STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of **SBC 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 May 28, 2003 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 May 27, 1999, the Commission issued an order adopting an initial set of performance measures and benchmarks to be used in reviewing the compliance of Ameritech Michigan, now known as SBC Ameritech Michigan (SBC), with its obligation to provide nondiscriminatory access to its facilities and services to competitive local exchange carriers (CLECs). The Commission subsequently modified those measures and benchmarks on a number of occasions.

On April 17, 2001, the Commission adopted an enforcement mechanism in the form of "a remedy plan that complies with the [Federal Communications Commission's] standards, adequately compensates the CLECs for Ameritech Michigan's failure to meet the approved performance standards, and sufficiently motivates Ameritech Michigan to end any discriminatory conduct that impedes the development of competition in Michigan." April 17, 2001 order, Case No. U-11830, p. 5.

On July 25, 2001, the Commission modified a portion of the remedy plan, the multiplier that the Commission had determined should apply to SBC's proposed remedies. In suspending the multiplier, the Commission stated:

> [T]he Commission will suspend the multiplier for now in order to test whether the remedies without the multiplier are sufficient to motivate improved compliance with the performance measures and to compensate the CLECs. The Commission and the Staff will monitor Ameritech Michigan's performance during the next three months. At the end of that period, the Commission will issue a follow-up order, after a hearing if necessary, imposing a multiplier (which may be two or another number) if it finds that necessary to achieve the purposes of the remedy plan. Ameritech Michigan thus has an opportunity in the next three months to demonstrate that a further escalation of the remedies is not necessary to achieve the purposes of the plan and is not warranted in light of its improved performance.

July 25, 2001 order, Case No. U-11830, p. 3.

On February 25, 2002, after five months of remedy payments had been issued to CLECs and three months of payments had been paid to the State of Michigan under the terms of the remedy plan, the Commission issued an order commencing a review of the suspended multiplier. The Commission directed SBC to file a report discussing remedy payments made to date, along with SBC's position regarding the suspension of the multiplier. The report was also to include a discussion of the number of CLECs receiving remedy payments for Michigan operations (distinguishing between remedy payments made pursuant to the Commission-approved remedy plan and any other remedy plan), comparisons to estimated payments as discussed in SBC's June 7, 2001 motion for rehearing, and comparisons to remedy plan payments in other states, if available. The order provided that interested parties could file responses. The Commission concluded that, after reviewing the report and responses, it would issue a further order if it deemed it necessary.

On March 18, 2002, SBC reported the amounts paid to the CLECs and the state from August through December 2001 pursuant to the Commission-approved remedy plan. It also reported the payments made pursuant to other remedy plans, including the 13-state generic remedy plan. As for comparing its estimate of February 2001 payments to actual results, it said that a direct comparison was not possible because of when the remedy plan went into effect. In any event, it said that the estimate was higher than the actual amount because only 10, not 55, CLECs were participating in the remedy plan and because its performance had significantly improved. As for comparisons with payments in other states, it said that the amount per CLEC in Michigan is higher than elsewhere, even without the multiplier. It also concluded that it was not necessary for the Commission to reinstate the multiplier because the remedy plan provides for an escalation in remedy payments for repeated substandard performance without the multiplier and because the payments without a multiplier provide sufficient incentives.

On April 1, 2002, a group of CLECs jointly filed responses that, among other things, contained a recommendation that the Commission eliminate the "K table[1]." These parties argued that that the K table excludes from one-half to two-thirds of the remedies otherwise payable to them. They said that Wisconsin and Indiana had both recognized the competitively harmful nature of the table and refused to adopt it, and that Illinois was headed in the same direction. They further argued that the level of payments would not be sufficient to motivate SBC to improve its wholesale service quality.

In an order issued on March 26, 2003, the Commission concluded that it was necessary and appropriate to increase the incentives for SBC to provide nondiscriminatory access to its facilities and services and that the most effective modification to the remedy plan for that purpose would be

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[1]The K table is one type of statistical technique employed to mitigate the number of errors that occur due to use of statistical testing methods.

elimination of the K table. With that change, the Commission concluded that it should not reinstate the multiplier at this time.

On April 25, 2003, SBC filed a petition for rehearing of the Commission's March 26, 2003 order. In so doing, SBC insisted that, among other things, the Commission's March 26, 2003 order should be set aside because it constituted a denial of SBC's due process rights. According to SBC, it received no notice that the issue of the K table would be considered by the Commission.

On May 16, a joint response to SBC's petition for rehearing was received from AT&T Communications of Michigan, Inc., and TCG Detroit (collectively, AT&T) and MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc., (collectively, MCI). Additionally, Attorney General Michael A. Cox (Attorney General) filed his own response in opposition to the petition for rehearing. These parties maintain that SBC should have been aware that the issue of the K table was "on the table" following the Commission's April 17, 2001 order.

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 rehearing.

The Commission is persuaded that, before addressing the merits of the arguments raised on rehearing, it should solicit further comments from the parties and other interested persons regarding the subject matter of this proceeding. The Commission is taking this unusual step to

ensure that all persons who may be affected by the outcome of this proceeding will have a full and complete opportunity to be heard on the issues to be resolved by the Commission. To this end, the Commission directs that additional comments may be filed in this docket by June 27, 2003. Replies to those comments shall be filed by July 18, 2003. Finally, the Commission reminds SBC, AT&T, MCI, and the Attorney General that because their April 25 and May 16, 2003 filings are already contained in the record, there is no need for the arguments and proposals addressed in those pleadings to be repeated in the additional or reply comments.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The parties to this proceeding and other interested persons should be afforded an opportunity to file additional comments by June 27, 2003.

c. Reply comments should be filed by July 18, 2003.

THEREFORE, IT IS ORDERED that:

A. The parties to this proceeding and other interested persons shall be afforded an opportunity to file additional comments by June 27, 2003.

B. Reply comments shall be filed by July 18, 2003.

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.

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 May 28, 2003.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of May 28, 2003.

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Its Executive Secretary

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Suggested Minute:

> "Adopt and issue order dated May 28, 2003 allowing additional comments to be filed by June 27, 2003 and reply comments to be filed by July 18, 2003, as set forth in the order."