

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the petition of **MEDIAONE**)
TELECOMMUNICATIONS OF MICHIGAN, INC.,)
for arbitration pursuant to Section 252(b) of the)
Federal Telecommunications Act of 1996 to)
establish an interconnection agreement with)
AMERITECH MICHIGAN.)
_____)

Case No. U-12198

At the March 3, 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

I.

PROCEDURAL HISTORY

On November 10, 1999, MediaOne Telecommunications of Michigan, Inc., (MediaOne) filed a petition seeking arbitration of an interconnection agreement with Ameritech Michigan pursuant to Section 252 of the federal Telecommunications Act of 1996 (the federal Act), 47 USC 252, Section 204 of the Michigan Telecommunications Act (the Michigan Act), MCL 484.2204; MSA 22.1469(204), and the Commission’s July 16, 1996 order in Case No. U-11134, which established procedures for arbitrating interconnection agreements. According to the petition, the parties are currently operating as interconnected local exchange carriers pursuant to the terms of an

agreement approved by the Commission's September 23, 1998 order in Case No. U-11739, although that agreement expired on August 5, 1999. MediaOne further represented that on June 4, 1999, it delivered a written request to Ameritech Michigan to commence negotiations for inter-connection.

On November 12, 1999, Administrative Law Judge George Schankler appointed himself, Robin P. Ancona, and Margaret Wallin to the arbitration panel.

On December 6, 1999, Ameritech Michigan filed a response to the petition.

Pursuant to due notice, the parties met with the arbitration panel on December 8, 1999 to establish a schedule and to better define the issues to be addressed. On December 17, 1999, the parties filed a joint statement of the contract language that remained in dispute.

On December 28, 1999, MediaOne filed a motion to strike what it considered to be new issues that Ameritech Michigan raised after MediaOne filed the petition for arbitration. Ameritech Michigan filed its response to the motion on January 5, 2000.

On January 6, 2000, the parties presented their respective positions before the arbitration panel concerning specific issues for which it requested presentations. In addition, the parties presented arguments concerning MediaOne's motion to strike. The panel denied MediaOne's motion, and indicated that MediaOne would have an opportunity in its Proposed Decision of the Arbitration Panel (PDAP) to deal with the issues raised by Ameritech Michigan.

Thereafter, the parties filed their respective PDAPs on January 13, 2000. On January 25, 2000, Ameritech Michigan filed an objection to certain affidavits attached to MediaOne's PDAP. It requested that if the arbitration panel were to consider those affidavits, it allow Ameritech Michigan an opportunity to respond to disputed facts.

On January 28, 2000, the arbitration panel issued its Decision of the Arbitration Panel (DAP). Thereafter, both parties filed objections to the DAP by February 7, 2000, as provided for by the panel.

II.

DISCUSSION

The arbitration panel resolved the eleven issues that remained unresolved after the parties submitted their PDAPs. Of those, Ameritech Michigan objects to or requests modification of five, and MediaOne objects to three. The decision of the arbitration panel with respect to the issues for which no objections have been raised are adopted without further discussion. The issues and arguments raised by the parties' objections are discussed and resolved below.

Additional Points of Interconnection

According to the DAP, the parties differed on language concerning whether MediaOne could choose unilaterally to employ an additional fiber meet point at any point on Ameritech Michigan's network. The panel concluded that MediaOne may choose to use meet point interconnection at any point on Ameritech Michigan's network. However, noting that the federal Act and the relevant Federal Communications Commission (FCC) rules contemplate that the incumbent will, as a reasonable accommodation to interconnection, provide a limited build-out of facilities, the panel found that MediaOne may not unilaterally choose the point at which the fiber meet takes place. The arbitration panel adopted MediaOne's language for Sections 3.2.2, 3.2.3, 3.4.1, and 3.4.3.

Ameritech Michigan supports the arbitration panel's conclusions, but states that the panel inadvertently failed to adopt one of two definitions for "joint fiber meet" offered by the parties for

Schedule 1.2. The language of both provisions is the same except that Ameritech Michigan's version adds the phrase "at a mutually agreed upon location" to the definition. Ameritech Michigan states that its proposed language is the one that best gives effect to the arbitration panel's decision.

The Commission finds that the language proposed by Ameritech Michigan to define a joint fiber meet found on Schedule 1.2 should be adopted. The Commission agrees with Ameritech Michigan that the panel's failure to state its adoption of this language was probably inadvertent. However, the parties also proposed differing language on that schedule for defining "point of interconnection." It appears to the Commission that the language proposed by MediaOne is the more appropriate of the two, and it therefore adopts that definition.

Direct Trunking to End Offices

Ameritech Michigan proposed contract language that would require MediaOne to establish a direct trunk to an end office whenever MediaOne's traffic to that end office surpassed 700 centum call seconds (CCS) during the busy hour. Ameritech Michigan noted that the requirement would be reciprocal, i.e., Ameritech Michigan must also establish direct trunk groups when traffic from its end office to MediaOne's switch reaches 700 CCS at the busy hour. Ameritech Michigan stressed the importance of its proposal in preventing premature tandem exhaust and potential call blockage. It stated that 700 CCS was the maximum capacity of a DS-1 transport link and certainly would justify establishing a direct trunk to the end office when that threshold is met. Ameritech Michigan later modified its proposal to require the parties to meet to explore options to reduce traffic that terminates to the affected end office. Failing joint efforts to reach mutual agreement,

however, the current proposed language would require establishing new or additional trunk groups to the affected end office.

MediaOne objected, arguing that to impose this condition would unreasonably interfere with its ability to choose where and how to interconnect to Ameritech Michigan's network. It noted that the Commission had recently addressed this issue in two interconnection arbitration cases. See the Commission's August 17, 1999 order in Case No. U-11973 and the September 14, 1999 order in Case No. U-11989.

The arbitration panel was not persuaded that it must reach a different result than that reached by the Commission in its prior orders. The arbitration panel stated that Ameritech Michigan might be correct that the standard industry practice supports establishing a direct trunk when traffic reaches the 700 CCS threshold, but it noted that the industry following that practice is composed primarily of incumbent carriers. The panel found that the growth and stability of a competitive carrier's traffic will necessarily differ from that of an incumbent, such that the standard practice for an incumbent may not be applicable to a competitive carrier. Finally, the arbitration panel rejected Ameritech Michigan's argument that the FCC's Third Report and Order¹ requires a different result.

Ameritech Michigan objects to the arbitration panel's findings and conclusions on this issue. It argues that its proposed language requires MediaOne to establish a direct trunk to an end office only when MediaOne's traffic to that end office is so high that it jeopardizes call completion through the tandem, a provision that Ameritech Michigan argues is necessary to protect the public switched network. Ameritech Michigan argues that the panel failed to adequately consider the

¹Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order, sometimes referred to as the UNE Remand Order.

FCC's determination that an incumbent local exchange carrier's (incumbent LEC's) duty to provide interconnection at any technically feasible point requested by another carrier must be implemented in a manner that considers legitimate threats to network reliability. Moreover, Ameritech Michigan argues, the FCC has held that the incumbent LEC must be allowed to retain responsibility for the management, control, and performance of its own network. It asserts that its proposal does not unduly restrict the competitive LEC's ability to interconnect. Ameritech Michigan cites a decision of the Indiana Utility Regulatory Commission that adopts Ameritech Michigan's position on this issue.²

Additionally, Ameritech Michigan argues, the arbitration panel mistakenly characterized call blocking as an economic issue that need not concern the Commission. The issue, says Ameritech Michigan, is one of network reliability, not just economics. Ameritech Michigan argues that, contrary to the findings of the arbitration panel, the company did produce evidence that call blocking incidents would increase when MediaOne transports 700 CCS of traffic to a particular end office via the tandem. It asserts that "if a trunk is carrying traffic at one hundred percent utilization, *i.e.*, 700 CCS, calls will not complete. If calls don't complete the network is unreliable. This is a network reliability issue, not an economic issue." Ameritech Michigan's objections, p. 6. Therefore, Ameritech Michigan concludes, the Commission should reverse the findings of the arbitration panel and adopt Ameritech Michigan's proposed language for Sections 4.3.2 and 4.3.10 in order to protect the public network.

² The Indiana Commission's November 17, 1999 order in Cause No. 41495-INT 01, In the matter of the petition of BellSouth Cellular Corp. requesting arbitration of certain terms, conditions, and prices of an interconnection agreement with Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana.

The Commission finds that the arbitration panel's conclusions and findings should be adopted without the modifications suggested by Ameritech Michigan. Ameritech Michigan emphasizes that 700 CCS of traffic is equivalent to 100% of the capacity of a trunk. However, that does not speak to the capacity of the tandem or the probability of its exhaustion in the near term. As the arbitration panel noted, Ameritech Michigan's presentation failed to establish the required "clear and convincing evidence that specific and significant adverse impacts would result from the requested interconnection"³ Ameritech Michigan does not claim that 700 CCS comes close to exhausting the tandem, even in combination with other traffic projected for that switch. The Commission is not persuaded to adopt a position different than expressed in the order in Case No. U-11973, which concluded that restricting the competitive LEC's choice of interconnection is less acceptable than encouraging Ameritech Michigan to make needed investment in its network. Moreover, it is reasonable to assume that neither MediaOne nor Ameritech Michigan will seek to configure the network in a manner that would deteriorate service quality. The Commission trusts that MediaOne and Ameritech Michigan will cooperate to see that deterioration does not occur.

Method and Price for Direct Connection to an Ameritech Michigan End Office

Ameritech Michigan took the position that to obtain a direct connection with an Ameritech Michigan end office, MediaOne has three options: (1) build its own facility, (2) purchase tariffed switched access service, or (3) use dedicated transport as an unbundled network element (UNE). If MediaOne chooses option 3, Ameritech Michigan argued, the competitive LEC must collocate at the tandem and end office. Ameritech Michigan pointed out that MediaOne currently purchases switched access service at the tariffed rate to connect to specific end offices. Ameritech Michigan

³FCC No. 96-325, 11 FCCR 15449 (1996) [First Report and Order], ¶ 198.

further argued that it cannot be required to combine UNEs for MediaOne, and asserted that the only technically feasible method for MediaOne to combine the UNEs at issue is collocation.

The arbitration panel concluded that the FCC rules prohibiting Ameritech Michigan from separating already combined UNEs require Ameritech Michigan to permit MediaOne to purchase the combinations as UNEs and to obtain access to those UNEs at any technically feasible point, including by means of a meet-point arrangement. The arbitration panel thus rejected Ameritech Michigan's position that it could require MediaOne to collocate in order to access UNEs. Moreover, the panel found that the UNEs at issue here are ordinarily combined in the incumbent LEC's network.

Ameritech Michigan objects to the DAP and reiterates its original arguments. However, Ameritech Michigan argues, should the Commission reject Ameritech Michigan's position on this issue, the DAP must be clarified or corrected to comply with federal law. First, Ameritech Michigan argues, the Commission must clarify that Ameritech Michigan is required to provide only pre-existing UNE combinations. Pursuant to Rule 315(b)⁴, Ameritech Michigan admits, it may not separate UNEs that are already combined in its network except upon request. However, Ameritech Michigan argues, it is not required to combine UNEs at MediaOne's request, where such facilities do not currently exist as a switched access service purchased by MediaOne to route traffic to a specific end office. Rather, Ameritech Michigan argues, MediaOne must combine those UNEs itself, through collocation.

⁴47 CFR 51.315(b).

Second, Ameritech Michigan argues, MediaOne should not be allowed to use the DAP holdings as a means to end-run the “vacated” Rule 315(c)-(f).⁵ Iowa Utilities Bd v FCC, 120 F3d 753 (CA8, 1997), *aff’d in part and rev’d in part*, sub nom AT&T v Iowa Utilities Bd, 525 US 366; 119 S Ct 721; 142 LEd 2d 834 (1999). Specifically, Ameritech Michigan argues, MediaOne should not be allowed to obtain a tariffed switched access service at UNE prices merely by ordering the tariffed service and then later converting the already combined network elements as UNEs. Rather, Ameritech Michigan states, if MediaOne is allowed to convert pre-existing switched access service to UNEs, that right must be limited to switched access service that is in place and used by MediaOne as of the date of the final order in this case.

Third, argues Ameritech Michigan, if MediaOne is allowed to convert switched access service to UNEs, that right must be limited in the same manner as for a carrier that seeks to convert an existing special access service to an unbundled loop/dedicated transport UNE combination, including a certification that MediaOne is using and will continue to use the converted facilities to provide a significant amount of local exchange service to a particular end-user, and not merely to provide access service.

Finally, Ameritech Michigan argues that the arbitration panel’s conclusion that UNE combinations should be provided at no higher than total service long run incremental cost (TSLRIC) pricing must be modified to allow for total element long run incremental cost (TELRIC) pricing. One difference between these two pricing options is the inclusion of a reasonable portion of common costs in TELRIC prices.

⁵47 CFR 51.315(c)-(f).

After considering Ameritech Michigan's arguments, the Commission concludes that the arbitration panel's decision should be upheld, with the clarification that the price for UNEs should be understood to be TSLRIC-based rates, which may include a reasonable allocation of common costs.

The Commission is not persuaded that the other clarifications Ameritech Michigan requested are necessary or appropriate. The Commission has repeatedly held that Ameritech Michigan must provide UNE combinations and has rejected Ameritech Michigan's arguments to the contrary. The most recent decision discussing the issue is the Commission's February 9, 2000 order in Cases Nos. U-11104 and U-12143. In that order, the Commission stated:

There are numerous examples of the Commission's support for a UNE platform. In the January 28, 1998 order in Case No. U-11280, Ameritech Michigan contended that the 8th Circuit Court of Appeals' decision in Iowa Utilities Board, supra, invalidated any obligation on the part of Ameritech Michigan to provide transport, which it characterized as the undifferentiated use of its network from the end-user customer's switched line port to the called party's end office line port, because such an obligation would impermissibly compel it to provide a combination of various elements, including unbundled local switching, inter-office transmission facilities, and unbundled tandem switching. Ameritech Michigan also argued that the Commission could not require common transport to be offered pursuant to its authority under the MTA because the 8th Circuit Court of Appeals' ruling preempts state law in that respect. However, the Commission rejected Ameritech Michigan's contentions. In so doing, the Commission stated:

The Commission further finds that even if Ameritech Michigan's interpretation of federal law were valid, the Michigan Telecommunications Act requires the Commission to administer and enforce the obligations of incumbent providers to offer common transport. Section 355(2) states that unbundling of basic local exchange service requires the separation into the loop and port elements "at a minimum." However, the same principles that mandate unbundling make it appropriate to consider further disaggregation of basic local exchange service into more constituent elements than simply the loop and the port. Moreover, unbundling into more and smaller components or functions of the network furthers the competitive purposes and policies of the Michigan Telecommunications Act. The Commission also agrees with MCI that the statutory definition of "port" as "the entirety of local exchange" (except for the loop) used to

provide local calling is consistent with the unbundling concepts of the Michigan Telecommunications Act and embraces the common transport function. If it did not, local calling would not be a viable means of terminating any call that did not originate in the same end office.

The Commission also rejects the argument that Iowa Utilities preempts state law, even if Ameritech Michigan's interpretation of the court decision were valid. The decision reflected the court's conclusion of law that the FCC overstepped its statutory authority in requiring incumbents to combine multiple network elements. As argued by AT&T and MCI, this holding does not inhibit a state commission from mandating various elements or combinations of elements under state law. The federal Telecommunications Act of 1996 explicitly preserves states' authority to impose requirements that accelerate competition in the local exchange market beyond what federal law would otherwise mandate. 47 USC 251(d)(3), 261(c).

January 28, 1998, order, Case No. U-12280, pp. 21-22. (Footnote deleted.)

More recently, in Case No. U-11831, which concerned Ameritech Michigan's total service long run incremental cost (TSLRIC) studies, the Commission required Ameritech Michigan to file cost studies for UNE combinations that it had previously been ordered to provide by the Commission's July 14, 1997 order in Case No. U-11280.

February 9, 2000 order in Cases Nos. U-11104 and U-12143, pp. 8-9.

The DAP is consistent with the Commission's previous decisions on this issue, and is, therefore, affirmed.

Trunking Architecture

Ameritech Michigan took the position that two limitations on MediaOne's trunking architecture must be imposed before interconnection at one point per LATA⁶ becomes technically feasible. Those two limitations are: (1) logical trunking to each Ameritech Michigan tandem in the LATA, and (2) only NXX codes actually served by an end office may be accessed through a direct

⁶LATA stands for local access transport area, which in some instances is roughly equivalent to the area served by one area code.

connection to that end office. In Ameritech Michigan's view, MediaOne's proposal compromises the reliability of the public switched network by tandem exhaust, lack of network redundancy and diversity, and possible call blockage. Further, Ameritech Michigan argued, adoption of MediaOne's proposal increases Ameritech Michigan's costs because some calls would be switched through two tandems rather than one, contrary to the assumptions the company used in its most recent cost study.

MediaOne took the position that its proposal provides sufficient redundancy and reliability because of the second joint fiber meet. According to MediaOne, that second point of interconnection will increase the reliability of its network, and improve MediaOne's ability to survive facilities outages. MediaOne argued that the direct trunking contemplated by Ameritech Michigan would not be efficient for MediaOne.

The arbitration panel found that the federal Act gives MediaOne the right to select the most efficient points at which to exchange traffic with Ameritech Michigan, as well as the right to determine the method of interconnection. It found that Ameritech Michigan had failed to demonstrate that MediaOne's proposal is not technically feasible without its proposed restrictions. The panel therefore adopted the contract language proposed by MediaOne.

Ameritech Michigan objects to the finding of the arbitration panel and argues that the panel's decision allows MediaOne to send traffic to a single Ameritech Michigan switch (tandem or end office) for transport and termination to anywhere in the LATA. Ameritech Michigan claims that this proposal is not technically feasible because it jeopardizes the Michigan public switched network. Ameritech Michigan asserts that call blocking potential increases with this decision because traffic may be routed over a single trunk group to a single tandem or end office switch, which creates a single point of potential network failure with no alternate route. These problems, argues

Ameritech Michigan, affect other carriers with which Ameritech Michigan is interconnected and for which Ameritech Michigan transits traffic. However, it argues, all of these problems disappear with adoption of Ameritech Michigan's proposed logical trunking architecture.

The Commission finds that the findings and conclusions of the arbitration panel should be adopted without modification. The Commission is not persuaded that MediaOne's proposal puts the public switched network at peril in the manner suggested by Ameritech Michigan. It appears to the Commission that the redundancy needed to increase assurance that calls will not be blocked may be provided by MediaOne's proposal to establish additional points of interconnection in the LATA. As to Ameritech Michigan's rate argument, that is an economic argument that cannot be the controlling factor in determining permissible methods of interconnection.

Access to Signaling and Call-Related Databases

The arbitration panel determined that MediaOne's position regarding access to signaling and call-related data bases was the more appropriate one to adopt and rejected Ameritech Michigan's proposal that MediaOne be required to collocate in order to obtain these services at UNE rates.

In its objections to the DAP, Ameritech Michigan states that it accepts the panel's decision, but argues that certain corrections and clarifications must be made for the holding of the DAP to comply with federal law. First, consistent with its request to limit its obligation to combine UNEs for transport and termination, Ameritech Michigan insists that the Commission should limit the arbitration panel's holding to those circumstances in which the company actually has facilities in place and combined, because the incumbent is not required to create new combinations of UNEs at MediaOne's request. Second, Ameritech Michigan argues, the Commission should ensure that "MediaOne is not allowed to force Ameritech Michigan to combine UNEs for it by ordering

DNAL⁷ and SS7⁸ services and shortly thereafter seeking to convert them to UNEs on the theory that they make a Rule 315(b) combination.” Ameritech Michigan’s objections, p. 13. Rather, Ameritech Michigan states, the Commission must clarify that MediaOne’s ability to convert DNAL and SS7 services to a UNE combination must be limited to facilities that were already actually combined as of the date of the DAP. Finally, Ameritech Michigan argues, the Commission should clarify that the rate for any pre-existing UNE combination will be TSLRIC-based or TELRIC-based, not merely “at TSLRIC.”

The Commission finds that, except as to the correction to the appropriate rate to charge, Ameritech Michigan’s proposed modifications to the arbitration panel’s decision should be rejected. The arbitration panel found that Ameritech Michigan provides on a regular basis the combinations of UNEs that provide the access to signaling and call-related data bases at tariffed rates. Thus, pursuant to the UNE Remand Order, Ameritech Michigan must make this combination available to competitive LECs at UNE rates. Because these UNEs are already routinely combined to provide this service, MediaOne is not required to combine them in order to obtain them at UNE rates, nor is it required to collocate for that purpose. However, the appropriate rate is TSLRIC-based, which includes a reasonable amount of common costs.

Reciprocal Compensation Rates

Telecommunications carriers generally charge for transport and termination of traffic at a rate that varies according to whether the traffic is routed through a tandem switch or directly to an end-office switch. MediaOne proposed contract language that would permit it to charge Ameritech

⁷DNAL stands for “dedicated network access link.”

⁸SS7 stands for signaling system seven.

Michigan for termination of local traffic at a rate commensurate with Ameritech Michigan's tandem rate. Ameritech Michigan objected based on its assertion that MediaOne's switch neither offers the same functionality as Ameritech Michigan's tandem nor covers the same geographic area as an Ameritech Michigan tandem. Thus, Ameritech Michigan argued, MediaOne should be allowed to charge only the lesser rate.

Based on the presentation of the parties, the arbitration panel concluded that MediaOne's switch performs functions similar to the transmission and routing of traffic by Ameritech Michigan's Wayne tandem. However, the panel determined that MediaOne had failed to demonstrate that its network currently serves a geographic area comparable to Ameritech Michigan's switch. The arbitration panel based its finding on the small number of exchanges in which MediaOne actually has customers, despite the fact that MediaOne is licensed to provide service throughout the territory encompassed by Ameritech Michigan's tandem. The arbitration panel recommended adoption of a modified version of Ameritech Michigan's language, which provides that MediaOne may charge Ameritech Michigan the higher tandem rate when its switch meets the two criteria discussed above. It noted that any disagreements concerning whether MediaOne meets the geographical criteria could be brought to the Commission for resolution.

MediaOne objects to the arbitration panel's finding and conclusion on this issue. It argues that in contrast to MCI v Ameritech Michigan, Case No. 97-74362 (ED Mich, 9/30/99), relied upon by the arbitration panel, MediaOne has the authority to serve an area that overlaps portions of the service areas of four of Ameritech Michigan's tandems.⁹ MediaOne argues that the record in this

⁹MediaOne points out that its service area boundaries are determined by the municipal or township boundaries of its cable television franchises because it uses the broadband technology of its affiliated cable provider.

case is replete with evidence of the geographic scope of MediaOne's switch and SONET¹⁰ ring. MediaOne asserts that it concentrates all of its traffic at its switch for transit to Ameritech Michigan's network. Conversely, Ameritech Michigan can send traffic to MediaOne's switch to obtain an equivalent geographic reach as Ameritech Michigan's Wayne tandem. MediaOne argues that its switch effectively provides the same, or overlapping, geographic coverage as Ameritech's Wayne tandem switch. Citing Tr. 91-92.

MediaOne points out that previous Commission decisions have concluded that the area served need not be identical to that of Ameritech Michigan's tandem before the tandem rate should apply. It quotes the Commission's August 17, 1999 order in Case No. U-11973, regarding Airtouch Cellular, Inc., as follows:

Likewise, the provision quoted above [¶1090 of the First Report and Order] does not require that those [facilities] cover the exact geographical areas served by Ameritech Michigan's corresponding tandem switches. Instead, the Air Touch facilities need only serve geographic areas that are "comparable" to those served by Ameritech Michigan's corresponding tandem switches.

Id., p. 18.

MediaOne argues that the arbitration panel misinterpreted the maps that it presented as reflecting potential capacity, rather than actual serving areas with existing trunk groups to various Ameritech Michigan end offices. It asserts that its service area, service capability, and ability to serve are known, determined by this Commission's licensing procedure. Thus, it argues, there is no need for the Commission to speculate about MediaOne's future capability in order to state that the switch is comparable to a tandem for purposes of reciprocal compensation.

¹⁰SONET stands for synchronous optical network.

MediaOne argues that the arbitration panel placed undue weight on the number of NXXs that MediaOne has open in Ameritech Michigan's exchanges. It argues that this is merely an indication of the number of current customers and telephone lines served. As new customers are added, MediaOne states, the number of NXXs used to serve those new customers increases rapidly. In MediaOne's view, if the Commission uses the number of lines or NXXs served to determine whether a competitive LEC's switch serves a comparable geographic area, no new carrier will meet the standard. Additionally, MediaOne argues, the Commission will create an incentive for new carriers to waste scarce telephone numbers associated with NXXs to assure that they meet the test established in the FCC's First Report and Order.

Moreover, MediaOne argues, the arbitration panel's conclusion that either party can bring disagreements concerning whether MediaOne meets the geographic criterion to the Commission for resolution is not conducive to efficient competition. Rather, MediaOne argues, it will result in repeated contested case proceedings or arbitrations until the geographic area served by an interconnecting carrier's switch is determined to be comparable to that of the Ameritech Michigan tandem.

The Commission finds that the arbitration panel's determination that the MediaOne switch does not currently serve a geographic area comparable to an Ameritech Michigan tandem switch should be reversed.

The parties agree that Section 252(d)(2) of the federal Act and ¶1090 of the First Report and Order govern the appropriate determination on this issue. ¶1090 of the First Report and Order provides in part:

[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 LEC's 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 tandem interconnection rate.

The Commission has previously held that this language does not require that a competitive LEC's serving area exactly match that of the incumbent LEC. Further, the Commission has found that the technology need not operate in precisely the same manner as a tandem, if it provides the same or equivalent functionality.

After reviewing the facts presented to the arbitration panel, the Commission is persuaded that the area served by MediaOne's SONET network is comparable to that served by Ameritech Michigan's tandem switch. In so finding, the Commission is aware that MediaOne does not yet have the same number of customers or locations of customers that the incumbent currently has. Yet the Commission is persuaded that MediaOne's switch is serving a geographic area that is broad enough to be considered comparable to an Ameritech Michigan tandem. MediaOne is currently licensed and holding itself out as a telecommunications provider in 42 communities in Southeast Michigan. In its orders licensing MediaOne to serve, the Commission held that MediaOne was capable of providing service to every person within the licensed areas. In the Commission's view, MediaOne sufficiently demonstrated that it serves a geographic area comparable to an Ameritech Michigan tandem.

The Commission further adopts the arbitration panel's uncontested determination that MediaOne's switch provides functions comparable to a tandem. Therefore, the Commission concludes that MediaOne is entitled to symmetrical reciprocal compensation at the tandem rate, and MediaOne's language should be adopted for Section 4.7.1.

Deployment of SONET Technology

MediaOne complains that the arbitration panel failed to note that this issue had been resolved by the parties prior to the December 17, 1999 submission of disputed contract language. It states that in order to facilitate focus on more important issues, MediaOne agreed to the contract language proposed by Ameritech Michigan.

The Commission finds that whether this language was in dispute at the time the DAP was issued is moot. The arbitration panel adopted the language proposed by Ameritech Michigan and, according to MediaOne's objections, the language to which MediaOne agreed. The result is the same.

Performance Standards

MediaOne complains that the arbitration panel failed in several respects to handle the issues regarding performance standards appropriately. MediaOne argues that the Commission should adopt the language that MediaOne proposed for the various portions of the agreement, which it says specifically include all of the Commission's adopted performance standards, along with three additional standards.

MediaOne argues that there were many performance standard provisions that had been proposed by Ameritech Michigan before it changed its negotiating position, first advocating that all references to performance standards should be removed from the agreement, then later proposing the inclusion of a generic statement making the Commission's performance standards applicable to this agreement. Therefore, MediaOne argues, the Commission should adopt the many specific provisions rather than the one generic provision later proposed by Ameritech Michigan.

The Commission finds that MediaOne's objection should be rejected. Even MediaOne's statement of the facts reflects that the parties did not have an agreement as to performance standards that should be included in the contract. Before the arbitration petition was filed, Ameritech Michigan asserted a position that all language concerning performance standards should be removed. At that point, it placed all proposed performance standards into dispute. Moreover, Ameritech Michigan, like any contracting party, is permitted to change its position on issues that have not been finally resolved and to propose new or modified language to resolve those issues. In the present case, the Commission is persuaded that the language proposed by Ameritech Michigan and adopted by the arbitration panel is the more appropriate of the proposed provisions concerning performance standards. Therefore, the performance standards adopted by the Commission will expressly apply to this agreement.

The Commission is also persuaded that the arbitration panel appropriately rejected the additional performance standards requested by MediaOne. Again, the Commission finds that the parties did not reach an agreement on performance measures prior to the filing of the petition for arbitration. Thus, MediaOne's argument that Ameritech Michigan proposed most of the language of these measures, and therefore, should be required to accept them is without merit. Although the Commission notes MediaOne's concerns regarding the ability to obtain the service that it has ordered or maintenance and repair in a timely fashion, the Commission is not persuaded that the additional measures should be adopted at this time. If MediaOne experiences unwarranted delays in Ameritech Michigan's provisioning of trunks or other services and is unable to resolve those problems, it may pursue the remedies provided by law to resolve disputes between telecommunications carriers.

Finally, MediaOne objects to the arbitration panel's failure to include language stating that if there should be any inconsistency between the three performance measures on the schedule and the measures ordered by the Commission, the more rigorous performance standards should apply. MediaOne argues that although the Commission's performance standards are applicable to all carriers, the parties to an interconnection agreement should be permitted to agree to more rigorous or additional standards. MediaOne states that the arbitration panel failed to address the issue.

The Commission finds that because the arbitration panel did not adopt the additional performance standards, the issue concerning any difference between those standards and the standards ordered by the Commission was moot. The Commission adopts the arbitration panel's decision in this respect, and thus, there is no necessity to reach the issue. Although MediaOne argues correctly that the parties may agree on more rigorous standards than those imposed by the Commission or the FCC, the Commission finds that there has been no agreement to additional or more rigorous standards in this case. The Commission therefore rejects MediaOne's objection and adopts the arbitration panel's decision on this issue.

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 DAP, as modified by this order, should be adopted.

c. Within 10 days, the parties should file an executed interconnection agreement consistent with the DAP, as modified by this order.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel, as modified by this order, is adopted.

B. Within 10 days from the date of this order, MediaOne Telecommunications of Michigan, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel, as modified by 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 March 3, 2000.

/s/ Dorothy Wideman

Its Executive Secretary

c. Within 10 days, the parties should file an executed interconnection agreement consistent with the DAP, as modified by this order.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel, as modified by this order, is adopted.

B. Within 10 days from the date of this order, MediaOne Telecommunications of Michigan, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel, as modified by this order.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of March 3, 2000.

Its Executive Secretary

In the matter of the petition of **MEDIAONE**)
TELECOMMUNICATIONS OF MICHIGAN, INC.,)
for arbitration pursuant to Section 252(b) of the)
Federal Telecommunications Act of 1996 to)
establish an interconnection agreement with)
AMERITECH MICHIGAN.)
_____)

Case No. U-12198

Suggested Minute:

“Adopt and issue order dated March 3, 2000 adopting with certain modifications the decision of the arbitration panel establishing interconnection arrangement between MediaOne Telecommunications of Michigan, Inc., and Ameritech Michigan, as set forth in the order.”