

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the petition of)
COAST TO COAST TELECOMMUNICATIONS,)
INC., for arbitration of interconnection rates,)
terms, conditions, and related arrangements with)
MICHIGAN BELL TELEPHONE COMPANY,)
d/b/a AMERITECH MICHIGAN.)
_____)

Case No. U-12382

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

ORDER ADOPTING ARBITRATED AGREEMENT

On February 12, 2000, Coast to Coast Telecommunications, Inc., (Coast) 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, the federal rules promulgated pursuant to the federal Act, 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 under an interconnection agreement executed on

March 17, 1997 and approved by the Commission on June 25, 1997 in Case No. U-11375.¹ The petition listed 40 issues.

On April 19, 2000, Administrative Law Judge George Schankler appointed himself, Tom Saghy, and Margaret Wallin to the arbitration panel.

On May 8, 2000, Ameritech Michigan filed a response to the petition, in which it raised two additional issues.

On May 22, 2000 the parties submitted a joint filing that set out the proposed contract language in dispute and provided a status matrix of issues. That matrix revealed that little progress had been made in negotiations. On May 24, 2000, the panel met with the parties and directed them to meet (with each side represented by persons with authority to agree to terms) in an effort to resolve some of the numerous outstanding issues. That meeting occurred on June 1, 2000 after which the number of issues had been reduced to 10.

On June 8, 2000, the parties presented their respective positions before the arbitration panel concerning specific issues for which the panel had requested presentations. At that time, the parties indicated that two additional issues had been resolved. Following their presentations, the parties each filed a Proposed Decision of the Arbitration Panel (PDAP) on June 20, 2000, which indicated that an additional issue had been resolved. On July 5, 2000, the arbitration panel issued the Decision of the Arbitration Panel (DAP).

On July 17, 2000, Ameritech Michigan filed objections to the recommendations of the arbitration panel on which it did not prevail. Those issues are addressed below.

¹ The three-year term of that agreement has been extended pursuant to the May 1, 2000 amendment (the third amendment), which was approved by the Commission on June 5, 2000.

Additional Points of Interconnection

The parties disagreed concerning whether Ameritech Michigan should be permitted to require Coast to allow additional points of interconnection at any Coast central office upon written notice from Ameritech Michigan that it would do so. Coast objected to Ameritech Michigan's proposed language because it desired to retain the right to review requests for interconnection prior to implementation. The panel agreed with Coast on this issue, based on its determination that Coast should be permitted to retain a right to review any proposed interconnections to its network. The panel further stated its belief that, as a practical matter, Ameritech Michigan would be able to interconnect with Coast in a manner that meets its needs, but that should a dispute arise, Ameritech Michigan could bring the issue before the Commission for resolution.

Ameritech Michigan objects and argues that the panel failed to adequately consider the lack of merit to Coast's opposition to Ameritech Michigan's proposed language. Ameritech Michigan argues that Coast's objections are without substance and that any costs to Coast would be minimal. It states that Coast's original objection to this language, its belief that Ameritech Michigan might impose on Coast the obligation to create a joint fiber meet, is dispelled by noting contract language requiring both parties' agreement for joint fiber meets. Ameritech Michigan argues that Coast's admitted preference that additional trunks come directly from an end office rather than from the tandem should have led the panel to adopt Ameritech Michigan's language.

Ameritech Michigan further argues that the panel failed to consider or address the legal arguments that Ameritech Michigan raised. The company maintains that the federal Act does not preclude Ameritech Michigan from connecting an additional switch in its network to the parties' existing points of interconnection. Moreover, Ameritech Michigan argues, it has a right under the federal Act to "retain responsibility for the management, control and performance of its own

network.” FCC First Report and Order, ¶203.² In order for it to fully realize that right, Ameritech Michigan argues, the proposed language must be included in the contract. Moreover, Ameritech Michigan argues, this language merely makes additional interconnections equally available to both parties.

Finally, Ameritech Michigan argues that if the Commission allows this result to stand, Ameritech Michigan will be forced to negotiate or litigate with each competitive local exchange carrier (CLEC) on the design of Ameritech Michigan’s network. It projects that a CLEC could arbitrarily refuse to allow Ameritech Michigan to establish appropriate network connections, which, Ameritech Michigan argues, would negatively affect network design and reliability.

The Commission finds that the arbitration panel appropriately rejected Ameritech Michigan’s arguments and adopted Coast’s position on this issue. As noted by the Federal Communications Commission (FCC), Section 251 of the federal Act imposes additional requirements on incumbent local exchange carriers (ILEC), including the requirement to permit interconnection at any technically feasible point on the ILEC’s network. See 47 USC 251(c). Ameritech Michigan cites no similar provision for CLECs.

Although Ameritech Michigan argues that its only intentions are to protect its network functioning, the language it proposed did not limit its ability to demand interconnection to instances in which such interconnection is needed or desirable for handling local traffic. Rather, Ameritech Michigan proposed language that would give it absolute power to determine whether additional interconnection is necessary. There is no limiting language requiring the request to be reasonable or supported by any particular criteria. The Commission finds that Ameritech Michi-

² In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC Order No. 96-325, 11 Fccr 15449 (1996).

gan's proposed broad language is not required for it to maintain control of its network. Although Ameritech Michigan is correct that there is no provision in the Act that would prohibit incorporating this provision in the interconnection agreement, the company cites no provision that would require allowing the ILEC to impose unwanted interconnection on the CLEC at the former's unfettered discretion.

Foreign Exchange (FX) Service

As described in the DAP, FX service allows a customer to obtain an NXX code³ for a geographic area different from the area where the customer is actually located. Calls made from persons in the geographic area assigned to that NXX code are able to reach the FX customer for the price of a local call because Ameritech Michigan's billing system recognizes intra-NXX calls as local. Ameritech Michigan took the position that its "Appendix FX" should be added to the contract. That appendix would require either that Coast compensate Ameritech Michigan for these calls and remove them from the category of calls for which Ameritech Michigan pays reciprocal compensation or that Coast establish a point of interconnection in each local calling area associated with an NXX assigned to a Coast FX customer. In that manner, Ameritech Michigan argued, the costs of interexchange transport will be borne appropriately by Coast and its FX customer.

The arbitration panel rejected Ameritech Michigan's position. It reasoned that the following facts supported its decision:

1. Coast currently provides service to its customers through one switch, which is located in Pontiac. This current configuration is authorized under [the federal Act].

³ The NXX code is the first three digits of the seven-digit telephone number.

2. Ameritech [Michigan] is obligated to deliver all of Coast's traffic to its Pontiac switch.
3. Ameritech [Michigan]'s billing system identifies NXX to NXX calls as local and cannot distinguish such calls by ultimate destination.
4. Ameritech agrees that it incurs no additional costs related to what it refers to as FX calls under the current Coast configuration. (Tr. 60)
5. Ameritech [Michigan] admits that "There's been a definition of a local call. From NXX to NXX is a local call." (Tr. 64)

DAP, pp. 9-10.

The arbitration panel noted that because all calls terminated on Coast's network must be delivered to Coast's switch in Pontiac, the costs to Ameritech Michigan to deliver an FX call to Coast is the same as when the call is undisputedly local. Thus, the panel reasoned, Ameritech Michigan's argument that Coast receives a free ride for FX service must be rejected, citing the May 8, 2000 decision of the Illinois Commerce Commission (ICC) regarding an arbitrated agreement between Focal Communications Corporation of Illinois (Focal) and Ameritech Illinois. The panel further noted Coast's stated plans to build additional facilities, which the panel believed would alleviate some of Ameritech Michigan's concerns. Finally, the arbitration panel rejected Ameritech Michigan's alternative that Coast should be required to establish an additional point of interconnection (POI) in each area for which it has an NXX that it has assigned to an FX customer.

Ameritech Michigan objects to the arbitration panel's conclusions and argues that the panel effectively ruled that Ameritech Michigan must (1) forgo intraLATA toll revenues to which it would otherwise be entitled, (2) pay for the transport of what is marketed as a local call, but is not truly a local call, and (3) continue to pay reciprocal compensation on what is actually an interexchange call. Ameritech Michigan claims that each of these effects is erroneous and contrary to law.

Ameritech Michigan states that although it does not dispute the truth of the facts relied upon by the arbitration panel in reaching its decision, it does dispute the relevance of those facts. In Ameritech Michigan's view, FX service is not local exchange service, but is an interexchange service and should be rated as such between carriers. It cites and heavily relies upon the reasoning of the Maine Public Utilities Commission (Maine PUC) in New England Fiber Communications, LLC, d/b/a Brooks Fiber, Docket No. 99-593, issued June 30, 2000.

Ameritech Michigan reiterates that these are essentially toll calls that merely look like local calls to the end-user because of the assignment of the NXX associated with the area. Ameritech Michigan states that the FX customer customarily bears the cost of the FX service, because it is the party benefitting from the fiction that toll calls to it appear to the calling party to be local. When transporting calls across two networks, argues Ameritech Michigan, the carrier providing the FX service compensates the originating carrier for the use of its network in provisioning the FX service and then charges its FX customer accordingly.

As in the Maine case, Ameritech Michigan argues, Coast does not create a different, greater local area through its FX service, nor does it provide competing local exchange service in any meaningful sense. Ameritech Michigan urges the Commission to hold, as the Maine Commission did, that the CLEC "is free to offer calling areas of its own design so long as, when it uses the facilities of others to accomplish that end, it pays for those facilities on the basis of how their owners define them for wholesale purposes (interexchange or local). . . . What Brooks is doing . . . is offering free interexchange calling to customers of other LECs . . . in effect attempting to redefine the local calling areas of other LECs." *Id.*, p. 14.(emphasis in original.) Ameritech Michigan argues that the Commission should not equate the rating of calls for end-users with the appropriate rating of calls between carriers. It argues that merely because Coast may not charge

the caller for this FX service does not require a finding that Coast should not pay for the service provided by Ameritech Michigan to permit the call to be completed.

Ameritech Michigan goes on to state that if the arbitration panel's result is adopted, Coast will enjoy an unfair competitive advantage. It argues that Coast may offer FX service to information service providers (ISPs) or other customers for much less than other carriers can, because it will not be paying the full costs of the service. Moreover, although Coast stated it has plans to expand its number of POIs in Michigan, the result reached by the arbitration panel will create a disincentive for Coast to implement those plans.

Finally, Ameritech Michigan argues that the precedents relied upon by the arbitration panel are distinguishable from the instant case. It points out that the ICC decision does not address the Appendix FX, which Ameritech Michigan seeks to have added to the contract in this case. Moreover, Ameritech Michigan argues, the Commission's April 12, 1999 decision in Case No. U-11821, a complaint case involving CenturyTel, does not dictate the arbitration panel's result. In that case, argues Ameritech Michigan, the Commission fined CenturyTel for violating its tariffs when it billed the end-user for toll charges associated with her ISP traffic to an adjacent exchange, despite the tariff's listing that NXX as local. In that context, says Ameritech Michigan, the Commission found that routing and rating need not be the same. But, Ameritech Michigan argues, the decision relates to the CLEC's relationship to the end-user. Likewise, says Ameritech Michigan, the Commission's February 22, 2000 order in Case No. U-12090, a complaint case involving Coast and GTE North Incorporated (GTE), does not relate to FX service and relies upon GTE's local calling tariffs for the premise that a call made by a GTE end-user to the Coast ISP customer located within GTE's extended area service (EAS) area should be rated as a local call, regardless of how it is routed. Ameritech Michigan points out that, in the present case, the issue

relates to the appropriate compensation between carriers, not end-users, and there is neither an interconnection agreement nor a tariff to determine how these calls should be rated.

The Commission finds that the arbitration panel's decision on this issue should be affirmed. Commission precedent on the issue of the appropriate rating of a call to a customer located outside the geographic area associated with the NXX assigned to that customer has consistently found that intra NXX calls are to be considered local for rating purposes, despite their actual routing. See, the April 12, 1999 order in Case No. U-11821, Bierman v CenturyTel of Michigan, Inc., and the February 22, 2000 order in Case No. U-12090, Coast to Coast v GTE North Incorporated et al.

The arbitration panel adopted the reasoning of the ICC in its May 8, 2000 decision involving an arbitration agreement between Focal and Ameritech Illinois. In that case, Ameritech Illinois requested language that would have required Focal to establish a point of interconnection within 15 miles of the rate center for any NXX code that Focal used to provide FX service. The ICC determined that nothing in state or federal law required adoption of the proposal and it rejected Ameritech Illinois' arguments concerning the alleged "free ride" that Focal would obtain without the requirement. That free ride argument appears to be the same as one of the arguments that Ameritech Michigan poses in this case. In the ICC's view, the manner in which the parties currently handle traffic belied Ameritech Illinois' argument, because Ameritech Illinois would not be required to carry traffic any further or incur any extra expense based on the nature of the call being FX service. Rather, Ameritech Illinois delivers the call to the point of interconnection associated with the NXX, after which, Focal delivers the call to the FX customer, wherever that customer might be located.

Contrary to Ameritech Michigan's assertions, the DAP reflects the arbitration panel's adoption of the ICC's reasoning that there is really no free ride to remedy, and thus, no compelling reason to

incorporate the proposed language. Admittedly, the ICC did not address the Appendix FX proposed in this case. But both the proposed Appendix FX and the alternative of requiring a POI within a short distance of a rating center for which the CLEC obtains an NXX are intended to address the same perceived problem, which the ICC held did not exist as a practical matter.

The Commission is not persuaded that it should follow the result of the Maine PUC's decision concerning Brooks Fiber (Brooks). In its June 30, 2000 order, the Maine PUC determined that 54 NXXs that had been assigned to Brooks should be returned to the North American Numbering Plan Administrator (NANPA) because, in the Maine commission's view, those NXXs were not being used to provide local exchange service. Rather, Brooks was using those NXXs to allow customers, located in areas from which a call to Portland would be a toll call, to reach an ISP located in Portland by dialing a "local number." Brooks desired to have these calls treated as local, both for the originator of the call and for purposes of determining the appropriate compensation between Brooks and the ILEC. The Maine PUC found that Brooks was not providing a broader area for legitimate basic local exchange service, but rather was attempting to redefine the local calling area of another LEC by merely changing the designation of what would otherwise be interexchange calls through this "FX-like" service. It stated that if Brooks desired to provide a local calling area greater than that afforded by the ILEC, Brooks must compensate the ILEC for use of the network.

That decision is contrary to the position that this Commission has previously taken. See, the Commission's June 25, 1997 order in Case No. U-11340, in which the Commission found that Ameritech Michigan's historic boundaries for local calling should not dictate what may constitute a local calling area for competing providers and that calls within calling areas established as local by the CLEC should be treated as local for reciprocal compensation purposes. Ameritech

Michigan's arguments suggest that Coast is not providing local exchange service to an expanded local area, but using this service to retain ISPs as customers. However, the Commission notes that under the amended version of the Michigan Telecommunications Act, MCL 484.2101 et seq., MSA 22.1469 (101) et seq., basic local exchange licensees must, within two years, market basic local exchange service to all persons located within the geographic area for which the provider has a license, or risk losing the license or having its geographic area restricted. See, MCL 484.2303(1); MSA 22.1469(303)(1). Although MCL 484.2203(16); MSA 22.1469(203)(16) provides that the new law does not "amend, alter, or limit" any case commenced before its effective date, the interconnection agreement will take effect after the new law and Coast will be required to comply with MCL 484.2303(1); MSA 22.1469(303)(1).

The Commission finds that the arguments raised by Ameritech Michigan concerning the likely effect of the Commission's holdings on a competitive environment may deserve further study. However, it would be unwise for the Commission to reverse its position on this issue in an arbitration case, without the ability to grant other parties that might be significantly affected by such a reversal an opportunity to participate. Additionally, the Commission notes that a portion of the recent amendments to the MTA requires that calls made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call. MCL 484.2304(11); MSA 22.1469(304)(11). The appropriate implementation of this provision is currently the subject of Commission proceedings in Case No. U-12528, which was commenced by the Commission's July 17, 2000 order. The conclusions reached in that case may affect the Commission's position concerning the appropriate treatment and rating for FX and ISP calls.

Reciprocal Compensation for ISP Traffic

The parties disagreed about whether compensation between carriers should be paid on ISP traffic. Coast took the position, supported by substantial Commission precedent, that calls to ISPs within the local calling area are local calls requiring reciprocal compensation. Ameritech Michigan took the position that the FCC's decisions require finding that calls to ISPs are not local calls because they terminate on the internet, not within the local calling area. Thus, it argued, the reciprocal compensation provision in 47 USC 251(b)(5) does not apply.

The arbitration panel indicated that its review of previous Commission orders on this point led to the conclusion that calls to ISPs within the local calling area are local calls for purposes of reciprocal compensation between carriers. In the panel's view, because the Commission has continuously and repeatedly found in favor of the position taken by Coast, there was no reason to adopt Ameritech Michigan's language on this issue.

Ameritech Michigan objects and argues that the arbitration panel's decision should be reversed. It argues, as it has in prior cases, that the reciprocal compensation duty of 47 USC 251(b)(5) does not apply to ISP traffic, because the FCC has ruled that ISP traffic does not originate and terminate in the same local exchange area, but instead is predominantly interstate traffic. It also reiterates its arguments that the Commission does not have jurisdiction to determine whether these calls are local and thus subject to reciprocal compensation, because the FCC has exclusive jurisdiction over the issue. Moreover, Ameritech Michigan argues that despite whatever decision the Commission may make, the final outcome of the pending FCC Docket 99-68 , In the

matter of Inter-Carrier Compensation for ISP-Bound Traffic,⁴ will control the parties' conduct.

Further, Ameritech Michigan argues, no reciprocal compensation should be required on this traffic based on cost causation principles. Ameritech Michigan insists that when a call is placed to an ISP, it is the ISP that is the cost causer, not the originator of the call.

The Commission finds that the arbitration panel's conclusions with regard to this issue should be affirmed. In its January 28, 1998 order in Cases Nos. U-11178 et al., the Commission held that calls to ISPs within the local calling area are local calls. Thus, the Commission found, reciprocal compensation was required under the interconnection agreements at hand. The Commission's determination that calls to ISPs located within the local calling area are local calls for purposes of reciprocal compensation has been repeated in later orders. See, e.g., the Commission's April 12, 1999 order in Case No. U-11821, the February 22, 2000 order in Case No. U-12090, and the June 5, 2000 order in Case No. U-12284. In those orders, the Commission rejected Ameritech Michigan's arguments that the Commission lacks jurisdiction over this issue and that calls to ISPs are not local, including Ameritech Michigan's argument that the FCC's February 26, 1999 decision in CC Docket 96-98 supports the ILEC's position on this issue. Specifically, the Commission's February 22, 2000 order in Case No. U-12090, at pp. 4-6 fully addressed this argument, finding it baseless. See also, the Commission's June 5, 2000 order in Case No. U-12284, pp. 4-7. Ameritech Michigan raises no new arguments that persuade the Commission to reach a different conclusion in this case. The fact that the present case is an arbitration agreement rather than a

⁴The FCC's February 26, 1999 decision in Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-38, in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket 96-98, vacated and remanded in Bell Atlantic Telephone Companies v FCC, 206 F 3d 1 (DC Cir, 2000).

complaint seeking interpretation of a tariff or interconnection agreement provision does not alter the basis for finding that ISP calls within the local calling area are local for purposes of rating and intercarrier compensation. The Commission acknowledges that the parties could have reached an agreement not to compensate each other for these calls. However, they did not, and the Commission finds that it should not impose such a provision on Coast.

Finally, Ameritech Michigan complains that the arbitration panel failed to address the issue of the appropriate rate for intercarrier compensation for ISP calls. It insists that any compensation for this traffic should be lower than the reciprocal compensation for terminating voice calls because it costs Coast less to deliver Internet traffic to its ISP customers than it costs either party to terminate local traffic to non-ISP customers. Ameritech Michigan states its belief that the compensation rate should be zero, or a declining rate that, over a 12-month period, would be reduced to zero.

As a separate alternative, Ameritech Michigan argues that the Commission should, either in this case or a separate docket, examine and set the appropriate rates for ISP calls, the results of which should apply retroactively to the effective date of the parties' agreement. If the Commission determines a rate in this case, Ameritech Michigan argues, it should be bifurcated into two rate elements, one for initial set-up charge and the other to recover the per minute usage costs of each call. It states that based on the cost studies approved in the Commission's November 16, 1999 order in from Case No. U-11831, the rate structure should be \$.00733 for the set-up charge and \$.000778 for a per minute of use charge, or a melded charge of \$0.001034 per minute, which assumes an average holding time of 28.7 minutes per call. See Verified Statement of Eric L. Panfil, p. 17. Additionally, Ameritech Michigan took the position that Coast should not receive the tandem switching and transport rate associated with this traffic, because Coast generally serves

ISPs that are either located very close to its switch or collocated at the switch itself. Thus, Ameritech Michigan argued, Coast does not incur transport costs of any significance.

The arbitration panel rejected Ameritech Michigan's alternative positions. In the panel's view, arbitration procedures require the panel to choose between the two positions of the parties, not an array of alternatives. In this case, the panel chose the language proposed by Coast, and rejected the language proposed by Ameritech Michigan. It found no reason to also address the appropriate rate for these calls.

The Commission finds that the rate to be paid for reciprocal compensation for ISP calls should not be altered in this arbitration proceeding. Although Ameritech Michigan proffers numbers that it claims are "based on" its approved cost studies, the Commission notes that Ameritech Michigan did not propose a separate, lower rate for calls to its ISP customers in that case. If it sought to recognize lower per minute costs based on longer holding times for ISP calls, or to bifurcate the rate for all calls to ameliorate the difference between calls held for long periods, its latest cost study case would have been an appropriate time to examine the issue. To allow Ameritech Michigan to now alter the reciprocal compensation rate only for ISP calls would effectively sanction the company's altering only a portion of its cost studies, contrary to the directives in the Commission's November 16, 1999 order in Case No. U-11831, p. 40, in which the Commission directed that new cost studies must be proposed only for the company's entire system, except for new services. Calls to ISPs do not fall within that exception. That requirement is intended to prevent inequities associated with piecemeal changes.

Contract Services

The parties submitted several issues concerning the terms under which Coast would be allowed to assume contracts that Ameritech Michigan has with certain end-users. Among other things, Coast sought inclusion of language in the interconnection contract that would require Ameritech Michigan to produce upon request a validly executed copy of its contract with the end-user customer within 10 business days. Upon Ameritech Michigan's failure to produce a copy within the specified period, Coast argued, the contract with the end-user should be considered null and void and not binding on Coast. Coast asserted that it should not be required to assume all responsibilities under the contract without first having fair notice of what those liabilities might be.

Ameritech Michigan argued that a provision in a contract between Coast and Ameritech Michigan could not lawfully nullify a contract that Ameritech Michigan has with an end-user customer.

The arbitration panel determined that Coast should be entitled to receive a copy of any contract within 10 business days of its request. Failure to produce the contract would entitle Coast to treat the customer as a new customer, not subject to any contractual obligations or the lower assumed contract discount rate.

Ameritech Michigan objects and argues that the arbitration panel has adopted a position unsupported by law. Moreover, Ameritech Michigan argues, the issue is not even properly before the panel because it has no connection with any request for interconnection, service, or network element arising under the federal Act. In Ameritech Michigan's view, Coast should in the first instance be required to obtain a copy of the contract from the end-user customer rather than Ameritech Michigan. If the end-user customer does not have a copy, says Ameritech Michigan, the customer could contact Ameritech Michigan's retail business unit to obtain a copy. In the

alternative, Ameritech Michigan states, Coast could obtain the needed information from the customer service record at the Ameritech Michigan preordering interface.

The Commission finds that the decision of the arbitration panel should be affirmed. At the outset, the Commission finds that this is an issue properly before the arbitration panel because it deals with the terms and conditions of resale services, as provided in Section 251 of the federal Act. Moreover, the Commission finds that if, as Ameritech Michigan has argued (and the arbitration panel agreed), Coast must be willing to sign an agreement to be bound by the terms of an assumed contract between Ameritech Michigan and an end-user customer, Coast should be able to review a copy of the contract that created those obligations. Without the ability to review such a contract, Coast would be unable to determine precisely what obligations it is taking on, thus placing the CLEC in a position that might require litigating what contract rights actually exist. Further, the Commission finds that should Ameritech Michigan be unable or unwilling to produce a copy of the contract within a reasonable time (10 business days), Ameritech Michigan should not be permitted to insist on Coast's performance under that contract. Rather, under those circumstances, the Commission finds that Coast should be allowed to treat the customer as a new customer. Contrary to Ameritech Michigan's argument, this decision does nothing to alter the rights and responsibilities of the parties to the original contract for services. It merely relieves Coast of any obligation to perform under a contract that it cannot review.

Right to Purchase from Tariff or Contract

Ameritech Michigan sought inclusion of contract language that would effectively prohibit Coast from purchasing products or services that are described in Sections 251 and 252 of the federal Act, 47 USC 251 and 252, pursuant to any effective tariff. Ameritech Michigan argued that

the proposed language was necessary to prevent Coast from seeking to extend, modify, or otherwise change the terms of the contract by purchasing from a tariff products or services covered by the agreement. Further, Ameritech Michigan argued that adopting Coast's position would violate the Sierra-Mobile doctrine⁵, which Ameritech Michigan argues prevents a party to a contract from choosing different terms off a tariff. Finally, Ameritech Michigan argued that prohibiting Coast from purchasing products covered by the contract off of an Ameritech Michigan tariff would make business sense and would bring stability to the parties' business relationship.

The arbitration panel rejected Ameritech Michigan's position and found Coast's proposed language to be more reasonable and more consistent with promoting competition within the state. The panel took the position that tariffed services should be available to providers, regardless of whether there is an interconnection agreement. The panel found that adopting Coast's language would not violate the Sierra-Mobile doctrine or any other state or federal law or precedent. Moreover, the panel found that its decision was consistent with the Commission's January 3, 2000 order in Case No. U-12035 and its February 9, 2000 order in Case No. U-12043. It found Ameritech Michigan's proposed language overly broad in that it might preclude Coast from purchasing a product or service available through tariff that might be included in the cited federal Act sections, but that was not mentioned in the interconnection agreement.

The arbitration panel was unpersuaded that the language proposed by Coast would permit it to impermissibly mix terms of the agreement with terms available in a tariff. Rather, the panel pointed out that Coast would be required to choose whether to purchase products or services pursuant to all of the related terms or conditions in the contract or the applicable tariff. The panel

⁵ United Gas Pipeline Co v Mobile Gas Service Corp, 350 US 332; 76 S Ct 353; 100 L Ed 373 (1956) and FPC, v Sierra Pacific Power Co, 350 US 348; 76 S Ct 368; 100 L Ed 388 (1956).

concluded that adoption of Coast's language would likely reduce delays in Coast's ability to obtain and offer new products and services.

Ameritech Michigan objects and restates the arguments that it brought before the arbitration panel.

The Commission finds that the arbitration panel's decision should be affirmed on this issue for the reasons stated by the panel in its decision. Ameritech Michigan's arguments fail to persuade the Commission that a different result is required.

Collocation Indemnification

Coast proposed language for Section 12.10.7 of the interconnection agreement that would require Ameritech Michigan to indemnify Coast and hold it harmless for any injuries to persons or property that occur due to work performed in the collocation space by Ameritech, its employees, agents, or vendors. The proposed language mirrors and would make mutual the obligation language, in which Coast has already agreed to indemnify Ameritech Michigan. Ameritech Michigan rejected this proposed mutuality of indemnification, arguing that Coast's presence in the collocated space increases risk to Ameritech Michigan, but the fact that Coast is collocated does not increase Coast's risk.

The arbitration panel determined that the language proposed by Coast should be included in the interconnection agreement.

Ameritech Michigan objects and argues that Article 24 of the interconnection agreement, to which the parties have already agreed, protects each party against the results of negligence or intentional misconduct by the other. What Ameritech Michigan sought to protect itself against in Section 12.10.7 was a perceived additional risk not covered in Article 24. It states that Coast's

presence on Ameritech Michigan's property increases the risk of loss to Ameritech Michigan but not Coast. In fact, Ameritech Michigan states, its collocation rates do not include the costs of insuring Coast for virtually any loss in the collocation context, even without proven fault on Ameritech Michigan's part.

The Commission finds that the arbitration panel's decision making the indemnification obligation mutual should be affirmed. As the panel noted, there is a risk to Coast, once it has collocated in an Ameritech Michigan space whenever Ameritech Michigan performs work in the area. Ameritech Michigan actions that might not amount to negligence may cause great loss to the CLEC. If Coast is required to indemnify Ameritech Michigan, it is only appropriate that the obligation should be mutual. Ameritech Michigan's argument that this risk was not included in its cost study for determining collocation rates is not persuasive. Ameritech Michigan presented no evidence concerning the likely magnitude of such costs. The Commission finds that they are likely to be minimal. Moreover, it is not clear whether Coast's agreement to indemnify Ameritech Michigan would not offset any costs for Ameritech Michigan to indemnify Coast.

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 AACRS, R 460.17101 et seq.
- b. The interconnection agreement proposed by the decision of the arbitration panel should be approved.

c. Within 10 days from the date of this order, the parties should file an executed interconnection agreement consistent with the DAP.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel is adopted.

B. Within 10 days of the date of this order, Coast to Coast Communications, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

(S E A L)

/s/ David A. Svanda

Commissioner

/s/ Robert B. Nelson

Commissioner

By its action of August 17, 2000.

/s/ Dorothy Wideman

Its Executive Secretary

c. Within 10 days from the date of this order, the parties should file an executed interconnection agreement consistent with the DAP.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel is adopted.

B. Within 10 days of the date of this order, Coast to Coast Communications, Inc., and Ameritech Michigan shall submit an executed interconnection agreement that is consistent with the Decision of the Arbitration Panel.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of August 17, 2000.

Its Executive Secretary

In the matter of the petition of)
COAST TO COAST TELECOMMUNICATIONS,)
INC., for arbitration of interconnection rates,)
terms, conditions, and related arrangements with)
MICHIGAN BELL TELEPHONE COMPANY,)
d/b/a AMERITECH MICHIGAN.)
_____)

Case No. U-12382

Suggested Minute:

“Adopt and issue order dated August 17, 2000 adopting the decision of the arbitration panel establishing interconnection arrangements between Coast to Coast Telecommunications, Inc., and Ameritech Michigan, as set forth in the order.”