

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of **AMERITECH MICHIGAN's**)
submission on performance measures, reporting,)
and benchmarks, pursuant to the October 2, 1998)
order in Case No. U-11654.)
_____)

Case No. U-11830

At the October 23, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

Through its actions in this docket dating back over several years, the Commission has approved performance measurements, standards, procedures, and remedies for SBC Michigan (SBC), which is an incumbent local exchange carrier (ILEC) within the meaning of the federal Telecommunications Act of 1996, 47 USC 151 et seq. In its May 27, 1999 order in this proceeding, the Commission rejected a request by SBC to impose similar obligations on competitive local exchange carriers (CLECs). In so doing, the Commission stated:

At this juncture, the Commission is not persuaded that performance measurement should or may be required for other than ILECs that are bound by the obligations imposed by 47 USC 251(c) and MCL 484.2305; MSA 22.1469(305). The purpose of adopting performance measurements and standards is to provide a basis upon which the Commission may determine whether the ILECs that are subject to those sections have met their obligations to provide interconnection, resold services, and unbundled network elements in a nondiscriminatory manner. As noted earlier, this task is necessary because ILECs have both the incentive and the ability to impair a CLEC's ability to compete by providing less than parity in service and products

offered to competing providers. CLECs, on the other hand, do not occupy a position in which they might easily impair the development of a competitive market. The Commission therefore concludes that performance measurements adopted in this order should not be imposed at this time on those providers that are not bound by 47 USC 251(c).

May 27, 1999 order, Case No. U-11830, p. 39.

In its most recent annual report on the status of competition in telecommunications service in Michigan, which was issued on June 16, 2003, the Commission noted the significant growth of competition in the basic local exchange market. In 1999, 120 CLECs possessed licenses from the Commission. That number grew to 219 in 2002. The data show that the number of lines provided by CLECs has risen from 268,385 (4% of total lines in Michigan) in 1999 to 1,447,176 (21.7% of total lines in Michigan) in 2002. The geographic areas now covered by CLEC lines encompass the Detroit, Grand Rapids, Lansing, and Saginaw areas, with the majority of the competitive lines being provided in the Detroit vicinity. Virtually all of the CLEC activity is in geographic areas served by SBC. The data show that, as a percent of SBC's market, CLEC market share is approximately 26% of SBC lines.

Section 305 of Michigan Telecommunication Act (MTA), MCL 484.2305, imposes nondiscrimination obligations on all providers of basic local exchange service, without regard to whether the provider is an ILEC or a CLEC. Moreover, a customer's ability to change providers should not be influenced by the identity of the provider, or processes to change among providers.

The Commission finds it appropriate to provide that the parties to this proceeding engage in collaborative discussions in order to develop a proposal for the Commission's consideration. The previous collaborative discussions in this docket have, for the most part, resulted in agreement on additions, modifications, and deletions to the standards and procedures for SBC. The Commission has often commended the parties on their ability to reach a consensus on difficult issues. The

Commission finds that this track record likely means the parties will be able to work out differences and present the Commission with recommendations on whether performance measurements, standards, procedures, and possible remedies should apply to CLECs. Secondly, if parties recommend that performance measurements should apply, they should also address and identify the proper measurements and standards. As is the case with the change process for SBC, the Commission stands ready to decide any matters that might be disputed. The same dispute resolution process that has worked well with regard to SBC should be extended to CLECs.

Therefore, the Commission directs the parties during the current six-month review process to address the efficacy of developing baseline measurements and procedures for CLECs and possible remedies for performance failures.

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, 1999 AC, R 460.17101 et seq.

b. The public interest and the growth of competition in the basic local exchange market in SBC's service territory justify the commencement of a collaborative process devoted to examine the efficacy of developing performance measurements, standards, procedures, and remedies for CLECs.

THEREFORE, IT IS ORDERED that a collaborative process devoted to consideration of performance measurements and remedies for competitive local exchange carriers operating in SBC Michigan's service territory shall be conducted according to the procedures described in this order.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of October 23, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated October 23, 2003 commencing a collaborative process to consider adoption of performance measurements and remedies for competitive local exchange carriers operating in SBC Michigan’s service territory, as set forth in the order.”