

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)
against AMERITECH MICHIGAN.)
_____)

Case No. U-12287

At the August 17, 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

On January 21, 2000, AT&T Communications of Michigan, Inc., (AT&T) filed a complaint pursuant to Sections 204 and 310 of the Michigan Telecommunications Act (MTA), MCL 484.2204; MSA 22.1469(204) and MCL 484.2310; MSA 22.1469(310), concerning the rates that Ameritech Michigan charges interexchange carriers (IXCs) for providing them with intrastate toll access services. The complaint requests that the Commission set intrastate access rates on the basis of Ameritech Michigan's total service long run incremental cost (TSLRIC). Ameritech Michigan's current intrastate access rates are the same as (or "mirror") the usage-based components of its interstate access rates that it files with the Federal Communications Commission (FCC).

At a prehearing conference on February 24, 2000, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) granted leave to intervene to Attorney General Jennifer M. Granholm (Attorney General); MCI WorldCom Network Services, Inc., and MCI WorldCom Communications, Inc., (collectively, MCI); and Long Distance of Michigan, Inc., (LDMI). The Commission Staff (Staff) also participated. On April 5, 2000, the ALJ granted a late-filed petition to intervene by Sprint Communications Company L.P. (Sprint).

The ALJ conducted evidentiary hearings on April 18 and 19, 2000. All parties except MCI filed briefs, and all parties except the Staff filed reply briefs.

Since the close of the record, there have been two further developments that affect access rates as a general matter. First, on May 31, 2000, the FCC issued an order adopting a proposal for access charge reform by the Coalition for Affordable Local and Long Distance Service (CALLS).¹ The CALLS proposal significantly reduced the traffic-sensitive components of interstate access rates charged by the local exchange carriers (LECs) that chose to implement it. Ameritech Michigan, AT&T, and Sprint, or their parent companies, are signatories to the CALLS proposal. The significance, for purposes of this case, is that the interstate rate changes required by the CALLS proposal have been mirrored by Ameritech Michigan into its intrastate rates.

Second, on June 21, 2000, the Legislature passed Enrolled House Bill 5721, which amends various parts of the MTA, including provisions of Section 310 dealing with access charges. On July 17, 2000, the Governor signed the bill into law as 2000 PA 295 (Act 295), which became effective immediately.

¹ Access Charge Reform, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-46 (May 31, 2000).

On June 30, 2000, the ALJ issued a Proposal for Decision (PFD). Although the PFD concluded with a recommendation to dismiss AT&T's complaint against Ameritech Michigan on its merits, the ALJ did make preliminary determinations rejecting some of Ameritech Michigan's positions, including the claim that the Commission does not have the statutory jurisdiction to reduce intrastate access rates below their mirrored levels. In deciding that the Commission could resolve the complaint, the ALJ relied on Section 310 of the MTA, which provides in part:

(1) Except as provided by this act, the commission shall not review or set the rates for toll access services.

(2) A provider of toll access services shall set the rates for toll access services. Access service rates and charges set by a provider that exceed the rates allowed for the same interstate services by the federal government are not just and reasonable. Providers may agree to a rate that is less than the rate allowed by the federal government. If the providers cannot agree on a rate, a provider may apply to the commission under section 204.^[2]

MCL 484.2310(1), (2); MSA 22.1469(310)(1), (2).³ The ALJ further found that AT&T properly invoked the procedure set forth in Sections 204 and 310 for resolving disputes over intrastate toll access rates.⁴

However, the ALJ's dispositive recommendation was that the Commission should continue to adhere to its long-standing policy of mirroring access rates. The ALJ reasoned that the Legislature

² MCL 484.2204; MSA 22.1469(204). Section 204 provides: "If 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication issue between the parties, . . . then either telecommunication provider may file with the commission an application for resolution of the matter."

³ Except as otherwise noted, statutory references in this order do not reflect amendments in Act 295. Although Act 295 did amend Section 310 in certain respects, it did not affect subsections (1) and (2) in any manner significant to this case.

⁴ In this respect, the PFD is consistent with an earlier ruling by the ALJ denying Ameritech Michigan's motion to dismiss the complaint for lack of jurisdiction. 2 Tr. 58-61. Ameritech Michigan filed an application for leave to appeal the interlocutory jurisdictional ruling on March 29, 2000.

gave implicit approval to this policy by enacting the provision in Section 310(2) declaring that intrastate access rates in excess of mirrored levels are not just and reasonable. The ALJ found nothing in the MTA to require access rates to be equal to TSLRIC, but rather he determined that the MTA adopts TSLRIC as a rate floor for toll access services. He also observed that implementation of the cost study modifications required by the Commission's order in Case No. U-11831 is an ongoing process and that there are unresolved disputes, leaving the precise amount of TSLRIC-based rates unknown at this time.⁵ The ALJ found that existing rates based on mirrored FCC tariffs are just and reasonable and are not excessive.

The ALJ further found that the record in this case is not adequate to address all of the implications of altering intrastate access rates, given that those rates may provide an indeterminate amount of support for local loop cost recovery and universal service. The ALJ suggested that issues presented by the cost relationship between access services and the local loop and the policy trade-offs between the recovery of local loop costs and the promotion of competition could be better addressed in a comprehensive proceeding to review access rates.

On July 10, 2000, AT&T, LDMI, Sprint, the Attorney General, and Ameritech Michigan filed exceptions. On July 17, 2000, AT&T, LDMI, MCI, the Attorney General, Ameritech Michigan, and the Staff filed replies to exceptions.

In its exceptions, Ameritech Michigan renews arguments it made in an earlier application for leave to appeal from the ALJ's denial of its motion to dismiss the complaint.⁶ Ameritech Michigan argues that the CALLS proposal will have done much to resolve AT&T's request for

⁵ The Commission modified and approved Ameritech Michigan's most recent cost study in the November 16, 1999 order in Case No. U-11831.

⁶ See supra note 4.

access rate relief by reducing mirrored, usage-sensitive rates by half. It further maintains that intrastate access rate reform should be addressed in a generic proceeding that applies to all providers of toll access in Michigan. In its earlier motion to dismiss (but not its application for leave to appeal), Ameritech Michigan had argued that the MTA does not authorize the Commission to reduce access rates. Specifically, Ameritech Michigan had relied on the provision in Section 310(2) that “[a] provider of toll access services shall set the rates for toll access services.”

The ALJ’s decision not to dismiss the complaint was proper. Although the CALLS proposal has since reduced usage-sensitive access rates, the reductions are not identical to those proposed in AT&T’s complaint. Notwithstanding the suggestion to convene a generic proceeding, Section 310(2) expressly dictates the procedure to be used in disputing access rates, and AT&T has properly invoked this procedure by filing a complaint.

Ameritech Michigan’s claim that Section 310 does not grant jurisdiction to adjudicate complaints relating to excessive access rates is contrary to the last sentence of subsection (2), which states that if several providers cannot agree on an access rate reduction, a provider may file a complaint to resolve the dispute. In the October 26, 1998 order in Case No. U-11660, at 22, the Commission elaborated:

Merely because the [MTA] deems an access rate in excess of its corresponding federal rate to be per se unjust and unreasonable does not mean that any lesser rate is automatically acceptable. Had the Legislature intended such an interpretation, no need would exist for including the phrase “just and reasonable” in Section 310(2). Rather, the Legislature could have stated simply that intrastate toll access rates shall not exceed the federal rate. By rejecting this simpler statement in favor of Section 310(2)’s actual language, the Legislature intentionally granted the Commission the authority to regulate access rates set below federal levels in cases (like the present) where a dispute arises between providers.

The Commission reaffirms this holding.

AT&T takes exception to the recommendation in the PFD to defer the issue of access charges to a future comprehensive proceeding. AT&T says that a complaint filed under Section 310 is the only statutory procedure for reviewing access rates and that the Commission does not have the discretion to defer a decision in favor of some more generalized proceeding. The Staff responds that any type of proceeding will be unhelpful if there is not reliable information regarding the TSLRIC of access service. It says that AT&T has failed to provide the requisite cost information and that its complaint is therefore premature.

As already noted, Section 310(2) provides that access charge disputes may be resolved by complaint. The record in this case is ready for decision, and the Commission will decide the case on its merits.

The exceptions filed by AT&T, LDMI, Sprint, and the Attorney General share in common their objection to the ALJ's recommendation not to reduce Ameritech Michigan's toll access rates from mirrored levels to a TSLRIC basis. They take issue with the ALJ's reading of the MTA as conferring legislative approval on mirroring. AT&T argues that Section 310(2) does not create a presumption in favor of mirrored rates, but instead it obligates the Commission to exercise judgment in setting just and reasonable rates when the statute is invoked. LDMI argues that mirroring functions only as a rate ceiling and that mirrored rates are not per se just and reasonable. AT&T argues that the Commission rejected the view that Section 310 shields mirrored rates from adjudication in the order in Case No. U-11660, which it characterizes as holding that Ameritech Michigan's mirrored intrastate primary interexchange carrier charge (PICC) was excessive.

AT&T further argues that the ALJ erred in rejecting TSLRIC as the appropriate cost standard for setting just and reasonable access rates. It notes that TSLRIC forms the basis for the local interconnection rates approved by the Commission and that there is little, if any, technical differ-

ence in the way that the components of the telephone network are used to provide the switching and transport functions for interconnection and toll access services.⁷ AT&T points to the testimony of an Ameritech Michigan witness indicating that there is no cost difference between the two types of service from the standpoint of the basic network components used to provide each service. 7 Tr. 824-30. In point of fact, AT&T says, Ameritech Michigan's toll switched access service has less functionality than local interconnection service, as acknowledged in Exhibit A-20, an Ameritech Michigan discovery response.⁸ AT&T claims that an inflexible mirroring policy removes cost considerations from a just and reasonable rate and that rates exceeding TSLRIC cannot be just and reasonable. In light of the comparability of local interconnection and toll access services, AT&T requests that Ameritech Michigan's tariffed interconnection rates be substituted as intrastate toll access rates.

AT&T claims that the record does not contain credible evidence of a competitive market for toll access that would compel Ameritech Michigan to negotiate voluntary rate reductions. Thus,

⁷Other LECs pay Ameritech Michigan's interconnection rates (usually as set forth in an agreement providing for reciprocal compensation in exchanging local traffic) when Ameritech Michigan terminates local calls placed by the others' end users to Ameritech Michigan end users. Interconnection rates, as approved by the Commission in its cost study cases, include an allocation of shared and common costs in addition to the direct TSLRICs of the service components.

⁸ Specifically, Exhibit A-20 identifies the following differences between Ameritech Michigan's switched toll access and reciprocal compensation services. First, the TSLRIC for toll access excludes costs related to the end office trunk, which are included in the TSLRIC for end office local termination. The reason for the difference is that Ameritech Michigan assigns a separate cost element to the trunk in rating it for purposes of switched access. Second, the tandem switching TSLRIC for toll access excludes one of two tandem trunks, which is also charged as a separate cost element, but the reciprocal compensation TSLRIC for tandem switching includes both trunks. Third, the tandem transport termination TSLRIC for switched toll access excludes a multiplexer and one termination, both of which are included in the TSLRIC for reciprocal compensation. The multiplexer is a separate cost element in providing switched access. The costing of tandem transport termination for reciprocal compensation uses three terminations, as opposed to two for switched access.

AT&T says, Section 310 provides the only means for it to obtain a reduction in the access rates that Ameritech Michigan itself decided to set in excess of TSLRIC.

AT&T and the Attorney General contend that ongoing disputes relating to Ameritech Michigan's cost study in Case No. U-11831 should not provide an excuse for delaying the introduction of TSLRIC-based rates. They say that the tariffed interconnection rates from Ameritech Michigan's preceding cost study in Case No. U-11280 can be used as the rates for toll access service until the disputes in Case No. U-11831 have been resolved.

AT&T and LDMI argue that there is no evidence to show that reducing access rates to TSLRIC would prevent Ameritech Michigan from recovering its local loop costs or eliminate revenues it needs to maintain its telephone network and fund further investment. LDMI and the Attorney General say that Ameritech Michigan's recent history of overearnings indicates that the excess contributions provided by access rates are not necessary to protect its financial viability.

In reply, Ameritech Michigan supports the ALJ's determination that AT&T did not meet its burden of proving that current access rates are excessive. Ameritech Michigan argues that Section 310 authorizes it to set its own access rates, that those rates are not subject to the "just and reasonable" standard, and that TSLRIC is a floor for rates, not a ceiling. Ameritech Michigan says that there is no valid policy reason to set toll access rates equal to TSLRIC-based interconnection rates, even if both classes of service use the same network elements. Ameritech Michigan contends that TSLRIC pricing undermines the incentives for other providers to compete and discourages them from investing in their own infrastructure. Ameritech Michigan also contends that the contribution from its existing access rates enables it to invest in its infrastructure and to upgrade its service.

Ameritech Michigan asserts that the TSLRICs of interconnection and toll access services are different, notwithstanding their similarities in function. As one basis for distinguishing the costs of the two services, Ameritech Michigan attributes to each a different volume of usage. Ameritech Michigan also contends that TSLRIC is a measure of cost, not price, and that cost is not necessarily determinative of price. Ameritech Michigan adds that TSLRIC cannot account for market influences on pricing strategies, which affect how a provider allocates its joint and common costs among the various services it offers.

Ameritech Michigan argues that the FCC itself recognized TSLRIC's unsuitability as a pricing mechanism of general applicability when it devised a forward-looking economic cost model for the specific purpose of developing prices for unbundled network elements and interconnection services. Ameritech Michigan characterizes the FCC's adoption of forward-looking pricing as a policy decision made in pursuit of the limited objective of introducing local competition to telecommunications. According to Ameritech Michigan, the FCC was seeking to reduce artificially the prices of the elements and services provided by incumbent LECs (ILECs) to new entrants to less than what a competitive market would have otherwise allowed. Thus, Ameritech Michigan says, the FCC did not propose the model as the standard for pricing all other services, but it decided to treat interstate toll access services differently by allowing them to be priced under a non-prescriptive mode of regulation that takes market forces into account.

Ameritech Michigan suggests that the Commission should allow the rate effect of the CALLS proposal to be mirrored into intrastate access rates instead of abandoning a long-standing practice. According to Ameritech Michigan, the CALLS proposal represents progress toward market-driven access rates and provides for substantial rate relief. Ameritech Michigan says that mirroring has

reduced its intrastate switched access rates by \$530 million since 1993 and that its current rates are the lowest in the state and the second lowest in the nation.

Ameritech Michigan contends that there are already any number of competitive alternatives to the switched access service that it provides. Among these alternatives, Ameritech Michigan mentions special access service, switched access provided by competitive LECs (CLECs, a provider class that includes AT&T and MCI), cellular service, and Internet telephony. Ameritech Michigan claims that lowering access rates further would erode the incentives for others to develop alternatives to switched access service. Ameritech Michigan also argues that the benefit of any Commission-ordered reductions would not reach toll consumers, but that it would simply enrich the IXCs, whose toll rates are insensitive to changes in access costs.

Ameritech Michigan argues that it would be improper to reduce its access rates on the basis of its prior earnings, given that the MTA ended rate-of-return regulation. It further argues that the August 14, 1995 order in Case No. U-10775, at 4, distinguished between the Commission's (permissible) consideration of a provider's overall profitability as part of "any and all information necessary to determine whether rates are not inadequate, excessive, or discriminatory," as opposed to the (impermissible) use of financial information to "set rates at the levels prescribed by [rate of return] calculations." Ameritech Michigan maintains that similar considerations demonstrate that its current access rates are just and reasonable.

The Staff argues that mirrored access rates are appropriate in the absence of accurate TSLRIC information. The Staff says that even if access and local interconnection services both use the same network elements, it does not necessarily follow that their TSLRICs will be the same, given that different services can use different combinations of elements. Although the Staff does not believe that the difference in cost between the two services is significant, it cannot quantify the

difference with the available information. Furthermore, it says, the Commission has not held that all services with the same TSLRIC must have the same price.

The Staff says that AT&T mischaracterizes the order in Case No. U-11660 as invalidating the mirroring of Ameritech Michigan's interstate PICC, when the Commission in fact decided that Ameritech Michigan was improperly assessing its intrastate PICC only to interLATA carriers. In the absence of definitive cost information, the Staff believes that mirrored rates (as reduced by the CALLS proposal) are reasonably comparable to the interconnection rates used for reciprocal compensation and notes that the mirrored tandem switching rate is actually less than its reciprocal compensation counterpart.

Although the Commission agrees with the ALJ that mirroring is the proper approach to setting intrastate access rates, it is not prepared to accept all of the reasoning used in the PFD to support this conclusion. Section 310 does not provide a basis for finding that mirroring is the rate standard approved by statute for toll access services. Although Section 310 declares that access rates in excess of mirrored rates are not just and reasonable, it does not expressly approve or disapprove of access rates that fall below mirrored levels. Instead it provides that the Commission should decide those matters when they are in dispute. As previously noted, AT&T has properly invoked the dispute resolution procedures provided in Section 310 in this case.

Ultimately, however, the Commission is not persuaded on the merits that it should reduce intrastate access rates to their TSLRICs, but rather it finds that it should not now abandon the long-standing practice of allowing intrastate interexchange carrier access rates to mirror interstate rates. As Ameritech Michigan notes, mirroring, by picking up the effects of access charge reductions on the federal level, has provided substantial benefits to Michigan IXCs in the past several years. As recent developments indicate, there is even more reason to believe that access charge reform on the

federal level will continue to produce rate reductions. Moreover, there is no apparent reason to find that mirroring of federal charges has somehow produced rates that are fundamentally unjust, unreasonable, or otherwise inconsistent with the competitive policies of the MTA. In addition to its consistency with sound policy, mirroring has proven to be an eminently workable and pragmatic approach to reducing access rates.

According to Ameritech Michigan, mirroring has produced \$530 million of intrastate access rate reductions for IXCs since 1993. 6 Tr. 696. No one disputes this. Thus, Michigan consumers of toll and toll access services began to realize tangible benefits from mirroring even before federal and state law introduced TSLRIC as the model for assigning costs to services on a forward-looking, efficient basis. In an era of rapid change in telecommunications, the benefits of reductions in toll access rates cannot be minimized. Toll access services will continue to play a pivotal role in the market as long as they are a basic input to the retail services offered to end-use customers.

The Attorney General in particular justifies a reduction to TSLRIC-based access rates on the ground that the mirrored rates are producing overearnings. As noted in the order in Case No. U-11660, a provider's overall financial status plays only a limited role in the determination of whether the rate it charges for a particular service is just and reasonable. In this case, however, it is almost impossible to draw meaningful inferences from Ameritech Michigan's earnings, given that the primary source of its intrastate access revenues is the end user common line charge, which, prior to Act 295, accounted for 70% of those revenues according to the Attorney General. 6 Tr. 658. Act 295 terminated the end user common line charge outright. MCL 484.2310(7); MSA 22.1469(310)(7). At the same time, the CALLS proposal itself has substantially lowered mirrored intrastate access rates, as discussed below. The Commission is unable to find that

previous financial reports relating to Ameritech Michigan's revenues and earnings provide support for a finding that current access rates are excessive.

The Commission also shares the ALJ's concern that altering the ratesetting approach to access rates might have repercussions relating to cost recovery and policy that are not adequately addressed in the record.⁹ Outside of the context of TSLRIC studies, the MTA does not provide a means of examining or reviewing the adequacy of intrastate access rates in light of their costs and revenues.¹⁰ The effects upon a provider's ability to recover its costs and provide for its universal service obligations cannot be easily ascertained. Under the circumstances, it is preferable to continue mirroring the interstate rates set under the regulatory oversight of the FCC.

The CALLS proposal, as implemented by Ameritech Michigan in tariffs it filed with the FCC and this Commission,¹¹ should do much to resolve the concerns that other parties have expressed regarding excessive access rates. AT&T's complaint, which placed those issues before the Commission, raised valid concerns about Ameritech Michigan's access rates, and the parties addressed those issues on the record. After the record closed, the FCC approved the CALLS proposal, and Ameritech Michigan implemented it. Those events have overtaken AT&T's complaint. The CALLS proposal is part of an integrated approach to access charge reform spanning a number of years. The orderly manner in which federal access charge reform has successfully introduced rate reductions, and will continue to progress toward the policy objective of achieving competitive

⁹ As already noted, the Commission rejects the argument that access charge reductions should be deferred to a comprehensive proceeding that includes all providers of intrastate toll access service.

¹⁰ In point of fact, Section 310(1) forbids the Commission from setting access rates, except as otherwise provided in the MTA.

¹¹ The Commission takes administrative notice of the tariff sheets filed to implement the CALLS proposal, which reflect the effective rates as a matter of official public record.

rates, gives the Commission some measure of confidence that mirroring will continue to provide benefits for intrastate services.

In addition, the immediate rate cuts effected by the CALLS proposal are significant. For example, the rate element for local switching, which is the largest per-minute charge assessed for switched access, fell from \$0.00582 to \$0.00313,¹² a percentage decline of more than 46%. On the record in this case, Ameritech Michigan estimated that mirroring the rates produced by the CALLS proposal would reduce its average usage rates for switched access from around 1¢ to 0.55¢ per minute of use and would reduce its intrastate revenues by \$15 million in 2000 and \$31 million in 2001. 6 Tr. 697-98. These projected numbers appear to be consistent with the CALLS proposal, as approved by the FCC. In light of these reductions, the Staff's portrayal of mirrored access rates as comparable to AT&T's proposal is correct, even if AT&T's proposal would reduce most rate elements slightly more. (As noted by the Staff, the post-CALLS rate for one access component, tandem switching, at \$0.000821 per minute,¹³ is actually less than its reciprocal compensation counterpart of \$0.001421 per minute of use.) Even if TSLRIC were to be viewed as a cost benchmark for access services, the post-CALLS mirrored rates are well within a zone of reasonableness and are not so far removed from TSLRIC levels as to pose a potential impediment to competition.¹⁴

In a related exception, AT&T, LDMI, and Sprint argue that charging CLECs TSLRIC-based rates for local interconnection services and, at the same time, charging IXCs mirrored rates for toll access services is unjust discrimination, given that both services are functionally the same. AT&T

¹² Ameritech Operating Companies, Tariff F.C.C. No. 2, 56th Rev. P. 214.

¹³ Ameritech Operating Companies, Tariff F.C.C. No. 2, 16th Rev. P. 207.1.

¹⁴Moreover, the record in this case is not sufficient to conclude that post-CALLS mirrored rates would necessarily be less than TSLRIC levels.

asserts that the only valid distinction between the end-use services offered by similarly situated CLECs and IXCs is that their retail tariffs classify some calls placed with them as local and others as long distance.

LDMI argues that Ameritech Michigan's own toll business benefits unjustly from the excessive and discriminatory access rates that it charges to its long-distance competitors. As a provider of toll service, LDMI says, Ameritech Michigan is uniquely situated, in that it incurs only its cost when using its own access services. Sprint adds that imputation of access rates to toll rates is not adequate to curb abusive market behavior. According to Sprint, the statutory imputation test¹⁵ does not remove the implicit subsidies contained within Ameritech Michigan's access rate structure and affords it an added margin to use in competing for toll customers on the basis of price.

Ameritech Michigan argues that its access rates are not discriminatory. It says that all IXCs pay the same toll access rates and that the rates a CLEC pays for interconnection service are irrelevant. Ameritech Michigan also denies that it discriminates in favor of its own toll business when it charges other IXCs for toll access service. Ameritech Michigan claims that its toll rates satisfy the statutory imputation test, which ensures that it is not using an unfair price advantage to undermine competition. Ameritech Michigan suggests that if its toll access rates were as excessive and anti-competitive as AT&T claims, it would have no incentive to undercut other IXCs' long-distance prices in order to divert their customers to its own toll service. It explains that this strategy would sacrifice the allegedly high margins produced by its toll access services in order to attain lesser margins from the more competitive toll business.

¹⁵ See MCL 484.2362; MSA 22.1469(362).

The Commission rejects the view that maintaining different rate structures for toll access and local interconnection is unjustly discriminatory. As already noted, the rate differences have converged in the aftermath of the CALLS proposal. More to the point, toll access service is simply not the same as local interconnection service, even if the underlying network functions used to provide the services are similar. The services are dissimilar in the same manner that retail local and long-distance calling are dissimilar.

Although toll access and local interconnection services are components of providing retail long-distance and local service, respectively, the rate structures for local and toll service are different as a matter of long-standing ratemaking and regulatory practice. ILECs charge their local service customers substantially different rates and apply different rate structures, compared to the time-of-day/location/minutes-of-use structures traditionally used for long-distance calling. Because the underlying costs, regulatory concerns, pricing structures, and competitive pressures faced by providers of local and long-distance calling have been, and for now continue to be, different, it is appropriate to continue to differentiate between toll access and local interconnection services for rate purposes. Although one premise of competitive markets for all telecommunications services is that someday all segments of the market will be fully competitive and subject to similar cost pressures, that day has yet to arrive. For the present, the distinctions between the two types of service are deeply embedded in the MTA, and the Commission cannot ignore them.

The Commission finds no merit in the claim that the toll access rates are discriminatory in the sense that Ameritech Michigan need not actually pay them (at least in an economic sense; it is not clear whether some affiliated entity within the Ameritech/SBC holding structure actually transfers funds to Ameritech Michigan as payment for toll access services). The MTA uses the statutory imputation test to avoid those types of abuses. There is no indication that Ameritech Michigan's

toll rates do not comply with imputation, nor is there any showing on the record that Ameritech Michigan actually engages in the types of abuses of which the IXC parties complain.¹⁶

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 AACRS, R 460.17101 et seq.
- b. The complaint should be dismissed.

THEREFORE, IT IS ORDERED that the complaint filed by AT&T Communications of Michigan, Inc., against Ameritech Michigan is dismissed.

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

¹⁶ At present, federal law precludes Ameritech Michigan from offering interLATA service in Michigan. Thus, the only toll market segment in which Ameritech Michigan now competes with other IXCs is intraLATA toll service.

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 August 17, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

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

Chairman

Commissioner

Commissioner

By its action of August 17, 2000.

Its Executive Secretary

In the matter of the complaint of)
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)
against AMERITECH MICHIGAN.)
_____)

Case No. U-12287

Suggested Minute:

“Adopt and issue order dated August 17, 2000 dismissing a complaint filed by AT&T Communications of Michigan, Inc., against Ameritech Michigan, as set forth in the order.”