

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
AMERITECH MICHIGAN for approval of )  
cost studies and resolution of disputed issues )  
related to certain UNE offerings. )  
\_\_\_\_\_)

Case No. U-12540

At the September 18, 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 September 8, 2000, MCImetro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., (f/k/a MFS Intelnet of Michigan, Inc.), and Brooks Fiber Communications of Michigan, Inc., (collectively, WorldCom) filed an application for leave to appeal and a request for immediate consideration of a September 5, 2000 ruling of Administrative Law Judge Barbara A. Stump (ALJ), which denied relief sought in WorldCom's August 31, 2000 motion to compel Ameritech Michigan to respond to discovery request WOAM 0001.

On September 13, 2000, answers to the application for leave to appeal were filed by the Commission Staff (Staff) and Attorney General Jennifer M. Granholm (Attorney General). On September 15, 2000, Ameritech Michigan filed its answer.

Rule 337 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17337, establishes the standards for reviewing applications for leave to appeal. Not every application merits immediate review; an appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

The Commission finds that the application for leave to appeal and request for immediate consideration should be granted in order to avoid any undue delay in the determination of the issues presented in this proceeding.

In its application for leave to appeal, WorldCom argues that failure to reverse the ALJ's ruling will prevent the Commission and the parties from obtaining information that is vital to an understanding of how the local telecommunications marketplace will operate in the future. According to WorldCom, the information sought in WOAM 0001 is relevant to the Commission's determination of Ameritech Michigan's Section 271 application.<sup>1</sup> WorldCom also maintains that Ameritech Michigan's responses to WOAM 0001 are relevant to the process of opening the local marketplace to competition. WorldCom explains that WOAM 0001 addresses scenarios<sup>2</sup> such as

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<sup>1</sup> In Section 271 of the federal Telecommunications Act of 1996, 47 USC 271, Congress specified the conditions under which a regional Bell operating company, such as Ameritech Michigan, may provide in-region interLATA service.

<sup>2</sup> WOAM 0001 involves 24 different scenarios.

whether a customer's desire to transfer from Ameritech Michigan to a competitive local exchange carrier (CLEC) can be fulfilled by the voice (dial tone) CLEC, the digital subscriber line (DSL) CLEC, or the customer through Ameritech Michigan's existing tariffs. The questions contained in WOAM 0001 also seek identification of the rates and tariffs that would be applicable in such situations. Various subparts of WOAM 0001 delve into the ability of customers to switch service between providers and inquire about Ameritech Michigan's position on whether such transfers could result in service interruptions. The discovery request also seeks Ameritech Michigan's position on whether its answers could vary depending upon the technology involved, i.e., universal digital loop carrier (UDLC), integrated digital loop carrier (IDLC), or next generation digital loop carrier (NGDLC).

WorldCom is also concerned by a comment made by counsel for Ameritech Michigan during oral argument on the motion to compel. According to WorldCom, it was Ameritech Michigan's position at the hearing that many of the questions contained in WOAM 0001 were "unanswerable" because Ameritech Michigan does not support line splitting<sup>3</sup> or line sharing<sup>4</sup> through use of an unbundled network element platform (UNE-P). WorldCom believes that Ameritech Michigan's representation regarding its lack of support of line splitting and line sharing over the UNE-P could be indicative of a barrier to competition in the local marketplace. WorldCom argues that if an Ameritech Michigan customer relies on Ameritech Michigan for both voice and data traffic, then

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<sup>3</sup> Line splitting refers to the provision of voice traffic over an Ameritech Michigan loop by a CLEC combined with the provision of data traffic on the same line by another carrier.

<sup>4</sup> Line sharing refers to Ameritech Michigan's provision of voice traffic combined with the provision of data traffic on the same line by either an Ameritech Michigan affiliate or another carrier.

that customer may be reluctant to switch its voice service to a CLEC that provides service through use of the UNE-P if that technology is incapable of supporting data service.

According to WorldCom, Ameritech Michigan should be required to disclose whether it can support line splitting or line sharing over the UNE-P and should explain how it would be technically feasible to have such a customer change voice service without the loss of data service. In short, WorldCom is concerned that Ameritech Michigan's failure to provide full and complete answers to WOAM 0001 could conceal UNE-P deficiencies or technically feasible solutions to line splitting and line sharing issues. Therefore, WorldCom requests that the Commission order Ameritech Michigan to provide full and complete answers for all of the scenarios described in WOAM 0001. Finally, because all parties to this proceeding support an expeditious resolution by the Commission, WorldCom urges the Commission to adhere as closely as possible to the existing schedule.

In their responses, the Staff and the Attorney General indicate support for WorldCom's appeal. According to them, the questions contained in WOAM 0001 seeks specific information that is relevant to how Ameritech Michigan's UNE-P offering will work in the competitive environment of the future. Accordingly, they assert that Ameritech Michigan's answers to WorldCom's inquiries are crucial and should be provided.

In its September 15, 2000 response, Ameritech Michigan contends that WorldCom's application for leave to appeal should be denied. According to Ameritech Michigan, the scope of this proceeding is limited to a review of whether Ameritech Michigan's UNE remand order and its line sharing product offerings comply with applicable laws with regard to costs, terms, and conditions, and should not be expanded into a broad exploration of tangentially-related public policy concerns. Moreover, Ameritech Michigan asserts that ALJ's ruling should not be reversed because

WOAM 0001 is overly burdensome and fundamentally flawed. Ameritech Michigan insists that it is not planning to offer line sharing over its UNE-P product offering because it is not required to do so by the Federal Communication Commission's line sharing order<sup>5</sup>. Likewise Ameritech Michigan maintains that it cannot provide line splitting over the UNE-P product offering<sup>6</sup>.

Further, Ameritech Michigan argues that WorldCom is less interested in receiving answers to the questions posed in WOAM 0001 than it is in delaying a final resolution of this proceeding. In support of this argument, Ameritech Michigan stresses that the tactics employed by WorldCom, the Staff, and the Attorney General in appealing the ALJ's ruling evidence a lack of credibility.

Finally, Ameritech Michigan contends that, in the event that the Commission grants WorldCom's appeal and reverses the ALJ's ruling, the schedule proposed by WorldCom is not tenable. Rather, Ameritech Michigan maintains that the existing schedule will need to be revised in order to ensure that Ameritech Michigan has a reasonable opportunity to file supplemental testimony.

The Commission finds that Ameritech Michigan should be ordered to fully and completely respond to the questions contained in WOAM 0001 as soon as possible. On its face, WOAM 0001 appears to solicit a great deal of information pertinent to a number of different scenarios. However, the Commission is persuaded that all of the requested information is crucial to the development of a competitive marketplace for local telecommunications services. CLECs have frequently maintained that their entry into the local marketplace will be facilitated through use of the UNE-P. For that reason, a complete understanding of the capabilities of Ameritech Michigan's UNE-P

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<sup>5</sup> See, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order, CC Docket No. 98-147, \_\_\_\_\_ FCC Rcd \_\_\_\_\_ (December 9, 1999).

<sup>6</sup> In support of this contention, Ameritech Michigan cites pp. 17-22 of the prepared direct testimony of Carol Chapman in this proceeding.

offering is relevant to the issues presented by this proceeding and to Ameritech Michigan's Section 271 application. The Commission does not necessarily accept Ameritech Michigan's assertion that line splitting cannot be provided over the UNE-P product offering. Although the sheer volume of information requested by WOAM 0001 seems overwhelming, the importance of such information to the Commission's ultimate decision of these issues far outweighs any burden placed on Ameritech Michigan to respond to the discovery request.

For these reasons, the Commission finds that the ALJ's September 5, 2000 ruling should be reversed and that Ameritech Michigan should be ordered to fully and completely respond to WOAM 0001 in the manner requested by WorldCom.

The Commission remands this matter to the ALJ for further proceedings consistent with this order. The ALJ shall immediately consult with the parties in order to establish a reasonable deadline for Ameritech Michigan to respond to WOAM 0001 and, if necessary, shall adjust the remainder of the schedule.

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 application for leave to appeal filed by WorldCom should be granted.
- c. Ameritech Michigan should be ordered to fully and completely respond to WOAM 0001 as soon as possible.

d. This matter should be remanded to the ALJ for further proceedings consistent with this order.

THEREFORE, IT IS ORDERED that:

A. The application for leave to appeal filed by MCImetro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., (f/k/a MFS Intelnet of Michigan, Inc.), and Brooks Fiber Communications of Michigan, Inc., is granted.

B. Ameritech Michigan is ordered to fully and completely respond to discovery request WOAM 0001 by the deadline to be established by Administrative Law Judge Barbara A. Stump.

C. This matter is remanded to Administrative Law Judge Barbara A. Stump for further proceedings consistent with this order.

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

MICHIGAN PUBLIC SERVICE COMMISSION

( S E A L )

/s/ John G. Strand  
Chairman

By its action of September 18, 2000.

/s/ David A. Svanda  
Commissioner

/s/ Dorothy Wideman  
Its Executive Secretary

/s/ Robert B. Nelson  
Commissioner

d. This matter should be remanded to the ALJ for further proceedings consistent with this order.

THEREFORE, IT IS ORDERED that:

A. The application for leave to appeal filed by MCImetro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., (f/k/a MFS Intelnet of Michigan, Inc.), and Brooks Fiber Communications of Michigan, Inc., is granted.

B. Ameritech Michigan is ordered to fully and completely respond to discovery request WOAM 0001 by the deadline to be established by Administrative Law Judge Barbara A. Stump.

C. This matter is remanded to Administrative Law Judge Barbara A. Stump for further proceedings consistent with this order.

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

MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Suggested Minute:

“Adopt and issue order dated September 18, 2000 granting the application for leave to appeal filed by MCImetro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., (f/k/a MFS Intelnet of Michigan, Inc.), and Brooks Fiber Communications of Michigan, Inc., and ordering Ameritech Michigan to fully and completely answer certain discovery questions, as set forth in the order.”