

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)	
to consider AMERITECH MICHIGAN ’s compliance)	
with the competitive checklist in Section 271 of)	Case No. U-12320
the federal Telecommunications Act of 1996.)	
_____)	

At the March 19, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER ON REHEARING

On January 4, 2001, the Commission issued an order requiring Ameritech Michigan to implement its proposed Michigan 271 Amendment (M2A), as modified, and to provide new and existing combinations of unbundled network elements (UNEs).

On or before February 5, 2001, Ameritech Michigan; XO Michigan, Inc. (XO); MCImetro Access Transmission Services, Inc. (MCImetro or WorldCom); and the Competitive Local Exchange Carriers Association of Michigan, AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T), the Competitive Telecommunications Association, the Association of Communication Enterprises, and Long Distance of Michigan, Inc., (collectively, CLEC Association) filed petitions for rehearing. On February

21, 2001, AT&T, WorldCom,¹ the CLEC Association,² and Attorney General Jennifer M. Granholm (Attorney General) filed answers to Ameritech Michigan's petition for rehearing. On February 23, 2001, Ameritech Michigan filed an answer to the other petitions for rehearing.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

New versus Existing Combinations and Obligations Under Section 271 of the FTA

Ameritech Michigan argues that it cannot legally be required to provide "ordinarily combined" UNEs as existing combinations because the definition of existing combinations that the Commission adopted in the January 4, 2001 order is contrary to court decisions and orders of the Federal Communications Commission (FCC). Ameritech Michigan argues that although it is willing to provide combinations that it ordinarily combines for its own customers, some of those combinations that it believes the Commission

¹WorldCom's answer was filed on behalf of MCImetro as well as MCI WorldCom Communications and Brooks Fiber Communications of Michigan, Inc. References in this order to WorldCom denote both the petition for rehearing filed by MCImetro and the answer filed by all three companies.

²The CLEC Association's answer was filed on behalf of the same group of parties as its petition for rehearing, but excluding AT&T and including BRE Communications, LLC, d/b/a McLeodUSA. References to the CLEC Association denote both the petition and the answer.

defined as existing combinations are, in its opinion, new combinations, which it says it cannot be compelled to provide to competitive local exchange carriers (CLECs) or to offer pursuant to tariff. In addition, Ameritech Michigan continues to argue that it will not make the M2A available until the Commission determines that its offering is sufficient to comply with the combinations requirements of the federal Telecommunications Act of 1996 (FTA). Ameritech Michigan maintains that CLECs will be required to acknowledge this compliance as further delineated in the M2A.

The CLEC Association agrees with the “ordinarily combined” definition of existing combinations in the January 4, 2001 order, but it requests that the Commission specifically clarify the types of combinations that Ameritech Michigan must offer under that definition. The CLEC Association also requests that the M2A option to withdraw the UNE platform offering for business customers under certain circumstances be denied. WorldCom, XO, and the CLEC Association also argue that it is inappropriate for CLECs to waive rights regarding UNE combinations as they believe they must in order to purchase the combinations pursuant to Ameritech Michigan’s M2A. WorldCom and the CLEC Association further request that the Commission address the timing for Ameritech Michigan to offer combinations in compliance with the January 4, 2001 order.

The Attorney General opposes Ameritech Michigan’s petition for rehearing. She believes that a request for a determination of compliance with Section 271(c)(2)(B)(ii) of the competitive checklist of the FTA, 47 USC 271(c)(2)(B)(ii), is premature. She also maintains that the “ordinarily combined” definition adopted by the Commission is correct. The CLEC Association, AT&T, and WorldCom argue that Ameritech Michigan’s petition for rehearing fails to meet the standards set forth in Rule 403 and that it merely repeats arguments already addressed. In the CLEC Association’s opinion, the Commission has

not redefined existing combinations as Ameritech Michigan represents, but it instead rejected Ameritech Michigan's incorrect definition of the term. AT&T and WorldCom support the CLEC Association's view, and AT&T further argues that Ameritech Michigan's request to have the Commission reconsider a Section 271 compliance finding is not supported. WorldCom also argues that Ameritech Michigan must file the tariffs that the Commission has required and that Verizon North Inc v Strand, opinion of the United States District Court for the Western District of Michigan, decided Dec. 5, 2000 (File No. 5:98-CV-38), appeal filed, does not bar the Commission from obligating Ameritech Michigan to do so.

Ameritech Michigan responds that the CLECs' petitions for rehearing point out that the Commission's order is not limited to the provisioning of existing combinations and must therefore be rejected under the Verizon North decision. Similarly, in Ameritech Michigan's view, the court decision prevents the imposition of the tariffing requirements as well. Finally, Ameritech Michigan responds that modifications to the Section 271 waiver language of the M2A are not needed because the CLECs have misinterpreted what the waiver involves.

The Commission finds it unnecessary at this time to resolve the arguments regarding the precise demarcation point between new and existing combinations. The Commission notes that there is a wide range of combination offerings that the FCC has deemed to be compliant with the combinations requirements of Section 271 of the FTA.³ The scope of the product offerings that Ameritech Michigan will make available in total is initially not dependent upon whether the particular product is designated as a

³Verizon's combinations offerings in New York, for example, do not distinguish between new and existing combinations and are offered pursuant to both tariff and interconnection agreements. SBC's combinations offerings in Texas, on the other hand, are offered pursuant to interconnection agreements, and the availability and prices for these offerings differ during the contract life according to whether the offering is categorized as a new or existing combination. Both alternatives have been accepted by the FCC as complying with the combinations requirements of Section 271.

new or existing combination. In addition, in its petition for rehearing, Ameritech Michigan has significantly revised its pricing schedule and has now agreed to initially price all services that it defines as either new or existing combinations in compliance with this Commission's pricing determinations in Case No. U-11831, the most recent proceeding approving a comprehensive cost study for Ameritech Michigan. Pursuant to this commitment, Ameritech Michigan represents that both the recurring and nonrecurring charges for these offerings as well as the circumstances in which these charges are applied are in compliance with the Case No. U-11831 determinations. Ameritech Michigan's petition for rehearing at 5. There continues to be considerable dispute among the parties relating to the intent of FCC and court orders regarding the incumbent local exchange carriers' (ILECs) obligations to provide UNE combinations. Further, it is now anticipated that a number of additional determinations may be reached in the near future that may clarify the obligations of ILECs in this regard.⁴ Because the scope and price of the combinations offerings are not initially dependent upon their classification as new or existing, and because further guidance may become available prior to the time when these determinations affect the scope or price of available combinations offerings, the Commission adopts, for the present, Ameritech Michigan's revised proposal as consistent with the present combinations requirements of Section 271 of the FTA. Should further court decisions or FCC orders be issued on this subject prior to Ameritech Michigan's federal application for Section 271 authorization, this Commission will revisit these determinations. Neither this Commission nor the CLECs who agree to enter into an M2A agreement with Ameritech Michigan waive any rights to revisit these Section 271 product determinations should such circumstances arise. In addition, this

⁴These would include anticipated decisions of the United States Court of Appeals for the Sixth Circuit in Verizon North and the United States Supreme Court in Iowa Utilities Board v FCC, 219 F3d 744 (CA 8, 2000), cert granted __ US __; 121 S Ct 877-79; 148 L Ed 2d 788 (2001).

determination is made solely with regard to the scope of the product offering for combinations as approved here and subject to the revisions and considerations discussed below. Further determinations regarding the actual provisioning of these services, compliance with operations support systems (OSS) testing, and performance measurement results will be made at a future date as Ameritech Michigan has recognized, and the Commission, the CLECs, and other interested parties may revisit these matters when the time is appropriate.⁵ In addition, the Commission will require the following clarifications and changes to Ameritech Michigan's proposed M2A.

First, the M2A provides in part that the scope and prices of Ameritech Michigan's combinations offerings may begin to be altered in two years as permitted by changes in UNE and pricing requirements by that time. Sections X.2.5 and X.2.6 of the proposed M2A. The Commission requires that these criteria also specifically recognize that further Commission orders may be issued prior to that time clarifying the obligations of ILECs to provide UNE combinations including the precise demarcation point between new and existing combinations, and that changes to the scope of the product offerings may then be required. Should it become necessary, revisions to the term of the offerings may also be revisited at that time.

⁵Additionally, Ameritech Michigan has not sought a determination in this proceeding that its proposed prices comply with Section 251 of the FTA, 47 USC 251. Alexander Aff. dated Sept. 25, 2000, at 29.

Second, in addition to the specific tariffing proposed by Ameritech Michigan in this proceeding,⁶ the Commission will also require the tariffing of the complete M2As according to a modified procedure used in the past for access contracts.⁷ As permitted in certain circumstances under Section 202(b) of the Michigan Telecommunications Act, MCL 484.202(b); MSA 22.1469(202)(b), and Attachment A to the Commission's December 22, 1992 order in Case No. U-10064, Ameritech Michigan's tariff on UNE combinations shall generally delineate each M2A contract that it signs, specifying the CLEC signing the contract and, in general terms, summarizing the services, terms, conditions, prices, and duration of the M2A.⁸ Of course, complete, signed copies of the agreement will also be filed with the Commission in compliance with the requirements of Section 252 of the FTA, 47 USC 252.

Third, revisions to Sections 3 and 6 of the M2A shall be made to clearly specify the parameters as well as the limitations of the Section 271 compliance determination discussed above. Specifically, the Commission has found that Ameritech Michigan's combinations proposal complies with the scope of the product offering that today is required by Section 271 of the FTA. This issue may be revisited should

⁶This includes the continued tariffing of existing combinations as presently defined by Ameritech Michigan, tariffing of special access to enhanced extended loop (EEL) conversions (Alexander Aff. dated November 13, 2000, at 7) along with applicable prices that comply with this Commission's determinations in Case No. U-11831 and the FCC's determinations regarding non recurring charges for special access to EELs conversions, and tariffing of operator services, directory assistance, and shared transport offerings. Tariffs for the latter three services should comply with this Commission's determinations issued today in Case No. U-12622.

⁷It should be recognized that the filing of this tariff merely reflects the fact that interconnection services are regulated services pursuant to the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq. The degree to which the specific scope or price of the service is regulated is not determined by the filing of the tariff. For example, optional toll calling plans are tariffed services even though, for the most part, they are not required service offerings.

⁸This information should be similar to the type of information specified for special contracts in the Ameritech Operating Companies' Interstate Access Tariff F.C.C. No. 2, Section 12.

future court or FCC orders require. Neither the Commission nor the CLECs waive any right to address other issues regarding combinations in further Section 271 proceedings, including such things as the actual provisioning of combinations, OSS testing, and performance measurement results. Furthermore, CLECs may seek clarification of the terms of the M2A at any time as well as pursue these issues in pending arbitrations.⁹

Miscellaneous Issues

WorldCom repeats its request that the Commission grant it relief with respect to its CABS billing requirements. It also argues that the Commission should require that operator services and directory assistance (OS/DA) be provided at rates based on total service long run incremental costs. The CLEC Association similarly requests that the Commission grant its requested relief with regard to the pricing of resale services. Ameritech Michigan replies that these arguments should be rejected as nothing new is presented that would justify reversing the Commission's determinations on these issues.

The Commission denies the requests of WorldCom to address the issue of billing formats and the CLEC Association with regard to the pricing of resale services. No new arguments have been raised that would warrant further determinations by this Commission at this time. Arguments regarding OS/DA pricing are addressed in detail in an order issued today in Case No. U-12622, and the parties should refer to that order for the Commission's determinations on those issues.

⁹Other miscellaneous changes to the M2A as filed will also be required to reflect such things as the effective date of the amendment.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.;

MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. Ameritech Michigan should offer its proposed M2A as modified by this order within ten days of the date of this order.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan shall offer its proposed Michigan 271 Amendment as modified by this order within ten days of the date of this order.

B. Ameritech Michigan shall file tariffs in compliance with this order within ten days of the date of this order.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of March 19, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
to consider **AMERITECH MICHIGAN**’s compliance)
with the competitive checklist in Section 271 of)
the federal Telecommunications Act of 1996.)
_____)

Case No. U-12320

Suggested Minute:

“Adopt and issue order dated March 19, 2001 directing Ameritech Michigan, on rehearing, to modify and implement its proposed Michigan 271 Amendment for providing combinations of unbundled network elements, as set forth in the order.”