

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of ACCUTEL OF TEXAS, INC.,)	
d/b/a 1-800-4-A-PHONE's petition, pursuant to)	
47 USC 252(b), for arbitration of certain issues in)	Case No. U-13352
relation to an interconnection agreement with)	
AMERITECH MICHIGAN.)	
_____)	

At the July 23, 2002 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

OPINION AND ORDER

On April 8, 2002, AccuTel of Texas, Inc., d/b/a 1-800-4-A-Phone, (AccuTel) filed a petition requesting the Commission to arbitrate an interconnection agreement with Ameritech Michigan, pursuant to Section 252(b) of the Telecommunications Act of 1996, 47 USC 252(b). The petition identified four issues, all concerning nonrecurring charges related to the unbundled network element (UNE) platform. AccuTel proposed that it pay the same charges as those approved by the Indiana Utility Regulatory Commission.

An arbitration panel was appointed, consisting of Administrative Law Judge Barbara A. Stump and Commission Staff members Elizabeth Durbin and Pamela Seawright.

On May 3, 2002, Ameritech Michigan filed a response to the petition. On May 7, 2002, Ameritech Michigan filed the verified statement of Deborah Fuentes Niziolek. Ameritech

Michigan took the position that it already had Commission approved nonrecurring charges for UNEs, which should be used in this interconnection agreement.

On May 24, 2002, the parties each filed a Proposed Decision of the Arbitration Panel.

On June 11, 2002, the arbitration panel issued its Decision of the Arbitration Panel (DAP) in which it reviewed the issues presented and determined that Ameritech Michigan's position should be adopted on each issue. The DAP provided that any objections must be filed by June 21, 2002. No objections have been filed.

In the July 16, 1996 order in Case No. U-11134, the Commission established the procedures that would apply to interconnection arbitration cases and concluded that: "[u]nless the result would be clearly unreasonable or contrary to the public interest, the arbitration panel will limit its decision on each issue to selecting the position of one of the parties on that issue." *Id.*, p. 2. In the present case, the arbitration panel followed the prescribed procedure by choosing Ameritech Michigan's position on the issues presented.

However, the Commission concludes that Ameritech Michigan's position will lead to results that are contrary to the public interest because it is not consistent with the Commission's prior orders in Case No. U-11831. Ameritech Michigan proposes to add the nonrecurring charges for each UNE included in the UNE platform for the nonrecurring charge. This is contrary to the conclusions reached in the August 31, 2000 order in Case No. U-11831, in which the Commission stated:

The Commission concludes that whenever there is a migration, whether by resale, transfer to or between competitive local exchange carriers, or any other manner, the migration cost determined in the prior order applies and that charge is the only nonrecurring charge for the migration. On the other hand, a new installation involves more work, on average, than a migration, and the same charge is therefore not appropriate. However, neither is it appropriate, as Ameritech Michigan proposes, to add the nonrecurring charge for each UNE included in the

platform. Instead, the nonrecurring charge for one individual UNE is appropriate for the newly installed UNE combination.

Id., p. 10.

The Commission finds that to adopt Ameritech Michigan's position without modification would be contrary to the public interest in that it would effectively deny AccuTel the ability to compete in the Michigan market. Ameritech Michigan's representations that its position is consistent with the findings in Case No. U-11831 were misleading to AccuTel and to the arbitration panel. Although the Commission approved the prices for individual UNEs that Ameritech Michigan proposed in the prior case, the Commission rejected Ameritech Michigan's proposal to impose a charge equaling the sum of the individual UNE nonrecurring charges for installation of the UNE platform. Therefore, the Commission concludes that neither party's position should be adopted and the DAP should be modified to require that the pricing of the interconnection agreement be consistent with the Commission's orders in Case No. U-11831. With that modification, the Commission concludes that the DAP should be adopted.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 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.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The Decision of the Arbitration Panel, as modified by this order, should be adopted.
- c. Within 10 days of the date of this order, the parties should submit a signed interconnection agreement consistent with the Decision of the Arbitration Panel, as modified by this order.

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel, as modified by this order, is adopted.

B. Within 10 days of the date of this order the parties shall submit a signed interconnection agreement consistent with the Decision of the Arbitration Panel, as modified by this order.

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

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 July 23, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

THEREFORE, IT IS ORDERED that:

A. The Decision of the Arbitration Panel, as modified by this order, is adopted.

B. Within 10 days of the date of this order the parties shall submit a signed interconnection agreement consistent with the Decision of the Arbitration Panel, as modified by this order.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

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By its action of July 23, 2002.

Its Executive Secretary

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Case No. U-13352

Suggested Minute:

“Adopt and issue order dated July 23, 2002 adopting, with modification, the Decision of the Arbitration Panel and directing the parties to file a signed interconnection agreement, as set forth in the order.”