

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)
and TCG DETROIT for arbitration of intercon-)
nection rates, terms, and conditions and related)
arrangements with AMERITECH MICHIGAN)
pursuant to 47 USC 252(b).)
_____)

Case No. U-12465

At the November 20, 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.

HISTORY OF PROCEEDINGS

On June 12, 2000, AT&T Communications of Michigan, Inc., and TCG Detroit (collectively, AT&T) filed a petition for arbitration of an interconnection agreement with Ameritech Michigan, pursuant to Section 252(b) of the federal Telecommunications Act of 1996 (FTA), 47 USC 252(b). The filing included documentation of the parties' negotiation history and affidavits of witnesses in support of AT&T's position on the 75 identified issues.

An arbitration panel was appointed consisting of Administrative Law Judge James N. Rigas and Commission Staff members Elizabeth C. Durbin and Louis R. Passariello.

On July 7, 2000, Ameritech Michigan filed its response to the petition, in which it listed an additional 26 issues requiring resolution. The response also included affidavits and other support for Ameritech Michigan's position.

Thereafter, the parties and the arbitration panel established a schedule for the completion of this case. The parties stipulated that a Commission order issued by November 20, 2000 would be timely.

On August 28, 2000, the parties filed a joint submission of pending issues, disputed language, and a double red-line version of the proposed interconnection agreement. On September 11, 2000, the parties each filed a Proposed Decision of the Arbitration Panel (PDAP).

On September 25, 2000, AT&T filed a motion to limit the arbitration panel's determinations to what it termed "arbitrable contract proposals" and to strike portions of Ameritech Michigan's PDAP that related to language proposed by Ameritech Michigan that is not related to any identified issue in this arbitration.

By letter dated October 13, 2000, the parties notified the arbitration panel that 11 issues had been settled. Thereafter, on October 18, 2000, the arbitration panel issued its Decision of the Arbitration Panel (DAP). On October 24, 2000, the arbitration panel issued an errata correcting the wording of two issues.

The parties filed objections to the DAP on October 30, 2000. In arguments spanning about 185 pages, Ameritech Michigan objects to 57 findings of the arbitration panel. AT&T objects to 21 of the arbitration panel's conclusions and renews its motion to strike certain portions of Ameritech Michigan's arguments.

On November 8, 2000, AT&T filed a motion to strike portions of Ameritech Michigan's objections.

II.

DISCUSSION

A. General Issues

1. Form of Decision

The DAP includes the arbitration panel's observation that despite its encouragement for the parties to meet with a mediator to resolve as many issues as possible, 88 of the original 102 issues remained disputed and in need of resolution. Because of the immensity of the task before it, based on the number and complexity of the issues submitted, the arbitration panel states that it felt compelled to abandon what it would consider under normal circumstances to be a proper and deliberate presentation of the supporting analysis for each issue decided. It notes that for many issues, the DAP supports its decision with reference to the analysis presented by the prevailing party. However, the arbitration panel cautions that its reliance on portions of the analysis provided by a party should not be construed to be an adoption of the entire analysis. Rather, the panel's stated reliance signifies that, taken as a whole, the cited analysis provides a reasonable foundation upon which the arbitration panel's recommendation may rest.

Ameritech Michigan objects and argues that the style of the DAP in many instances leaves the parties to ponder what the supporting reasoning for the arbitration panel's decision might really be. Ameritech Michigan argues that the Commission should reject the DAP in its entirety because of the arbitration panel's chosen method of dealing with the issues.

The Commission finds that to reject the DAP in its entirety because of its style would be a waste of Commission resources, and is not necessary to effect a just resolution of this case. This case is one that includes an extraordinary number of complex issues. The parties were apparently unwilling to negotiate mutually acceptable solutions to the problems presented. To meet the time

constraints for issuing its decision, the arbitration panel opted for a method that would permit timely completion. The Commission finds that the path of the arbitration panel's reasoning can be adequately discerned and, given the number and complexity of the issues with which it dealt and the time permitted for resolution of those issues, the Commission finds that the arbitration panel's decision need not be rejected in its entirety. Rather, the Commission finds that, except as specifically modified by this order, the decision of the arbitration panel should be adopted for the reasons stated by the panel.

2. Orphan Contract Language

As noted earlier, AT&T filed a motion to limit the arbitration panel's decision and to strike portions of Ameritech Michigan's PDAP that proposed additional language that was not properly identified with any issue listed in the petition, the response, or the joint statement ("orphan" contract language). AT&T points to two general categories of nonarbitrable language. First, it objects to Ameritech Michigan's proposed changes to the existing contract that are unrelated to any of the issues listed in the joint issues list, both additions to and deletions from that current contract language. Second, it objects to Ameritech Michigan's proposal to revise reciprocal compensation rates for calls to Internet service providers (ISPs).

AT&T argues that because these alterations were never identified as issues, AT&T never had been called upon (nor given the opportunity) to explain AT&T's position. Moreover, AT&T argues, it would be improper for the Commission to undertake a decision on this language because 47 USC 252(b)(4)(A) limits the Commission to consideration of the issues "set forth" in AT&T's petition and in Ameritech Michigan's response, neither of which identified these provisions as disputed issues.

In its objections to the DAP, Ameritech Michigan argues that the Commission must resolve all of the orphan contract language issues. It argues that the disputed nature of the language is clearly apparent from the face of the competing interconnection agreements filed with AT&T's petition and Ameritech Michigan's response, and in the double red-line version of the contract, even if they were not listed in the joint submission as associated with any of the issues enumerated in the petition and response. Thus, Ameritech Michigan argues, the issues are sufficiently set forth to require the Commission's resolution of each dispute. It points to the October 12, 2000 decision of the Public Service Commission of Wisconsin in an arbitration case between these same parties (Docket No. O5-MA-120). In that case, Ameritech Michigan states, the arbitration panel for the Wisconsin commission agreed to decide 72 orphan contract language issues. Ameritech Michigan further states that AT&T lost this issue in the arbitration before the Public Utility Commission of Ohio.

The Commission declines to address orphan contract language disputes that are not identified with an issue for which there is any discussion or presentation on the part of the proponent. It is not for the Commission to seek out, identify, and create a rationale to justify each phrase or sentence that a party might desire to include in the contract. Rather, the burden is on the proponent to support the propriety or necessity of the desired wording. In order for disputed language to be resolved, there must be some recognition and presentation of the language as an issue. Otherwise any resolution is done in a vacuum. Therefore, the Commission finds that alterations from the current contract that have not been made a part of the discussion or listed as an issue will not be addressed. However, if, as Ameritech Michigan suggests, most of the orphan language relates to an issue that is decided in this arbitration, then the contract language used should be consistent with the determinations made by the arbitration panel, as modified by this order.

3. Issues Deferred to Other Proceedings

The parties and the arbitration panel recognized that certain of the issues presented to the arbitration panel are currently at issue in industry-wide collaborative proceedings pending before the Commission. For those issues, the arbitration panel generally found the position of one party or the other more reasonable, but then stated that the final resolution of the issue should be deferred until the conclusion of the appropriate proceeding.

Ameritech Michigan objects to the ambiguity in that finding, and requests that the Commission clarify that the resolution of all issues addressed in the DAP and pending collaborative proceedings will be deferred to the outcome of the appropriate pending collaborative proceeding and that neither party's contract language reflects the outcome of such proceeding.

AT&T also objects to the arbitration panel's handling of issues that are being addressed in the pending proceedings. However, it requests that the Commission clarify that the language proposed by the party whose position the arbitration panel found more reasonable should be incorporated into the contract until the conclusion of the collaborative process, which may supersede that language. Following final orders in those cases, AT&T argues, the parties may negotiate new language under the change of law provisions within the contract.

The Commission finds that the issues that are being addressed in industry-wide collaborative proceedings currently pending before the Commission (where AT&T and Ameritech Michigan are parties) are best resolved following the input from all interested telecommunications providers and the Commission Staff (Staff). Generally, those proceedings should be completed within a reasonable time for inclusion in this agreement. Moreover, a uniform result will further the public interest. Accordingly, except as specifically noted otherwise, the Commission declines to adopt the position of either party on these issues in this proceeding on the grounds that a determination of

the issue without the benefit of the collaborative record and input from other telecommunications providers would be contrary to the public interest.

B. Objections Related to Specific Issues

As noted above, this order will only discuss those issues for which the Commission finds that modification is required. If an issue is not specifically addressed in this order, the Commission finds that the arbitration panel's decision should be adopted for the reasons stated in the DAP.¹ Issues will be numbered according to the consistent numbering system used by the parties.

1. Changes in Technical Standards

The Commission finds that the arbitration panel's determination on this issue should be reversed. According to Ameritech Michigan, federal network disclosure rules require that it provide six months' notice to AT&T for any technical changes that will materially affect the competitive local exchange carrier (CLEC). 47 CFR §§ 51.325 through 51.335. Six months' notice provides the stability and predictability that AT&T argues that it requires. It also provides sufficient time for AT&T to challenge any unreasonable change. The Commission is further mindful that incorporating a provision that would allow a CLEC to veto technical changes might create a significant stumbling block for Ameritech Michigan to implement innovations and to keep up with technological changes. Because any CLEC may opt in to the same terms and conditions of a contract arbitrated for another CLEC, Ameritech Michigan might find itself in the position of having to negotiate for technical changes to its own network with a multitude of CLECs, any one

¹The Commission notes that in some instances the issues in this case have been previously decided by the Commission. The arbitration panel's discussion does not expressly refer to those prior decisions on all such issues. However, where the panel's determination is consistent with past Commission decisions, or is otherwise adequately supported by the prevailing party's argument, the Commission sees no reason to discuss or modify the result reached by the arbitration panel.

of which could delay or prevent implementation by refusing to agree. Should Ameritech Michigan seek to implement unreasonable changes, the CLECs would have sufficient time to object and take action to prevent implementation.

2. Inclusion of UNE² Combinations and Different Quality Interconnection in the Bona Fide Request (BFR) Process

The Commission rejects Ameritech Michigan's arguments and adopts the decision of the arbitration panel.

3. Time Allowed for Responding to a BFR

The Commission rejects Ameritech Michigan's arguments and adopts the decision of the arbitration panel.

4. Points of Interconnection

The Commission rejects Ameritech Michigan's arguments and adopts the decision of the arbitration panel. The issue concerning transit service has been addressed previously by the Commission. Ameritech Michigan must provide transit service upon request when technically feasible. Thus, the arbitration panel had a basis upon which to resolve that issue in favor of AT&T, independent of AT&T's PDAP.

5. Maximum Interconnection Activation Interval

The Commission rejects AT&T's arguments and adopts the determination of the arbitration panel for the reasons stated in the DAP, with certain clarifications. The Commission grants AT&T's request for clarification that the 150-day maximum interval for activating a requested interconnection is to be counted in calendar days, not business days. Moreover, the Commission

²UNE refers to unbundled network elements.

finds that AT&T's language should be adopted with the substitution of 150 days for 120 days as the interval. The Commission finds that the remaining requests of AT&T should be rejected.

6. One-Way versus Two-Way Trunking

The Commission rejects Ameritech Michigan's arguments on this issue and adopts the decision of the arbitration panel.

7. Reciprocal Compensation for ISP Calls

The Commission has decided this issue repeatedly. It again rejects Ameritech Michigan's arguments and adopts the decision of the arbitration panel on this issue. The Commission declines to alter the rate structure for the reasons stated in the October 24, 2000 order in Case No. U-12460, pp. 5-8.

8. Special Processing of Trunk Groups

The Commission rejects AT&T's arguments and adopts the decision of the arbitration panel.

9. Equitable Sharing of Costs for Facilities

Consistent with the Commission's rejection of Ameritech Michigan's arguments on Issues 4 and 6, the Commission adopts the decision of the arbitration panel on this issue.

10. Restrictions on AT&T's Use of UNEs

The Commission rejects AT&T's arguments and adopts the determination of the arbitration panel on this issue. This case may be distinguished from the Commission's decision in its October 24, 2000 order in Case No. U-12460 in that AT&T has not agreed to avoid using UNEs to provide access service, contrary to the Federal Communications Commission's (FCC's) Supplemental Order Clarification.³

³FCC Order 00-183, CC Docket No. 96-98, rel'd June 2, 2000.

11. Fraud Liability for AT&T's End-User Accounts

The Commission is persuaded that the determination of the arbitration panel should be reversed on this issue. Liability for fraud should ordinarily be determined on the facts of a given situation. Contrary to the arguments in Ameritech Michigan's PDAP, AT&T's proposed language does not impose liability on Ameritech Michigan without regard to the facts. However, Ameritech Michigan's language would exempt the incumbent from responsibility even if its negligence permitted ongoing fraud to occur.

12. Appropriate Compensation for Termination

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

13. Limitation on Location of Access to UNEs

The Commission rejects Ameritech Michigan's arguments on this issue and adopts the decision of the arbitration panel on this issue.

14. Operator Services (OS) and Directory Assistance (DA) as UNEs

This issue is being addressed in pending Case No. U-12320 and is thus subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

15. Restrictions on Interface Types to Access UNEs

The Commission rejects Ameritech Michigan's arguments on this issue and adopts the decision of the arbitration panel on this issue.

16. Loss of Dial Tone at Conversion

Ameritech Michigan's arguments do not persuade the Commission that a result other than that reached by the arbitration panel must be adopted. Therefore, the Commission adopts the determination of the arbitration panel on this issue.

17. Right to Obtain UNE Combinations

This issue presents questions that are currently being addressed in Case No. U-12320 and is thus subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

18. Inclusion of a List of Specific UNE Combinations

The Commission rejects the arguments of AT&T and adopts the determinations of the arbitration panel on this issue. It reaffirms that this holding does not negate the requirement that Ameritech Michigan provide access to UNE combinations as described in previous Commission orders.

19. Inclusion of UNE Platform – Terms and Conditions, 23. Shared Transport, and
26. Call Detail for Unbundled Local Switching

The Commission rejects AT&T's arguments and adopts the determinations of the arbitration panel on these issues. Issues related to long-term shared transport are being considered in Case No. U-12622. Until a final decision is issued on these issues, the parties should rely on Ameritech Michigan's filed tariff for long-term shared transport.

20. Limiting UNE Use to Local Exchange Service

The Commission rejects AT&T's arguments and adopts the determinations of the arbitration panel on this issue.

21. Prohibition on Shared Transport of IntraLATA Toll Traffic

The Commission rejects Ameritech Michigan's arguments and adopts the arbitration panel's determination on this issue.

22. Specification of Ancillary Equipment

The Commission rejects AT&T's arguments and adopts the determination of the arbitration panel on this issue.

24. Customized Routing for UNEs

This issue presents questions that are currently being addressed in Case No. U-12320 and is thus subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

29. and 89. Access to Customer Premises Wiring

With regard to Issue 29, the Commission rejects AT&T's arguments and adopts the determination of the arbitration panel.

With regard to Issue 89, the Commission grants AT&T's request for clarification that it may access a customer's premises wiring by Ameritech Michigan's network interface device (NID), as defined in 47 CFR § 68.3, and affirms the arbitration panel's determination that Ameritech Michigan's language in Schedule 9.2.4 should be adopted.

30. Cut-over Procedures

The Commission rejects AT&T's arguments and adopts the determination of the arbitration panel on this issue.

33. Prices for UNEs

The Commission rejects Ameritech Michigan's invitation to render an unnecessarily broad decision and adopts the decision of the arbitration panel on this issue.

34. Line Splitting on UNE-P Loops, 35. Placement of Ameritech Michigan-owned Splitters, and 45. Line Splitting Provisioning Interval

The Commission recognizes that these issues are being addressed in Case No. U-12540. Thus, resolution of these issues is subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

36. Proper Provisioning of Splitters,

The Commission recognizes that this issue is being addressed in Case No. U-12540. Thus, resolution of this issue is subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

38. Provision of OSS to Support Line Splitting

The Commission recognizes that this issue is being addressed in Case No. U-12540. Thus, resolution of this issue is subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

40. Acceptance and Cooperative Testing

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

43. Continuity of Data Service with New Voice Provider and 44. Rates for xDSL Conditioning and Splitters.

The Commission recognizes that these issues are being addressed in Case No. U-12540. Thus, resolution of these issues is subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

47. Dark Fiber Terms and Conditions and 87. Construction of New Facilities to Provide Dark Fiber

These two issues are being addressed in Case No. U-12540. Thus, the resolution of these issues is subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

48. Limitations on Liability for LIDB and CNAM⁴ and 49. Limitation on Recoverable Damages

The Commission rejects AT&T's arguments and adopts the determinations of the arbitration panel with respect to these issues.

50. Advance Notice of Changes in Resale Terms and Conditions

The Commission finds that the determination of the arbitration panel should be modified to require Ameritech Michigan to provide 45 days' notice of changes in resale terms and conditions. This will prevent discriminatory treatment for AT&T as against other CLECs and enforces the Commission's general rule that Ameritech Michigan must provide 45 days' notice for such changes to all CLECs.

51. Customized Routing to OS/DA Functions

The Commission rejects Ameritech Michigan's arguments and adopts the arbitration panel's determination on this issue.

53. Notice of Proposed Changes in Ameritech Michigan's Internal Processes

The Commission rejects AT&T's arguments and adopts the arbitration panel's determination on this issue.

55. Maintenance of Virtually Collocated Equipment

The Commission is persuaded that the arbitration panel's determination on this issue should be reversed. It is the incumbent local exchange company (ILEC), not the collocating CLEC, that installs and maintains the virtually collocated equipment that is dedicated to the CLEC. This finding is consistent with FCC precedent. See, e.g., Virtual Collocation Order, 9 FCCR 5154,

⁴LIDB refers to Line Information Database. CNAM refers to the Calling Name Database.

5158 (1994) and First Report and Order, 11 FCCR 15785. The Commission therefore finds that the language proposed by Ameritech Michigan should be adopted for this issue.

56. Standard Options for Electrical Service

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

57. Limits on Collocating Certain Equipment

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

58. Copper and Coaxial Cable Interconnection

The Commission is persuaded that the determination of the arbitration panel should be modified on this issue. The Commission agrees that fiber optic cable is the preferable interconnection facility, due to its more efficient use of scarce space resources within central offices, switches, conduits, and poles. However, there may be times when copper or coaxial cable would be a reasonable method of interconnection. The Commission is not persuaded that AT&T should be required to seek Commission approval on an individual case basis whenever it seeks to use copper or coaxial cable. Rather, as provided in the cited Texas tariff, AT&T should be required to demonstrate that use of such cable will not impair Ameritech Michigan's ability to serve its own customers or subsequent collocators. The Commission concludes that AT&T's language should be adopted with modification to reflect its stated willingness to abide by the Texas tariff language.

59. Direct Connection of Collocated Equipment

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

60. Provision of Floor Plan for Physical Collocation Request

The Commission is persuaded that AT&T's language should be adopted on this issue. In the Commission's view, it is reasonable for Ameritech Michigan to provide a copy of floor plans of areas within which AT&T will collocate. Specific or proprietary information concerning other CLECs may be deleted from this floor plan.

61. Right to Adjacent Space Collocation on Non-owned Property

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

62. and 92. Interval for Certain Changes to Existing Collocation Arrangements

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on these issues.

64. Intervals for Providing Quantities of Ported Numbers

The Commission rejects AT&T's arguments and adopts the determination of the arbitration panel on this issue.

65. Days Available for Number Porting

The Commission is not persuaded that the clarification sought by AT&T is necessary. Therefore, the Commission adopts the determination of the arbitration panel on this issue.

66. Ordering Interface

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

67. Innerduct as Modification

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

68. Major Project Defined for Trunking Forecasts

The Commission rejects AT&T's arguments and adopts the determination of the arbitration panel on this issue.

69. Traffic Forecasting Responsibilities

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

70. Term of the Agreement

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

75. Third Party Intellectual Property Rights

The Commission finds that the determination of the arbitration panel should be modified to be consistent with the Commission's October 24, 2000 order in Case No. U-12460, an arbitration proceeding involving Ameritech Michigan and Level 3 Communications, LLC, (Level 3). In that order, the Commission stated:

The Commission concludes that neither party has proposed language that adequately and accurately reflects the holdings in the IP Order.⁵ The Commission finds that the order requires that Ameritech Michigan use its best efforts to obtain intellectual property rights for Level 3 that are coextensive with the rights that Ameritech Michigan has obtained for itself, which might be more than the rights that it currently uses. The Commission notes that the incumbent's obligation does not guarantee that the third party vendor will grant the rights sought. However, it is expected that the incumbent's good faith best efforts will be able to extend the incumbent's license to include the CLEC's use of the UNE in the same manner contemplated by the license originally obtained by the incumbent. It is further expected that those efforts will result in terms and conditions equal in quality to the terms and conditions under which the incumbent LEC has obtained these rights, which presumably will be at a lower cost than the requesting carrier might be able

⁵FCC's Intellectual Property Order, FCC Order 00-139, Docket No. CC 96-98, rel'd April 27, 2000.

to obtain for itself. . . . To the extent that Level 3 seeks to use UNEs in a manner not contemplated by the agreement between the vendor and the incumbent LEC, Level 3 is on its own to obtain the additional permissions.

Nothing in the IP Order requires that the incumbent indemnify the CLEC for costs arising out of infringement claims. On the other hand, nothing in that order requires that the CLEC should be required to indemnify the incumbent. In the Commission's view, Level 3 is not entitled to a blanket contract provision requiring Ameritech Michigan to indemnify it for all damages arising out of intellectual property infringement challenges. But neither should it be held necessarily responsible for indemnifying the incumbent.

Order, pp 21-22, (footnote added).

The Commission then directed the parties to negotiate language for the agreement that complied with its findings in the order. The Commission finds that a similar result is required here. The language proposed by Ameritech Michigan is essentially identical to its proposal in Case No. U-12460. AT&T's language is broader than the requirements expressed in the IP Order. The Commission therefore directs the parties to negotiate language complying with the Commission's findings within the time set for submission of the interconnection agreement. Should the parties be unable to agree, each should submit its last best offer, from which the Commission will pick one.

76. Inclusion of Terms Inapplicable to Michigan Operations

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

77. Determining Points of Interconnection

Consistent with its determinations on related Issues 4 and 6, the Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

78. Design Method for Fiber Meets

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

79. Compensation Arrangements for Third Party Transiting Traffic

The Commission is persuaded that the determination of the arbitration panel should be modified on this issue. Although the Commission upholds the arbitration panel's determination that AT&T should not be required to prove its authority to deliver traffic, the Commission agrees with the Wisconsin arbitration panel that "neither carrier should have to act as a billing agent or conduit for compensation between other carriers that exchange traffic that transit[s] its network."

Arbitration Award, p. 129.

80. Delivery of Traffic to Ameritech Michigan's End Offices

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

81. Terminating Access Rates for IntraLATA Toll

AT&T stated in its PDAP that there is no issue to be arbitrated here because the CLEC has not requested LATA-wide calling at a blended rate in this arbitration after the proposal was rejected by Ameritech Michigan. The Commission agrees that the interconnection agreement does not provide LATA-wide reciprocal compensation arrangements.

83. Trunking Terms and Conditions for OS/DA

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

84. Terms and Conditions for Enhanced Extended Links (EELs)

This issue presents questions that are currently being addressed in Case No. U-12320 and is thus subject to the findings, conclusions, and directions on pages 6 and 7 of this order.

86. Diversity for AT&T's SS7 Links

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

88. New Construction of xDSL-Capable Loops

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

94. Reimbursement by Parties Subsequently Attaching to Modifications Paid for by AT&T

AT&T states that the panel resolved this issue in Ameritech Michigan's favor, despite the fact that AT&T had withdrawn its proposed language, and therefore removed the reimbursement issue from disputed issues to be resolved in this arbitration. AT&T argues that Ameritech Michigan improperly used this issue as an opportunity to modify its definitions for poles, conduits, and rights of way, which have no legitimate relation to this issue. Further, AT&T argues, none of Ameritech Michigan's witnesses addressed those definition changes. Therefore, AT&T requests that the Commission clarify that the determination with respect to Issue 94 relates only to the now uncontested proposed Sections 16.3.4 and 16.3.5. As to Section 16.1.1, AT&T argues that it proposed the same language that the Commission adopted in Cases Nos. U-11151 and U-11152, the previous AT&T/Ameritech Michigan arbitration case. It argues that nothing in the law or the facts has changed that would support altering those definitions now.

Finally, AT&T argues that Ameritech Michigan argued for the first time in its PDAP that access to entrance facilities of Ameritech Michigan's central offices is available as part of Ameritech Michigan's collocation tariff and that the additional facilities that AT&T seeks are available as part of Ameritech Michigan's UNE offerings in Article IX. However, AT&T argues, neither of those replaces access to Ameritech Michigan's distribution structure for placement of AT&T's own equipment and related facilities, which is only available in Article XI of the agreement. Therefore, AT&T requests that the Commission reject Ameritech Michigan's proposed language for Section 16.1.1 as procedurally outside this case and substantively objectionable.

The Commission finds that AT&T's request for clarification is appropriate. It is apparent to the Commission that the issue as outlined on the joint issue list did not include Section 16.1.1 as disputed language associated with this issue. Therefore, the Commission is persuaded that AT&T's proposed Section 16.1.1, which was approved in the previous Commission decision, should be adopted for this agreement.

95. Reimbursement of Periodic Inspections of AT&T's Attachments

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

96. Scope of Indemnification

The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

98. Change in Law Provision

This issue is listed in Ameritech Michigan's PDAP as settled. The arbitration panel recommended adopting AT&T's proposal, which AT&T addressed in its PDAP. The Commission rejects Ameritech Michigan's arguments and adopts the determination of the arbitration panel on this issue.

99. Inclusion of Merger Conditions as Appendix

The Commission rejects Ameritech Michigan's arguments on this issue and adopts the determination of the arbitration panel on this issue.

100. Retroactive Application of New Rates

The Commission finds that this issue is one that seeks interpretation of the previous contract and its extension by the parties' agreement. An arbitration case is not the proper forum for determining the parties' rights arising out of a previous contract or its extensions. Thus, the Commission declines to address it in this case.

101. Foreign Exchange (FX) Service

The Commission finds that, consistent with its August 17, 2000 order in Case No. U-12382, the Appendix FX should not be included in this interconnection agreement.

C. AT&T's Motion to Strike

AT&T filed a motion to strike Exhibit C to Ameritech Michigan's objections, a transcript of the arbitration proceeding in which the parties participated in Ohio. AT&T argues that the hearing occurred after the parties in this case submitted their PDAPs and the arbitration panel did not have that transcript when it made its decision. Moreover, AT&T argues that it is prejudiced because there is no provision for filing a response to the other party's objections. The Commission agrees

and grants AT&T's motion to strike Exhibit C. The time for providing supporting documentation has passed.

AT&T further moves to strike Ameritech Michigan's newly proposed positions. AT&T notes that Ameritech Michigan has altered its position on certain arbitration issues, in some cases providing additional alternatives from which it asserts the Commission may choose. AT&T argues that this violates the basic rules of baseball style arbitration in which each party is to bring its last best offer to the table. The Commission grants AT&T's motion on newly proposed positions. As the Commission stated in the parties' most recent arbitration:

Baseball-style arbitration exposes both parties to the same risks. Each party to the arbitration process was aware that its position on an issue would be rejected if the other party's position were found to be more reasonable. Accordingly, each participant should have been motivated to abandon unrealistic positions in favor of more reasonable ones. Ameritech Michigan is solely responsible for determining its negotiation and arbitration stances.

November 26, 1996 order, Cases Nos. U-11151 and U-11152, p. 5.

Finally, AT&T moves to strike the briefs from other jurisdictions that Ameritech Michigan attached to its objections. The Commission is not persuaded that granting that portion of the motion to strike is necessary.

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 decision of the arbitration panel, as modified by this order, should be adopted.

- c. AT&T's motion to strike should be granted in part and denied in part.
- d. The parties should, within 60 days, submit a signed agreement conforming to the findings of this order.

THEREFORE, IT IS ORDERED that:

- A. The decision of the arbitration panel, as modified by this order, is adopted.
- B. The motion to strike filed by AT&T Communications of Michigan, Inc., and TCG Detroit should be granted in part and denied in part.
- C. The parties shall, within 60 days, file a signed agreement conforming to the findings of 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 November 20, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

- c. AT&T's motion to strike should be granted in part and denied in part.
- d. The parties should, within 60 days, submit a signed agreement conforming to the findings of this order.

THEREFORE, IT IS ORDERED that:

- A. The decision of the arbitration panel, as modified by this order, is adopted.
- B. The motion to strike filed by AT&T Communications of Michigan, Inc., and TCG Detroit should be granted in part and denied in part.
- C. The parties shall, within 60 days, file a signed agreement conforming to the findings of this order.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of November 20, 2000.

Its Executive Secretary

In the matter of the application of)
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)
and **TCG DETROIT** for arbitration of intercon-)
nection rates, terms, and conditions and related)
arrangements with **AMERITECH MICHIGAN**)
pursuant to 47 USC 252(b).)
_____)

Case No. U-12465

Suggested Minute:

“Adopt and issue order dated November 20, 2000 adopting, with modification, the decision of the arbitration panel and requiring Ameritech Michigan and AT&T Communications of Michigan, Inc. and TCG Detroit, to file an interconnection agreement consistent with this order, as set forth in the order.”