

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of **COAST TO
COAST TELECOMMUNICATIONS, INC.,**)
against **AMERITECH MICHIGAN.**)
_____)

Case No. U-12043

At the February 9, 2000 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

History of Proceedings

On July 14, 1999, Coast to Coast Telecommunications, Inc., (Coast), a reseller of Centrex service¹ provided by Ameritech Michigan, filed a complaint against Ameritech Michigan. In the complaint, Coast disputes issues related to 34 Centrex service arrangements that it acquired pursuant to contracts with seven-year terms that it signed with Ameritech Michigan from 1993 to 1995, as well as 13 other Centrex contracts with five-year terms that it manages pursuant to agreements it signed with Ameritech Michigan and Americom Telemanagement, Inc., (Americom)

¹Ameritech Michigan defines Centrex as a service offering that combines basic local exchange access lines (including dial tone and a telephone number for each line) with a package of unregulated features. Because it is dependent upon capabilities provided by end office switches, a single Centrex arrangement is limited in geographic scope to a central office. If a Centrex customer subscribes to multiple lines, an end user of the service would perceive it as functioning much as though it were a private branch exchange. Tr. 251-54.

in 1995. Americom is another reseller. Although Americom had originally signed the 13 original Centrex contracts with Ameritech Michigan, it subsequently agreed to relinquish those contracts to Coast.

The complaint alleges that Ameritech Michigan has withheld the resale discount of 19.96% on the regulated prices in the 47 Centrex contracts at issue in the complaint. The complaint further alleges that Ameritech Michigan improperly withheld other discounts to which Coast was entitled based on the quantity of the Centrex loops it purchased. Coast disputes Ameritech Michigan's noncompliance with instructions for routing intraLATA calls placed by Coast's end use customers of Centrex service and further claims that Ameritech Michigan should not be permitted to bill Coast for casual usage long distance calls placed by Coast end users through various interexchange carriers (IXCs).

On September 1, 1999, Administrative Law Judge James N. Rigas (ALJ) conducted a prehearing conference attended by Coast and Ameritech Michigan. The Commission Staff also participated. The parties agreed to extend the statutory deadline for completing the case to 210 days.² Tr. 3.

On October 28, 1999, the ALJ conducted a hearing, at which Coast and Ameritech Michigan presented testimony and exhibits. Although Coast presented Exhibit C-14 as a computation of the total billing adjustments it should receive under the complaint, Coast and Ameritech Michigan later agreed that they could compute the billing adjustments if the Commission made findings on the issues raised in the complaint. Tr. 129-31. Consequently, the ALJ did not admit Exhibit C-14 into evidence. Tr. 136-37.

²See MCL 484.2203(6); MSA 22.1469(203)(6).

Coast and Ameritech Michigan filed briefs and reply briefs. On December 17, 1999, the ALJ issued a Proposal for Decision (PFD) recommending dismissal of all of the claims in the complaint. On January 4, 2000, Coast filed exceptions. On January 14, 2000, Ameritech Michigan filed replies to exceptions.

Resale Discount

Coast argued that, as a reseller of services purchased from Ameritech Michigan, it is entitled to reduce the contract pricing for regulated Centrex services by the resale discount rate of 19.96%.³ Ameritech Michigan responded that Coast secured its contract pricing on a retail basis prior to the introduction of resale tariffs providing discounted wholesale rates and that the contracts continue in effect until they expire.

At the time that Coast (and Americom) entered into the 47 Centrex contracts, Ameritech Michigan made Centrex service available to both resellers and its own retail customers under the same tariff. See Ex. R-54. According to Ameritech Michigan, Centrex service combines access lines, or loops, which it provides at regulated rates, and packages of unregulated features. The Centrex contracts incorporated the then current loop charges from Ameritech Michigan's tariff and provided discounts for the unregulated features. According to Ameritech Michigan, one advantage of entering into Centrex contracts is to obtain guaranteed prices over the contract term.

³The 19.96% resale discount for purchasing wholesale services from Ameritech Michigan was approved in the July 14, 1997 order in Case No. U-11280, at 35. On November 16, 1999, the Commission issued an order in Case No. U-11831 revising the resale discount to 18.15%, and Ameritech Michigan has since filed Centrex resale tariff sheets implementing the revised discount, effective as of December 16, 1999. Mich. Bell Tel. Co. Tariff M.P.S.C. No. 20R, Pt. 22, Sec. 5, 6th Rev. Sheet No. 2.

Several regulatory developments have since altered the rates, terms, and provisions under which resellers generally obtain resale services from incumbent local exchange carriers (ILECs). In November 1995, the Legislature passed 1995 PA 216, which amended the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq.; MSA 22.1469(101) et seq., to obligate each provider of local exchange service to “make available for resale on nondiscriminatory terms and conditions all basic local exchange services that on January 1, 1996 it is offering to its retail customers.” MCL 484.2357(1); MSA 22.1469(357)(1).⁴ To comply with the 1995 amendments, Ameritech Michigan filed resale tariffs that included Centrex service in January 1996. Tr. 258.

In February 1996, Congress passed the federal Telecommunications Act (FTA), which amended the Communications Act of 1934, 47 USC 151 et seq. The FTA also imposes a duty “to offer for resale at wholesale rates any telecommunications service that the [ILEC] provides at retail to subscribers who are not telecommunications carriers; and . . . not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service.” 47 USC 251(c)(3). The FTA prescribes a detailed framework for providers to negotiate and, if necessary, enter into arbitration concerning, the terms of an interconnection agreement. 47 USC 252. Interconnection agreements provide, among other things, the wholesale rates for resale services. Using this procedure, Coast and Ameritech Information Industry Services (on

⁴The MTA further provides that “[r]esale shall be provided on a wholesale basis,” MCL 484.2357(1); MSA 22.1469(357)(1), and that “[n]o later than January 1, 1996, each provider of local exchange service shall file tariffs . . . which set forth the wholesale rates, terms, and conditions for basic local exchange services,” MCL 484.2357(4); MSA 22.1469(357)(4).

behalf of Ameritech Michigan)⁵ negotiated an interconnection agreement, which the Commission approved in the June 25, 1997 order in Case No. U-11395. Although the interconnection agreement provided a resale discount of 22%, that discount was later modified to reflect the revised discount of 19.96% that the Commission approved in Case No. U-11280. Thereafter, Coast did purchase resale services (in addition to the 47 Centrex contracts) under the provisions of the interconnection agreement. Tr. 182.

Coast claimed that it should be entitled to apply the resale discount to the contractual pricing for the regulated services provided in the 47 Centrex contracts that predate Ameritech Michigan's resale tariff. To sustain this contention, Coast relied on the following provision in its Centrex contracts:

If there is any inconsistency between the Agreement and applicable provisions of Michigan Bell Telephone Company tariffs filed with the Michigan Public Service Commission ("MPSC"), the rules and regulations of the MPSC, as now in existence or as later modified, then the tariffs, rules and regulations shall govern. However, to the extent Centrex features are not regulated under the Michigan Telecommunications Act, MCL 484.2210, et seq., the tariffs shall not bind the parties with regard to rates, charges, terms and conditions for such features.

Ex. C-1, at 1.

Ameritech Michigan responded that there is no inconsistency between Coast's Centrex contracts and the tariffs; instead, it says, the contracts were written in accordance with the tariffs and continue to be consistent with the current versions of the tariffs. In Ameritech Michigan's view, the interconnection agreement did not retroactively alter or otherwise affect the previously signed Centrex contracts. Although Ameritech Michigan refused to reduce the contract prices

⁵Although Ameritech Information Industry Services and Michigan Bell Telephone Company (which conducts business under the assumed name Ameritech Michigan), are separate affiliates of the Ameritech Corporation, this order will refer to both entities as Ameritech Michigan.

directly, it did offer to enter into replacement contracts with Coast for the remaining terms of the Centrex contracts that would adopt the resale discount and other provisions of the interconnection agreement. In making this offer, Ameritech Michigan indicated that it would waive contractual fees and penalties that would otherwise apply to an early termination of the 47 original contracts. Apparently because some of the provisions in the original contracts were more favorable than the prices and terms it could obtain under the interconnection agreement, Coast would not assent to a complete substitution of the original contracts with resale arrangements.

The ALJ agreed with Ameritech Michigan's contention that the Centrex contracts are consistent with its retail Centrex tariff, which expressly indicates that Ameritech Michigan could offer long-term contracts. The ALJ found that the contracts insulated Coast from subsequent increases in Ameritech Michigan's tariff rates, so that Coast did in fact secure price stability for the contract terms. The ALJ further found that the introduction of a new wholesale tariff providing a resale discount did not affect prior contractual arrangements and that Ameritech Michigan did not become obligated to apply the new resale discount retroactively to previous contracts. In the ALJ's view, Ameritech Michigan complied with its resale obligations by offering to enter into new contracts that would have replaced Coast's original Centrex contracts. PFD at 8-9.

In its exceptions, Coast argues that the ALJ erred by finding that Coast's ongoing service under its contracts is consistent with Ameritech Michigan's tariffs, "as now in existence or as later modified." Ex. C-1, at 1. According to Coast, the ALJ erroneously equated the word "inconsistency" with mutual exclusivity. In Coast's view, the tariff clause in the contracts should be read to recognize that the contracts are subject to change when necessary to conform to material changes in circumstances as they are reflected in the tariffs. To adopt the ALJ's reading, Coast says, would permit Ameritech Michigan to benefit from an illogical situation, i.e., Coast's paying retail rates

even though Ameritech Michigan avoids the costs related to providing retail service by dealing with a reseller instead of a retail customer. In this sense, Coast says, the amendment of the MTA and enactment of the FTA effected fundamental changes in regulation (as well as the tariffs) that are in conflict with basic assumptions underlying the Centrex contracts when they were negotiated.

Coast argues that the regulatory changes requiring ILECs to offer wholesale services at a resale discount are different from the more routine increases in regulated rates that Ameritech Michigan does not pass on to Coast under its present contracts. Coast says that Ameritech Michigan's Centrex tariff contemplated protection from routine rate changes by providing that Ameritech Michigan could enter into term contracts with customers. However, Coast distinguishes the resale discounts as wholly unanticipated by the tariff in effect at the time.

Coast argues that Ameritech Michigan's offer to enter into replacement contracts incorporating the resale discounts was illusory, in that a complete rescission of the original contracts would have deprived Coast of its beneficial pricing arrangement for the Automatic Dial 9 (AD-9) optional feature. (The AD-9 feature enables an end user to place a call outside of the Centrex system without dialing 9 for an outside line.) Under the original contracts, Coast obtained AD-9 by paying a non-recurring charge of \$250 per Centrex system. Under Ameritech Michigan's resale tariff for unregulated services, Coast would be obligated to pay a new non-recurring charge of \$4.00 per line and a new monthly charge of \$2.40 per line. According to Coast, accepting Ameritech Michigan's offer to sign new contracts, with the resale AD-9 pricing, would eliminate the benefit of any price reduction it would obtain from the resale discount.

Coast says that the resale discount should apply to the regulated loop charges that it pays for Centrex as well as the per-call local usage charges⁶ and line installation charges. Coast argues that, unlike the loop charges, the usage and line installation charges do not appear in its Centrex contracts, but that Ameritech Michigan bills them directly from its retail tariff.

In reply, Ameritech Michigan rejects Coast's contention that the introduction of a resale tariff and the signing of an interconnection agreement mean that the resale discounts should automatically apply as a price update to preexisting contracts. Ameritech Michigan argues that nothing in the 1995 amendments to the MTA or the FTA supports this view. Ameritech Michigan says that Coast's contracts incorporate the tariff in effect at the time (not the subsequent resale tariffs), which made no distinction between wholesale and retail customers. Ameritech Michigan applies the same principle to Coast's claim that the retail usage charges should also be reduced by the resale discount.

Ameritech Michigan argues that the ALJ was correct to find no "inconsistency" between Coast's Centrex contracts and Ameritech Michigan's tariffs. Ameritech Michigan says that it honors its obligations to Coast to provide service under the grandfathered Centrex contracts and, without any inconsistency, offers Centrex service under its resale tariff to any provider that seeks it, including Coast. According to Ameritech Michigan, each means of obtaining Centrex service stands as an independent alternative to the other, and whether Coast continues its service under its contracts for the remainder of their terms or chooses to "transition" to resale agreements is a

⁶The record indicates that the retail rate for business measured service is \$0.0853 per local call and that the resale usage rate is \$0.0683 [or $\$0.0853 \times (100\% - 19.96\%)$]. Exs. C-10, C-12. After Case No. U-11831 was decided, *see supra* note 3, Ameritech Michigan filed a revised tariff sheet changing the resale rate to \$0.0698 [or $\$0.0853 \times (100\% - 18.15\%)$]. Mich. Bell Tel. Co. Tariff M.P.S.C. No. 20R, Pt. 22, Sec. 3, 6th Rev. Sheet No. 3.

business decision for it alone to make. What Coast cannot do, Ameritech Michigan explains, is to incorporate selectively some of the resale pricing while simultaneously retaining other provisions to its liking from the original contracts, e.g., the AD-9 prices. To interpret the contract and tariff provisions otherwise, Ameritech Michigan says, would make long-term contracts pointless. Ameritech Michigan adds that its interpretation of the contracts' clause maintaining consistency with tariffs is in keeping with the contracts' other pricing provisions that lock in the tariff rates in effect when the contracts were signed.

The Commission agrees with the ALJ's findings on this issue. Coast apparently does not dispute that the Centrex contracts were lawful and proper when it negotiated them with Ameritech Michigan. The subsequent changes in law requiring Ameritech Michigan to file resale tariffs did not amend or affect the prior contracts, but instead they provided a new, different approach for resellers to obtain those services. However, that approach is dictated by the terms and provisions of the resale tariff and the interconnection agreement. Although the tariff and agreement make wholesale Centrex service available to Coast on a resale basis, the terms and availability of the service must comply in all respects with the provisions of the tariff and agreement. Coast's attempt to combine favorable provisions of the resale tariff, i.e., the resale discount, with favorable provisions that it originally negotiated in the contracts is unreasonable. If successful, it would give Coast a better arrangement than it bargained for when it signed the contracts and, at the same time, one more advantageous than what Coast or any other reseller could obtain from Ameritech Michigan by proceeding only under the resale tariff at the present time. It is difficult to see any rationale for allowing a reseller with contract terms straddling the introduction of a resale tariff in 1996 to be in a better position than either a reseller who purchases Centrex service solely under the

tariff in effect prior to 1996 or one who purchases Centrex service pursuant to the terms available after Ameritech Michigan filed its resale tariff.

The Commission finds no merit in Coast's view that the contract clause prohibiting inconsistencies with the tariffs entitles it to modify its contract pricing by applying the discount rate from the resale tariff. The clause recognizes that any contractual arrangement that the parties negotiate must comply with the filed rate doctrine. This ensures that the tariff controls in the event that the negotiated provisions of the contract are, or later become, inconsistent with the tariff, "as now in existence or as later modified." Ex. C-1, at 1. The subsequent introduction of a new resale tariff did not directly affect or modify the contracts signed under the Centrex tariff as it then existed, or render the contracts invalid. There is nothing inconsistent with a provider making service available under either of two alternative rate structures, each dictated by a different tariff, as long as it does so lawfully and without discrimination.

It is not as though Ameritech Michigan refuses to offer the resale discount to Coast. However, Coast must either accept new resale arrangements that replace the original contracts for their remaining terms, or it must continue to take service under the contracts as written. The Commission finds that this approach, coupled with Ameritech Michigan's willingness to waive early termination fees under the original contracts, is reasonable and fulfills Ameritech Michigan's duty to make resale service available to Coast.

For these reasons, the Commission finds that Coast is not entitled to reduce the rates it pays under the Centrex contracts for the resale discount. This finding applies to the loop charges as well as the local usage and line installation charges incurred under the contracts.

Unaffiliated End User Restriction

Ameritech Michigan's Centrex tariff provides a matrix of reduced loop prices based on the quantity of loops provided for each Centrex service. Under the matrix, a reduced price applies to each loop purchased after the first 25 loops, and further reductions occur for loops purchased in excess of 199, 499, and 999 loops. For example, Ameritech Michigan's current retail tariff imposes a monthly charge (in Access Areas A and B) of \$10.03 per loop for the first 25 loops, \$6.32 for the next 174 loops (loops 26 to 199), \$5.49 for the next 300 loops (loops 200 to 499), \$4.57 for the next 500 loops (loops 500 to 999), and \$3.59 for additional loops (in excess of 999 loops). Ex. R-54. Although the rates themselves have varied over the years, the matrix rate structure has been in place since Ameritech Michigan filed its initial Centrex tariff in 1990.⁷ See Exs. R-57, R-58.

Although most of Coast's Centrex services have over 25 loops, Exs. R-39, R-43, Coast does not have any end use customers that individually require more than 25 lines, Tr. 68-69. Consequently, Ameritech Michigan refused to grant Coast any reduced pricing for the matrix bands over 25 loops. Ameritech Michigan contended that allowing Coast to obtain quantity discounts by aggregating loops from its various end use customers would violate the unaffiliated end user restriction in its tariff, which states:

Where there are unaffiliated end users on the same Centrex system, all loops on the system are priced at the 1-25 loop band of the Matrix, regardless of the quantity of loops provided for each end user or total number of end users or customers of the reseller, sharer or aggregator.

Ex. R-54, at 2.

⁷The Centrex resale tariff contains a similar matrix, with the rates further reduced by the resale discount percentage.

The ALJ found that the unaffiliated end user restriction is lawful and is not anti-competitive or discriminatory, as Coast had contended. The ALJ noted that the Commission approved the tariff restriction in the October 18, 1990 order in Case No. U-9321. He said that the restriction did not discriminate against Coast or other resellers as they compete with Ameritech Michigan for retail Centrex customers because neither the reseller nor Ameritech Michigan can benefit from the matrix discounts if they aggregate unaffiliated end users on a single Centrex system. PFD at 11-12.

In its exceptions, Coast argues that the ALJ should not have compared Coast's use of Centrex service with Ameritech Michigan's own retail Centrex service. Coast contends that, unlike retail service, the purpose of a reseller's Centrex arrangements is to aggregate and serve numerous end users. Coast says that the tariff restriction imposes a disincentive on aggregation and that there is no legitimate reason to treat aggregators differently than retail Centrex customers. Coast dismisses Ameritech Michigan's claim that the tariff restriction is cost justified, noting that Ameritech Michigan did not present any supporting cost studies. Furthermore, Coast says, there can be no valid cost distinction because, generally speaking, the physical loops already exist, and there are no capital costs incurred in combining the loops as part of a Centrex service. In any event, Coast adds, a true cost-based rationale would take the physical proximity of end users into account. However, Coast notes, the tariff restriction contains no criteria based on physical proximity, even though it is possible for an aggregated group of unaffiliated end users to be located in the same building, just as it is possible for affiliated end users to be located far from each other.

Furthermore, Coast argues that the word "unaffiliated" is not defined in Ameritech Michigan's tariffs, leaving it too much discretion to decide what kind of relationship qualifies two or more end users as affiliated to each other. Coast suggests that Ameritech Michigan may not in fact apply the

affiliation requirement to its own retail customers in the same manner as it does to a reseller's end use customers.

Coast contends that the unaffiliated end user restriction effectively prevents it from providing Centrex service on a wholesale basis. Coast notes that the monthly contract rate it pays for Centrex loops is \$9.76, which was the tariff rate in effect for the 1-25 loop matrix band at the time the contracts were signed. It says that \$9.76 is far more than the \$6.32 rate that Ameritech Michigan charges its retail customers for the 26-199 loop matrix band.

Coast argues that it was improper for the ALJ to cite Case No. U-9321, in which the Commission approved a settlement. Coast says that it was not a party to the settlement and that the settlement itself has no precedential value.

Ameritech Michigan responds that the unaffiliated end user restriction applies to the end users served by a Centrex system, regardless of whether the retail Centrex provider is Ameritech Michigan itself or a reseller of Ameritech Michigan's service. Ameritech Michigan argues that if Coast were permitted to obtain matrix discounts by aggregating unaffiliated end users, it would have an unfair price advantage over Ameritech Michigan, whose tariff does not permit it to extend those discounts to groups of its own unaffiliated customers. Ameritech Michigan represents that it will extend the matrix discounts to Coast when Coast seeks to provide Centrex service to a single customer with more than 25 end users or a group of affiliated customers that together have more than 25 end users. Ameritech Michigan contends that the matrix discounts reflect cost savings from serving high volume customers and says that allowing Coast to aggregate unaffiliated end users would run counter to the cost basis for the discounts.

Because Ameritech Michigan's tariffs have incorporated the unaffiliated end user restriction since the Commission decided Case No. U-9321 in 1990, Ameritech Michigan contends that the filed rate doctrine should bar Coast's claim that it should not be subject to the restriction.⁸

The Commission is persuaded that the distinction between affiliated and unaffiliated end users served by a single Centrex system is not unjust or unreasonable discrimination. As Ameritech Michigan points out, the tariff matrix applies to the number of affiliated end users served on a Centrex system, without regard to whether the end users are retail customers of Ameritech Michigan or a reseller. This characteristic of service is a valid basis for extending quantity-based discounts, as retail customers with more end users are more likely to present cost efficiencies than an aggregated group of unrelated end users, whose only point of commonality is that they are customers of the same reseller. The cost savings of using Centrex to serve large numbers of end users holds true, regardless of whether the physical loops have already been installed (in which case the cost recognition is deferred through depreciation) or whether additional capital expenditures are required to install a Centrex system. There would seem to be little point in having a Centrex tariff with a matrix rate structure if it could be used to serve the general population of end users. In the event that Coast obtains a retail customer with more than 25 end users, the benefit of the matrix discount will be available to it.

Coast in effect asks for a quantity-based discount that Ameritech Michigan cannot offer to its own retail Centrex customers under its tariffs. As a result, Coast would be in a position to lower the price it charges its customers for Centrex loops and undercut the retail rates on offer from

⁸The October 18, 1990 order in Case No. U-9321 establishes that Ameritech Michigan secured Commission authority to file a tariff making Centrex service available. The Commission agrees with Coast that the order does not nullify Coast's right to file a complaint challenging the tariff and has not relied on any of the order's findings in deciding this case on its merits.

Ameritech Michigan. It does not follow that giving aggregators a price advantage over Ameritech Michigan's retail service would encourage them to compete with Ameritech Michigan on the basis of which provider is more cost efficient.

Although Coast claimed that the lack of definition of "affiliation" in Ameritech Michigan's tariffs enables Ameritech Michigan to be arbitrary in extending the matrix discounts, there is no indication on the record that Ameritech Michigan has applied the restriction in an arbitrary or discriminatory fashion. There is also no evidence to show that Ameritech Michigan's refusal to extend the discounts to Coast has relied on strained or unreasonable interpretations of the tariff restriction. Further, Coast did not raise this claim until after the record closed, so that Ameritech Michigan did not have a fair opportunity to present evidence regarding the criteria it uses in applying the affiliation requirement.

Automatic Route Selection

Automatic Route Selection (ARS) is an optional feature of Centrex service that enables Coast to dictate the routing of calls. Coast uses the feature to route intraLATA toll calls placed by its end use customers to its own toll facilities and, in the event of an overflow situation, to another designated IXC, thereby ensuring that no toll calls are carried by Ameritech Michigan.

In 1995, Coast began receiving bills from Ameritech Michigan in which calls that should have been routed by ARS to Coast's toll service were instead routed to Ameritech Michigan's public switched network and charged to Coast at Ameritech Michigan toll rates. Although some of the reasons for the misrouting appear to have related to technical issues at least initially, Coast and Ameritech Michigan reached understandings on those issues by October 1997, and Ameritech Michigan made billing adjustments. However, the disputed charges for intraLATA calls routed to

Ameritech Michigan did not end. Coast seeks to have Ameritech Michigan's charges for those calls canceled.

Ameritech Michigan attributed the ongoing problems to Coast's failure to provide written instructions updating the ARS routing every time a new NPA or NXX code⁹ is introduced somewhere on the public network. Ameritech Michigan relies on its tariff for the resale of unregulated services, which provides:

Automatic Route Selection . . . [a]llows for the completion of calls to a public network telephone number by automatically scanning the digits and selecting a first choice completion route when available, or a subsequent route if the first choice route is not available. . . .

It is the responsibility of the carrier to notify the Company regarding updates to the carrier's ARS patterns whether caused by changes in the carrier's private network or the public switched network.

Ex. R-56, at 5. The July 21, 1995 agreement signed by Ameritech Michigan and Coast to enable Coast to assume Americom's 13 Centrex contracts provided:

At [Coast's] written request, Ameritech shall revise ARS routing patterns consistent with [Coast's] written routing instructions. If [Coast] claims that a call was not routed consistent with its ARS routing instructions it shall notify Ameritech in writing, including specific telephone number and call, and calls not routed consistent with the ARS routing pattern shall be rerouted consistent with Ameritech's normal adjustment procedures.

⁹NPA refers to Numbering Plan Area, which is the area code used in dialing ten-digit interexchange calls. NXX refers to the first three digits in a seven-digit dialing pattern.

Ex. C-3, at 3.¹⁰ According to Ameritech Michigan, when a Coast end user places a call to a new NPA or NXX, for which updated ARS instructions have not been provided, Ameritech Michigan's network routes the call by default through its own intraLATA toll service.

Coast's view was that Ameritech Michigan is aware of new NPA/NXX codes as they are introduced and has standing instructions to route all toll calls in accordance with Coast's expressed wishes. Coast President Bruce H. Yuille stated this view in a letter to Ameritech Michigan dated March 18, 1997:

. . . Ameritech has the duty to make this routing pattern work. If it works, there should be absolutely no overflow on the Americom centres. If they do not we have no duty to pay for the unwanted service.

Ex. C-19, at 5. In a letter dated April 29, 1997, Ameritech Michigan Service Manager Kathy Mekjian responded by reminding Mr. Yuille that Coast must provide updated written instructions:

[W]hen a new NXX is opened it is automatically routed [by direct distance dialing]. If the customer wants the call routed differently, an order needs to be issued to change the routing.

Id. at 3.

Although the ALJ agreed with Coast that it should not be billed for calls routed in violation of its written instructions, the ALJ found that the charges for the disputed calls resulted from Coast's failure to provide written updates for new NPA/NXX codes. Thus, the ALJ accepted Ameritech Michigan's contention that Coast had a duty to provide written updates on a code by code basis and that it was not obligated to change the ARS routing for each new NPA/NXX code without written instructions from Coast. PFD at 13-14.

¹⁰The July 21, 1995 agreement does not apply to the 34 Centrex contracts that Coast signed directly with Ameritech Michigan. Although Coast and Ameritech Michigan also signed an amended agreement dated September 23, 1996 to address ARS routing issues, that agreement did not address the procedures to be used to issue updated instructions. Ex. R-46.

In its exceptions, Coast argues that Ameritech Michigan was at all times well aware of Coast's expressed desire that the calls be routed to its own toll facilities instead of Ameritech Michigan's and that it conveyed this instruction to Ameritech Michigan, verbally and in writing, on numerous occasions. Coast disputes both that the disputed calls were misrouted as a result of new NPA/NXX codes and that any agreement or other document imposes a legal duty on it to provide written updates for each new code. In this regard, Coast contends that Ameritech Michigan's resale tariff is inapplicable to the dispute, given that Coast does not purchase the 47 Centrex services under that tariff. In any event, Coast says, the resale tariff for the ARS feature does not specify that written updates must be issued for each new NPA/NXX code. Coast suggests that Ameritech Michigan is attempting to frustrate Coast's ARS instructions, so that Coast will cancel its current contracts and take Centrex service from the resale tariff.

Ameritech Michigan responds that its own investigation of the disputed calls indicated that their routing was the result of new NPA/NXX codes without proper instructions from Coast. Ameritech Michigan notes that Coast's exceptions do not rebut Ameritech Michigan's showing that Coast did in fact fail to provide updated instructions for new NPA/NXX codes and that Ameritech Michigan reminded Coast of this obligation on numerous occasions.

As framed by the parties, the issue appears to be whether Coast is obligated to give specific, written ARS routing instructions for each new NPA/NXX code as it is introduced. The tariff and agreements mention the need for written instructions, but they do not speak to whether the degree of specificity extends to each NPA/NXX code. On the other hand, Coast simply refused to comply with Ameritech Michigan's request for written updates, adamantly relying on a blanket instruction that its ARS routing achieve its desired circumvention of Ameritech Michigan's toll facilities. The record does not provide much insight as to whether Ameritech Michigan's insistence on a written

update for each new code is merely a hypertechnical reading of the terms of service for the ARS feature or whether there are valid reasons to require written updates for each new code.

However, the Commission finds that it would not be appropriate for it to attempt to resolve this issue on its merits. As Ameritech Michigan asserted,¹¹ ARS is an unregulated feature of Centrex service. See MCL 484.2401; MSA 22.1469(401). Although Ameritech Michigan has a legal obligation under the MTA and the FTA to file resale tariffs making all retail services, including unregulated Centrex features, available on a wholesale basis, the ARS provisions of its resale tariff do not apply to Coast's 47 Centrex contracts, which Coast signed under the Centrex tariff in effect prior to the resale tariff and Coast's interconnection agreement with Ameritech Michigan. Therefore, Coast's purchase of the ARS feature remains an unregulated component of its Centrex service, and the Commission cannot adjudicate the rates, terms, and conditions of an unregulated service.¹²

Casual Usage Long Distance Charges

Casual usage refers to a caller's option of making a toll call that bypasses his or her subscribed long-distance service and accesses another IXC. Examples of casual usage arrangements include dial-around, third-party billed, and collect calling. An IXC handling casual usage calls typically maintains a billing arrangement with Ameritech Michigan, which allows Ameritech Michigan, acting on the IXC's behalf, to bill its retail customers for the charges owed to the IXC.

¹¹Ameritech Michigan's initial brief at 20, n.6; reply brief at 16.

¹²Although the disputed charges relate to regulated toll services, the issue is not whether those charges were incurred in accordance with Ameritech Michigan's toll tariff, but rather whether the charges were incurred as a result of Ameritech Michigan's failure to fulfill its obligations as a provider of ARS, an unregulated service.

Because Coast does not have billing arrangements with IXCs, any casual usage calls placed by Coast's Centrex customers are billed by Ameritech Michigan directly to Coast. Coast objects to these billings and seeks to have Ameritech Michigan apply "Code 50," which "recourses" the charges; i.e., returns the billing information to the IXC with a notification that the calls were placed by a customer of a reseller and that Ameritech Michigan will not provide billing services for the call. According to Coast, Code 50 would compel the IXC to either bill the end user directly or enter into a billing arrangement with Coast.

Coast claimed that its present computerized billing system is not set up to accommodate casual usage billing, although it apparently could be modified to do so at some expense to Coast. Similarly, Ameritech Michigan claimed that its billing system for retail Centrex service cannot accommodate a Code 50-type of arrangement, even though its separate resale Centrex billing system is capable of recouring casual usage calls back to the IXC.

The ALJ found that Coast had not sought to negotiate a billing arrangement with any IXC and that Ameritech Michigan had not acted to impede Coast from entering into billing arrangements. The ALJ determined that Ameritech Michigan was not subject to a duty to apply Code 50 to casual usage calls. PFD at 15.

Coast maintains that it is under no obligation to pay for casual usage calls and that Ameritech Michigan should use Code 50 to address the situation. Further, Coast notes that its interconnection agreement with Ameritech Michigan contains the following provision:

Interexchange call detail forwarded to Ameritech for billing, which would otherwise be processed by Ameritech, will be returned to the IXC and will not be passed through to [Coast]. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account.

Interconnection agreement, § 11.16.2, Case No. U-11375. Although Coast acknowledges that the disputed Centrex contracts are not subject to the interconnection agreement, it says that the appropriate treatment of casual usage by an ILEC is a general duty that is not directly related to the terms and conditions of Centrex service. In any event, it says, the Commission has authority under MCL 484.2205(2); MSA 22.1469(205)(2) to require Ameritech Michigan to conform its billing practices to the standard set forth in the interconnection agreement.

Ameritech Michigan responds that Coast has in fact passed some or all of the charges for casual usage on to its own end use customers and that it has not actively pursued billing arrangements with IXCs. Ameritech Michigan says that the interconnection agreement does not apply to the Centrex contracts that predated it and that, in the absence of a provision similar to that in the interconnection agreement, Coast cannot support its claim that Ameritech Michigan has a legal duty to apply Code 50 to casual usage calls.

Although the parties negotiated an apparently workable solution for dealing with casual usage in their interconnection agreement, that agreement does not apply to preexisting contracts signed under Ameritech Michigan's retail Centrex tariff. The Commission further finds that it is not appropriate to apply the agreement's provision for recouping IXC charges by analogy. Presumably, the parties included the provision as a benefit to Coast. It is not appropriate to apply selective provisions that are beneficial to only one party in a context in which the entire agreement does not otherwise apply. If Coast wants to obtain the benefits of the interconnection agreement, it must be willing to conform its Centrex arrangements to the agreement.

Under the circumstances presented in this case, Coast has not advanced a persuasive justification for the Commission to require Ameritech Michigan to apply Code 50 to Coast's Centrex lines. The record indicates that Ameritech Michigan was within its legal rights to bill a resale customer

for casual usage calls placed by the reseller's end users. Under the Centrex tariff and the Centrex contracts, Coast stands in the relationship of a customer to Ameritech Michigan, and that relationship gives rise to Coast's duty to pay for the calls that its end users make and that Ameritech Michigan bills on behalf of IXCs. Coast is unable to cite any provision in its Centrex contracts or the tariffs that would support a different allocation of responsibility for the charges. Moreover, the Commission notes that Ameritech Michigan provides its Centrex customers with the option to block casual usage calls, except dial-around calling, but that Coast has chosen to block only 900/976 calls. Tr. 62-63, 204-05. Finally, curtailing access to dial-around calling could conceivably create an inconvenience for Coast's customers by limiting their choice of long-distance carriers.

Assumed Contracts

In addition to the 47 Centrex contracts that Coast signed with Ameritech Michigan (or assumed from Americom), Coast has also assumed Centrex contracts that Ameritech Michigan originally signed with its own retail customers. In those situations, Ameritech Michigan would not extend the full resale discount of 19.96%¹³ to Coast because, it claims, it does not avoid all of the up-front retail and marketing costs that were used to compute the resale discount. Instead, it explains, it incurred those costs when it negotiated the contracts, and Coast benefitted by assuming the contracts after the costs were incurred. To account for the lesser costs avoided in a contract assumption situation, Ameritech Michigan offered Coast a discount of 3.39%. In the

¹³As already noted, see supra note 3, the order in Case No. U-11831 revised Ameritech Michigan's resale discount to 18.15%.

November 16, 1999 order in Case No. U-11831, at 21-22, the Commission approved 3.39% as the resale discount for assuming individual case basis contracts.

The ALJ determined that the 3.39% discount approved in Case No. U-11831 would apply to Coast's assumed contracts after the effective date of the order in that docket. The ALJ further determined that no resale discount should apply to assumed contracts prior to the effective date, given the inherent cost differences between Coast's purchase of wholesale services to market to prospective retail customers and its assumption of existing contracts that Ameritech Michigan has already marketed to, and negotiated with, retail customers. PFD at 16-17.

Although Coast accepts the Commission's approval of a 3.39% discount in Case No. U-11831, it claims that the order has no retroactive effect and that Ameritech Michigan should refund to it the full resale discount on the charges paid pursuant to assumed contracts prior to Case No. U-11831. Coast says that Ameritech Michigan had not submitted a cost study justifying a lower discount for assumed contracts prior to Case No. U-11831 and that the Commission had not previously approved a resale discount specific to assumed contracts. Under these circumstances, Coast asserts, the full discount rate of 19.96% that the Commission approved in Case No. U-11280 applied to all resale services, including assumed contracts.

Ameritech Michigan argues that there is no cost justification for extending the full resale discount to resellers assuming existing retail contracts. According to Ameritech Michigan, it had no obligation to make any discount available to resellers assuming contracts prior to Case No. U-11831, even though it offered the 3.39% discount on a voluntary basis.

The Commission agrees with Coast that the discount in effect prior to the effective date of Case No. U-11831 was the full resale discount rate. The legal obligation to make telecommunications services available at a resale discount extends to "all basic local exchange services that on

January 1, 1996 [the provider of local exchange service] is offering to its retail customers.”

MCL 484.2357(1); MSA 22.1469(357)(1).¹⁴ Neither the statute nor the Commission’s orders in Case No. U-11280 exempt or differentiate assumed contracts from other retail services that must be offered at a discount. Because the Commission’s determinations in Case No. U-11831 do not have retroactive effect, the approved resale discount in effect prior to that case applies to assumed contracts.¹⁵ Although Ameritech Michigan attempts to claim that there are cost differences between assumed contracts and wholesale contracts for new services, it did not submit a cost study justifying a separate discount rate prior to Case No. U-11831. Therefore, Ameritech Michigan must issue billing adjustments for prior periods in which Coast assumed retail contracts.

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.; 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. For periods prior to the effective date of the November 16, 1999 order in Case No. U-11831, the price discount applicable to the retail contracts that Coast assumed from Ameritech Michigan is the authorized discount percentage for making all retail services available on a wholesale basis.

¹⁴Similarly, the FTA imposes a duty “to offer for resale at wholesale rates any telecommunications service that the [ILEC] provides at retail to subscribers who are not telecommunications carriers.” 47 USC 251(c)(3).

¹⁵Thus, the resale discount for periods covered by Case No. U-11280 is 19.96%. For periods predating Case No. U-11280, other discount rates were in effect.

c. The other claims raised in the complaint should be dismissed.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan shall make billing adjustments to reflect the appropriate resale discount percentage for retail contracts assumed by Coast to Coast Telecommunications, Inc.

B. The other claims raised in the complaint are dismissed.

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 February 9, 2000.

/s/ Dorothy Wideman

Its Executive Secretary

c. The other claims raised in the complaint should be dismissed.

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of February 9, 2000.

Its Executive Secretary

In the matter of the complaint of **COAST TO**)
COAST TELECOMMUNICATIONS, INC.,)
against **AMERITECH MICHIGAN.**)
_____)

Case No. U-12043

Suggested Minute:

“Adopt and issue order dated February 9, 2000 granting in part and denying in part the relief requested in a complaint filed by Coast to Coast Telecommunications, Inc., against Ameritech Michigan, as set forth in the order.”