

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 October 28, 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

On August 17, 1999, the Commission issued an order (the August 17 order) approving with modification the decision of the arbitration panel (DAP) concerning an interconnection agreement between AirTouch Cellular, Inc., (AirTouch) and Ameritech Michigan.¹ However, as did the DAP, the August 17 order directed the parties to continue negotiating in an attempt to develop mutually agreeable language concerning a declaration of satisfaction covering the resultant interconnection agreement. The

¹The sole modification to the DAP was the rejection of Ameritech Michigan's language regarding "netting" and its replacement with language proposed by AirTouch. In the context of this case, netting refers to setting off amounts due under the interconnection agreement against any other amounts owed by AirTouch or Ameritech Michigan to each other.

August 17 order further indicated that should the parties be unable to reach agreement on that issue within 30 days, the Commission would choose between the parties' respective last best offers.

On September 16, 1999, AirTouch and Ameritech Michigan filed separate interconnection agreements, along with motions requesting the adoption of their respective agreements. On September 24, 1999, Ameritech Michigan filed a response to AirTouch's motion. AirTouch filed its response to Ameritech Michigan's motion on September 27, 1999.

According to AirTouch, the August 17 order and the negotiations that took place subsequent to that order necessitate only two changes to the interconnection agreement attached to the Proposed Decision of the Arbitration Panel (PDAP) that AirTouch submitted on June 11, 1999.² The first change entails incorporating into Section 15.1 of that interconnection agreement language (recently drafted by Ameritech Michigan and consented to by AirTouch) expressing the parties' mutual satisfaction with the final agreement. The second change, which AirTouch claims was not demanded by the August 17 order but instead was proposed by Ameritech Michigan and voluntarily accepted by AirTouch, involves changing the definition of a "UNE Rate Element" to that "defined and specified in the then current Ameritech Michigan Bell Company Tariff M.P.S.C. No. 20R, Part 19, or its replacement." AirTouch's motion, p. 2.

AirTouch goes on to state that it made those two changes to the proposed interconnection agreement, signed it, and submitted an original and three copies of the signed agreement to Ameritech Michigan on September 10, 1999. Nevertheless, AirTouch continues, Ameritech Michigan advised AirTouch on September 15, 1999 that it would not be signing the agreement. According to AirTouch,

²Because AirTouch's PDAP already contained the Commission-approved language concerning netting, the August 17 order required no revision in that regard.

that refusal is based on the fact that the agreement fails to incorporate “extensive changes” that had been requested by Ameritech Michigan after issuance of the August 17 order. *Id.* AirTouch concludes by arguing that because none of those changes are called for by the August 17 order, Ameritech Michigan’s refusal to sign the proposed agreement is wholly unjustified and (in addition to necessitating an order directing Ameritech Michigan to sign the agreement) supports awarding AirTouch all costs, including reasonable attorney fees, for bringing its motion.

In contrast, Ameritech Michigan asserts that the August 17 order requires making several changes to the interconnection agreement beyond those incorporated into AirTouch’s latest proposal. Foremost among these changes, Ameritech Michigan contends, is the need to revise Section 3.5 of the interconnection agreement (concerning the recovery of costs for providing interconnection facilities and services, including SS7 signaling) and Attachment A to the agreement (which sets forth the specific rates to be recovered for those services). According to Ameritech Michigan, the Commission’s discussion of this issue on pages 10 and 11 of the August 17 order, as well as its ultimate directive to adopt the DAP “as modified by this order,” supports making the changes currently proposed by Ameritech Michigan and set forth in the interconnection agreement attached to its motion. August 17 order, p. 17. Ameritech Michigan concludes by arguing that, based on the mutual consent of the parties, the Commission should replace the language found in Sections 3.2.2 and 3.2.3 of AirTouch’s proposed interconnection agreement with that found in the same numbered sections of Ameritech Michigan’s proposed agreement.

The Commission disagrees with Ameritech Michigan’s arguments and concludes that the interconnection agreement submitted by AirTouch on September 16, 1999 (which includes the parties’ agreed-upon language regarding the revised definition of a UNE Rate Element and mutual satisfaction with the final

agreement) best reflects the intended end product of this arbitration process. As a whole, the rulings set forth in the DAP closely paralleled the positions offered by AirTouch and set forth in the proposed interconnection agreement attached to AirTouch's June 11, 1999 PDAP. Moreover, the August 17 order modified only one aspect of the DAP. Specifically, it rejected the arbitration panel's recommendation to adopt Ameritech Michigan's proposal to preclude netting and, instead, adopted the alternative language contained both in AirTouch's PDAP and in that party's proposed interconnection agreement. See, August 17 order, pp. 16-17. Thus, because Ameritech Michigan's proposed changes to Section 3.5, Attachment A, and Sections 3.2.2 and 3.2.3 are based neither on the directives set forth in the August 17 order nor on some documented agreement between the parties,³ they should be rejected.

The Commission therefore concludes that the parties should, within 10 days of this order's issuance, file an executed interconnection agreement consistent in all regards with that attached as Exhibit A to AirTouch's September 16, 1999 filing. As for AirTouch's request for costs and attorney fees, the Commission finds that, at least thus far, Ameritech Michigan's actions have not been sufficiently egregious to support imposition of those (or other) penalties. Nevertheless, any failure on Ameritech Michigan's part to expedite the signing and submission of the interconnection agreement called for by this order could give rise to sanctions in the future.

The Commission FINDS that:

³The revised definition of a "UNE Rate Element," adopted on page 3 of this order, was included in the latest round of proposed interconnection agreements submitted by both parties. In contrast, the new language proposed by Ameritech Michigan for Sections 3.2.2 and 3.2.3 does not appear in AirTouch's recently submitted agreement.

- 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 AACS, R 460.17101 et seq.
- b. The revised language proposed by AirTouch for inclusion in its interconnection agreement with Ameritech Michigan is appropriate and should be adopted.
- c. Ameritech Michigan's proposed changes to Section 3.5, Attachment A, and Sections 3.2.2 and 3.2.3 should be rejected.
- d. Within 10 days, the parties should file an executed interconnection agreement consistent in all regards with that attached as Exhibit A to AirTouch's September 16, 1999 filing.
- e. AirTouch's request for sanctions is rejected at this time.

THEREFORE, IT IS ORDERED that, within 10 days from the date of this order, AirTouch Cellular, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent in all regards with the proposed agreement attached as Exhibit A to AirTouch Cellular, Inc.'s September 16, 1999 filing in this case.

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 October 28, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of October 28, 1999.

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Suggested Minute:

“Adopt and issue order dated October 28, 1999 directing AirTouch Cellular, Inc., and Ameritech Michigan to file an executed interconnection agreement with the Commission within 10 days, as set forth in the order.”