigan's UNE rates pending the establishment of TSLRIC-based rates.

Optional Use of Two-Way Trunk Groups

A dispute arose between the parties regarding whether the transmission and routing of local traffic over local trunk groups used for interconnection should be configured using one-way, as opposed to two-way, trunks. Based on the presentations of the parties, the arbitration panel concluded that two-way trunking should be allowed as an option wherever AirTouch and Ameritech Michigan mutually agree that it would be appropriate. The panel further concluded that because it provided for that option, the pertinent language set forth in AirTouch's proposed interconnection agreement should be adopted.

Neither of the parties object to the panel's proposed resolution of this issue, and the Commission finds that it should therefore be adopted.

Interconnection at Technically Feasible Points

The parties agreed that AirTouch should be allowed to interconnect each of its customers' calls either at one of Ameritech Michigan's tandem switches or at one of its end office switches. However, Ameritech Michigan asserted that in situations where AirTouch's call volume through any of its tandem switching facilities to a given Ameritech Michigan end office exceeds 700 Centum Call Seconds (CCS), AirTouch should be required to route its traffic directly to the appropriate Ameritech Michigan end office. AirTouch objected to that proposal, claiming that the FCC intended for it and all similarly situated carriers to have the flexibility to interconnect with LECs' networks wherever those carriers found it most efficient. The arbitration panel concurred with AirTouch and ruled that, pursuant to language set forth in Paragraph 209 of the FCC's First Report and Order, AirTouch has the right to choose where to interconnect with Ameritech Michigan's system.

Ameritech Michigan objects to the panel's decision. Although conceding that it must allow interconnection at any technically feasible point on its network, Ameritech Michigan claims that the capacity of each of its tandem switches is effectively exhausted at 700 CCS. As a result, it argues, interconnection at such a tandem switch cannot be considered technically feasible where the volume of calls routed through the switch exceeds 700 CCS. Ameritech Michigan further argues that preventing it from taking "reasonable engineering precautions" in routing the traffic flow over its tandem switches "would likely result in not only decreased service quality (i.e., call-blocking, if the tandem capacity is reached or exceeded), but also increased service cost (i.e., to account for the construction of new tandem

switches).” Ameritech Michigan’s objections to the DAP, p. 21. It therefore requests that the Commission reverse the panel on this issue and adopt Ameritech Michigan’s proposed language regarding what constitutes a technically feasible point of interconnection.

Again, the Commission disagrees with Ameritech Michigan and finds that the arbitration panel’s proposed result should be adopted. As noted by the panel, the following determination made by the FCC in its First Report and Order governs this issue:

We conclude that we should identify a minimum list of technically feasible points of interconnection that are critical to facilitating entry by competing local service providers. Section 251(c)(2) [of the FTA] gives competing carriers the right to deliver traffic terminating on an incumbent LEC’s network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not developed ubiquitous networks by permitting them to select the points in an incumbent LEC’s network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional cost incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

FCC No. 96-325, supra, at ¶209 (Emphasis added). Based on the FCC’s above-quoted determination, the arbitration agreement at issue in this case should not include language restricting the right of AirTouch to select where to interconnect with Ameritech Michigan’s network. In reaching this decision, the Commission recognizes that permitting traffic volumes to exceed 700 CCS may exhaust a tandem switch’s capacity and necessitate the construction of additional switches. Nevertheless, it concludes that forcing AirTouch to use uneconomic connections and thus incur unnecessary expenses (by restricting AirTouch’s choice) is a less acceptable alternative than encouraging Ameritech Michigan to make needed investment in its network (by ensuring AirTouch’s access to the level of choice envisioned by the FCC).

The Commission therefore finds that the panel's proposed resolution of this issue should be adopted and incorporated into the parties' interconnection agreement.

Use of Shared Facilities

Ameritech Michigan acknowledged that whenever it elects to use AirTouch's facilities to transport traffic to an endpoint on AirTouch's system, it should compensate AirTouch for providing that transport service. Notwithstanding that fact, Ameritech Michigan went on to assert, it should remain free to build its own interconnection facilities, obtain transport service from a third party, or use AirTouch's facilities to the extent that it makes economic sense. Ameritech Michigan therefore objected to AirTouch's proposed language regarding the use of shared facilities. This was based on Ameritech Michigan's belief that the language could be interpreted as eliminating its right to choose and, instead, vesting AirTouch with complete authority to determine whether it should be the exclusive provider of transport service to Ameritech Michigan.

The arbitration panel found no requirement under either federal or state law obligating Ameritech Michigan to use shared facilities to transport traffic from its network to AirTouch's system. Nevertheless, it concluded that nothing in the language proposed by AirTouch could be viewed as imposing such an obligation. According to the panel, the language proposed by AirTouch is reasonable in that it "does not mandate that Ameritech use AirTouch facilities" and, instead, provides the respective parties with "reasonable options in designing their networks." DAP, p. 16. The panel therefore supported adopting AirTouch's language. In so doing, the panel went on to note that if Ameritech Michigan elects to install facilities that duplicate those already constructed by AirTouch, Ameritech Michigan will have to assume

their full cost and ensure that their construction does not somehow degrade the quality of the facilities previously installed by AirTouch.

Neither AirTouch nor Ameritech Michigan object to the arbitration panel's conclusions regarding this issue. The Commission therefore finds that it should adopt the panel's holdings regarding the use of shared facilities.

Netting

Throughout the parties' negotiations, Ameritech Michigan sought to include in their interconnection agreement a provision stating that there shall be no "netting" of the amounts due under the agreement against any other amount owed by Ameritech Michigan or AirTouch to each other. AirTouch opposed that provision on the grounds that it has a common law right to set off amounts it claims are due to it against amounts that are due to Ameritech Michigan. In response, Ameritech Michigan expressed concern that AirTouch intended to disregard their mutually agreed upon contractual provisions concerning billing and payment (in Section 10 of the proposed agreement) and resolution of disputes (in Section 31). The arbitration panel agreed with Ameritech Michigan and recommended adopting the LEC's proposed language to preclude netting.

AirTouch objects to the panel's recommendation on three grounds. First, it contends that Michigan courts have repeatedly upheld the common law right to setoff and that netting constitutes an identical right. Second, it argues that netting would more quickly focus attention on disputes between these parties and would thus result in the more expeditious resolution of those disputes than has occurred in the past. Third, it notes that approximately 75% of the traffic exchanged by these parties (and thus 75% of the payments) runs from AirTouch to Ameritech Michigan. According to AirTouch, this allows Ameritech to "disrupt

AirTouch's cash flow and obtain an advantage" in the dispute resolution process by "drawing the disputes out" as long as possible. AirTouch's objections to the DAP, p. 7. AirTouch therefore argues that the panel's decision regarding the denial of netting should be reversed.

The Commission agrees with AirTouch and finds that the arbitration panel's proposed resolution of this issue should be rejected. Both the FTA and the MTA were intended to enhance the ability of new service providers to enter the market. By precluding netting in all circumstances, and thus using disputes among the parties as a potential means of disrupting a new entrant's cash flow, Ameritech Michigan's proposed language can be viewed as conflicting with the purposes of the FTA and the MTA. The Commission therefore concludes that it should reject the arbitration panel's recommendation, deny Ameritech Michigan's request to prohibit netting in every instance, and adopt the language proposed by AirTouch.

Satisfaction with Interconnection Agreement

The proposed interconnection agreement submitted by AirTouch contained a provision through which the parties would mutually represent that the agreement was satisfactory to them and that each party fully supported its approval without modification. The specific language offered by AirTouch read as follows:

The Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.

Appendix A attached to the petition for arbitration, p. 31.

Ameritech Michigan opposed including that language in the interconnection agreement. In so doing, it claimed that the language in question was intended for use in an agreement that the parties entered into

voluntarily and does not accurately reflect a situation--like that presently before the Commission--involving a contested arbitration. According to Ameritech Michigan, it would be illogical to assert that the losing party in an arbitration setting can find the result to be satisfactory. Ameritech Michigan went on to assert that the language created the potential for unintended consequences, including the waiver of possible appeal rights.

The arbitration panel agreed in part with Ameritech Michigan, concluding that the first of the two sentences quoted above “appears to reflect a voluntarily negotiated agreement rather than an arbitrated one.” DAP, p. 18. Nevertheless, it noted that neither of the parties submitted proposed language that fully comports with the situation at hand. The panel therefore recommended leaving it to the parties “to negotiate a provision that fully captures their intended meaning.” Id.

AirTouch objects to this recommendation. According to AirTouch, the language contained in its proposal corresponds to that found in the Final Offer Interconnection Agreement submitted by Ameritech Michigan on April 27, 1999. See, Appendix C attached to the petition for arbitration, pp. 30-31. Thus, AirTouch contends, Ameritech Michigan has no right to now question the propriety of that language. AirTouch further contends that the Commission’s recent dealings with GTE North Incorporated (GTE), in which--following GTE’s refusal to sign arbitrated interconnection agreements--the Commission expressed the belief that agreements reached through arbitration should be treated the same as those reached through negotiation, support adopting AirTouch’s proposed language. AirTouch therefore requests that the Commission reject the panel’s recommendation and adopt the language quoted above.

The Commission concludes that AirTouch’s request should be denied. Although it finds nothing inherently wrong with the second sentence of AirTouch’s proposed language, the first sentence more

accurately applies to a negotiated agreement than to an arbitrated one. The Commission therefore cannot approve including that language in the interconnection agreement. However, the Commission further finds that although their proposals do not vary greatly, neither party has proposed language that accurately fits the current situation. Thus, the Commission concludes that it should adopt the panel's recommendation and direct the parties to negotiate this issue further. If the parties are unable to reach an agreement within 30 days of the date of this order, each party may present its last best proposal to the Commission and the Commission will choose the most reasonable of the proposed options.

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 AACCS, R 460.17101 et seq.

b. The decision of the arbitration panel, as modified by this order, should be approved.

THEREFORE, IT IS ORDERED that:

A. The arbitration panel's decision with regard to the interconnection agreement between AirTouch Cellular, Inc., and Ameritech Michigan, as modified by this order, is adopted.

B. The parties should continue to negotiate with respect to the unresolved issue concerning the declaration of satisfaction with the interconnection agreement, as provided in the arbitration panel's decision and this order.

C. Assuming that they resolve the one remaining issue discussed in this order, AirTouch Cellular, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the decision of the arbitration panel and this order within 30 days of the date of this order.

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

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 August 17, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

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By its action of August 17, 1999.

Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated August 17, 1999 approving, with modification, the decision of the arbitration panel with respect to interconnection terms between AirTouch Cellular, Inc., and Ameritech Michigan, as set forth in the order.”