

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)	
a shared transport cost study and resolution)	Case No. U-12622
of disputed issues related to shared transport.)	
_____)	

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

OPINION AND ORDER

History of Proceedings

On September 18, 2000, Ameritech Michigan filed an application for approval of a shared transport cost study and to address related issues that Ameritech Michigan and the other parties to the collaborative process in Case No. U-12320 were unable to resolve.¹

The focus of the application is a new product offering that Ameritech Michigan refers to as long-term unbundled local switching with shared transport (ULS-ST). ULS-ST combines two unbundled network elements (UNEs): local switching, which provides access to the features, functions, and capabilities of the

¹Case No. U-12320 is the docket established to examine Ameritech Michigan's compliance with Section 271 of the federal Telecommunications Act of 1996, 47 USC 271, which specifies the conditions for Ameritech Michigan to obtain authority to provide in-region interLATA service.

end office switch, and shared transport, which provides access to the local transmission facilities that connect Ameritech Michigan's network of end office and tandem switches. As a functional matter, it is not possible to provide shared transport apart from unbundled local switching. Ameritech Michigan explains that it developed long-term ULS-ST to replace an interim arrangement that had been in effect for one year and that both arrangements were necessary to comply with a condition of the Federal Communications Commission's (FCC) approval of the merger with SBC Communications, Inc. (SBC), which is now Ameritech Michigan's parent company. Applications of Ameritech Corp and SBC Communications, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, 14 FCCR 14712 (1999) (Merger Order). Ameritech Michigan also explains that it is proposing the ULS-ST tariff in this case to comply with checklist requirements pertaining to UNEs in Case No. U-12320.

At a prehearing conference on October 9, 2000, Administrative Law Judge George Schankler (ALJ) granted leave to intervene to Z-Tel Communications, Inc. (Z-Tel), MCImetro Access Transmission Service, Inc. (WorldCom), Attorney General Jennifer M. Granholm (Attorney General), AT&T Communications of Michigan, Inc., and TCG Detroit (collectively, AT&T), BRE Communications, LLC, d/b/a McLeodUSA, the Competitive Local Exchange Carriers Association of Michigan, CoreComm Michigan, Inc. (CoreComm), Global Crossing Telemanagement, Inc., Long Distance of Michigan, Inc., and Sprint Communications Company L.P. The Commission Staff (Staff) also appeared and participated.

The ALJ conducted evidentiary hearings on December 7, 8, and 11, 2000. Thereafter, AT&T, Ameritech Michigan, the Attorney General, CoreComm, the Staff, Z-Tel, and WorldCom filed briefs, and the same parties, except for the Staff and Z-Tel, filed reply briefs.

On January 4, 2001, the Commission issued an order granting an application by CoreComm for leave to appeal the ALJ's ruling denying a motion to introduce supplemental testimony and reopened the record to permit the testimony to be cross-examined. On January 19, 2001, the ALJ conducted a hearing to comply with the Commission's order. Thereafter, CoreComm and AT&T, collectively, and Ameritech Michigan filed supplemental briefs.

On January 30, 2001, the ALJ issued a Proposal for Decision (PFD). On February 12, 2001, Ameritech Michigan, WorldCom, and AT&T filed exceptions. On February 20, 2001, Ameritech Michigan, WorldCom, AT&T, CoreComm, Z-Tel, the Attorney General, and the Staff filed replies to exceptions.

Cost Study

The PFD recommends approval of Ameritech Michigan's ULS-ST cost study as filed. The ALJ rejected WorldCom's claims regarding an excessive non-conversation time assumption and the calculation of trunk investment. WorldCom excepts to both determinations.

In addressing non-conversation time, WorldCom states that the cost study effectively assumes that 1.4 minutes of each call represents non-billable usage of the telephone network. As an example, WorldCom notes that non-conversation time includes the period when someone picks up a telephone receiver to make a voice call, but prior to the call being picked up on the other end. WorldCom suggests

that 1.4 minutes of non-conversation time for a typical call is implausible, given that few persons would wait that long for the called party to pick up the telephone.

In any event, WorldCom says, the purpose of the assumption is to compute the setup component of the charges used to recover the costs. WorldCom suggests that adopting its position that switching costs do not vary with usage and should be recovered in a flat or nearly flat port charge would automatically correct the distortion caused by non-conversation time.

In reply, Ameritech Michigan argues that it is improper to assume that the wait before someone picks up the telephone accounts for all non-conversation time. Ameritech Michigan says that non-conversation time also includes calls producing busy signals as well as any time someone obtains a dial tone without completing a call. Ameritech Michigan claims that those actions use the network and incur costs. Although Ameritech Michigan concedes that the assumption affects the costs allocated to the setup charge, it adds that the total investment recovered through the combination of setup and usage charges does not vary.

Ameritech Michigan notes that WorldCom did not propose a cost study adjustment based on the non-conversation time assumption. Ameritech Michigan suggests that WorldCom's real purpose was to revive its argument regarding a flat rate structure, which the ALJ excluded from this case when he struck the testimony of the WorldCom witness.

As noted by the ALJ, the cost study uses non-conversation time in the context of a cost study methodology approved in Case No. U-11831. The Commission finds nothing improper with Ameritech Michigan's consistent use of that methodology in this case. Moreover, it is reasonable to use the non-

conversation time assumption to reflect the costs that Ameritech Michigan incurs for the non-billable usage of its network.

As a related matter, on December 13, 2000, WorldCom and AT&T filed applications for leave to appeal the ALJ's decision to strike their testimony regarding the rate structure of unbundled local switching. The ALJ had ruled that the testimony duplicated issues that the Commission had already decided in Case No. U-11831, which approved comprehensive cost studies covering Ameritech Michigan's services and UNEs.

In the November 16, 1999 order in Case No. U-11831, at 16-17, the Commission evaluated the rate structure for unbundled local switching and, as a result, reallocated costs that had been recovered in usage charges. The Commission agrees with the ALJ that it is neither necessary nor appropriate to revisit the rate structure in the context of another cost study limited in scope to Ameritech Michigan's reconfiguration of unbundled local switching and shared transport as a ULS-ST package. This is consistent with the permissible scope of cost studies for new services set forth in the May 3, 2000 order in Case No. U-11831, at 13, in which the Commission directed Ameritech Michigan to "use the data and costs that were used and approved in this proceeding." The Commission affirms the ALJ's ruling striking the testimony.

In its exceptions, WorldCom also argues that the ALJ erred in accepting Ameritech Michigan's methodology for computing trunk port investment, which used the number of lines served by the trunks as an input that determines trunk capacity investment. WorldCom argues that the most influential factor for trunk investment is the minutes of interoffice usage, not the line count.

Ameritech Michigan states that end-office trunk investment is in fact usage-sensitive and is a function of three variables: interoffice usage, line count, and trunk count. Ameritech Michigan further explains that there is a direct correlation between usage and line count; i.e., usage increases as lines are added. Ameritech Michigan claims that its methodology is more sophisticated because it factors all of the variables.

The Commission finds that Ameritech Michigan's methodology for calculating trunk investment is reasonable. The record does not demonstrate that line counts are the only variable that drives trunk investment or that adopting WorldCom's approach would be an improvement over Ameritech Michigan's.

WorldCom argues that the ALJ did not impose the burden of proof on Ameritech Michigan. However, the record indicates that Ameritech Michigan met its burden of persuasion with respect to the cost study and developed an adequate record. None of the issues can be resolved on the basis of a failure to meet the burden of proof.

The Commission finds that Ameritech Michigan's ULS-ST cost study should be approved. The Commission further approves the rates resulting from the study that are set forth in the public version of Exhibit A-8. Because modifications to the study are not required, there is no need to address how Ameritech Michigan should make a compliance filing for the study.

IntraLATA Toll Traffic

The ALJ recommended that Ameritech Michigan be required to make its shared transport facilities available for competitive local exchange carriers (CLECs) to transport intraLATA calls to points beyond Ameritech Michigan's local calling areas. Ameritech Michigan had argued that when a CLEC's retail

customer makes an intraLATA toll call, the CLEC's use of shared transport facilities should be restricted to providing toll access; i.e., the CLEC must route the call to the nearest point of presence maintained by the customer's presubscribed interexchange carrier. At that point, the call would be handed off from the Ameritech Michigan network to the interexchange carrier's (IXC) toll network. However, the ALJ rejected Ameritech Michigan's attempt to impose this restriction and determined instead that Ameritech Michigan should make its interoffice transmission facilities available to provide an end-to-end path to the call destination that bypasses an IXC's facilities.

The ALJ found that the end-to-end use of shared transport for intraLATA calling is technically feasible, notwithstanding Ameritech Michigan's objections. He noted that Southwestern Bell Telephone Company (Southwestern Bell or SWBT), an SBC operating company, has been providing this type of access to the shared network in Texas pursuant to an arbitration award issued under the authority of the Public Utility Commission of Texas (Texas PUC)² and that this Commission reached the same result in the November 20, 2000 order in Case No. U-12465, which arbitrated an interconnection agreement between Ameritech Michigan and AT&T. The ALJ also found that Ameritech Michigan had already conceded the issue in an exchange of e-mails during its interconnection negotiations with CoreComm.

In its exceptions, Ameritech Michigan argues that the ALJ's recommendation is inconsistent with federal law. Ameritech Michigan attributes the FCC's silence on the issue to the fact that it has yet to apply the "necessary" and "impair" analysis to shared transport within a toll context, as required by 47 USC 251(d)(2). Ameritech Michigan contends that the focus of the federal policy implicated by shared transport and UNEs generally is local markets, and not competition in toll markets.

²Birch Telecom of Texas, Ltd, LLP v Southwestern Bell Tel Co, arbitration award (Texas PUC Dockets Nos. 20745, 20755, Nov. 4, 1999).

With reference to the FCC's Merger Order, Ameritech Michigan contends that condition 56 of the merger, which requires it to offer shared transport under terms equivalent to that offered in Texas prior to August 27, 1999, does not apply in this case. Ameritech Michigan explains that SBC was not offering to route CLEC toll traffic in Texas on a voluntary basis, but that SBC implemented the shared transport arrangement under the compulsion of the Texas arbitration award, which postdates August 27, 1999 in any event. Ameritech Michigan also argues that merger condition 43 provides that the Texas arbitration award is not portable to Michigan. Condition 43 states in part:

This Paragraph shall not impose any obligation on SBC/Ameritech to make available to a requesting telecommunications carrier any terms for interconnection arrangements or UNEs that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. § 252, or the results of negotiations with a state commission or telecommunications carrier outside of the negotiation procedures of 47 U.S.C. § 252(a)(1).³

Ameritech Michigan also claims that there are technical reasons to restrict the use of shared transport against end-to-end routing of intraLATA toll calls. Ameritech Michigan explains that the routing tables located at its end office switches use the carrier identification code (CIC) of each customer's presubscribed IXC to route a toll call to the IXC's point of presence. To avoid routing the call to an IXC, Ameritech Michigan says, one of two things must happen: either the CLEC must have its own CIC to identify those calls, or the CLEC must share the use of Ameritech Michigan's CIC. As for the first

³The source of the quotation of condition 43 used in this order is the FCC's website at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99279.html. Ameritech Michigan quotes the excerpt by replacing the first five words ("This Paragraph shall not impose") with the phrase "[t]here shall not be imposed." Ameritech Michigan's exceptions at 6. Without regard to whether it was inadvertent, the misquotation is highly misleading in the context of the argument that Ameritech Michigan is attempting to make.

option, Ameritech Michigan claims that assigning new CICs would require it to modify the routing table, which would be inconsistent with the FCC requirement to provide ULS-ST through the incumbent local exchange carrier's (ILEC) existing routing tables. Ameritech Michigan further claims that sharing its own CIC is not a viable option because it would be unable to distinguish between its and the CLEC's traffic for billing purposes.

Ameritech Michigan claims that the e-mail message that the ALJ found to be a concession by Ameritech Michigan that it would allow CoreComm to carry intraLATA toll calls, end to end, over its shared transport facilities was taken out of context. Ameritech Michigan says that the e-mail does not concede the position that it is taking in this case.

AT&T and CoreComm argue that Ameritech Michigan misstates federal law. They contend that the FCC did apply the statutory "impair" analysis in finding that a failure to provide shared transport as a UNE would impair the ability of a requesting carrier to use unbundled local switching. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCCR 3696, 3862-66 (1999), at paras. 369-79 (UNE Remand Order).⁴ They argue that the FCC has not imposed restrictions based upon the local calling area and suggest that Ameritech Michigan is attempting to create a distinction between local and toll calling that does not exist in federal UNE requirements. According to AT&T and Z-Tel, an FCC rule, 47 CFR 51.309, summarizes the FCC's approach:

⁴The FCC issued this order addressing statutory unbundling requirements on remand from AT&T Corp v Iowa Utilities Board, 525 US 366; 119 S Ct 721; 142 L Ed 2d 834 (1999).

An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

CoreComm says that federal law requires Ameritech Michigan to make its shared transport facilities available to CLECs in the same manner that Ameritech Michigan itself uses those facilities to route both local and toll intraLATA calling. Z-Tel says that end-to-end routing would enable CLECs to avoid unnecessary costs when competing with Ameritech Michigan.

CoreComm and the Staff argue that condition 56 of the SBC/Ameritech Merger Order obligates Ameritech Michigan to make shared transport available for intraLATA toll traffic. CoreComm maintains that the regulatory compulsion behind the decision to offer shared transport in Texas does not matter under condition 56. CoreComm says that the Texas arbitration award documents that Southwestern Bell was in fact providing shared transport for intraLATA toll calling in Texas prior to August 27, 1999 and that it orders the company to continue to do so. CoreComm notes that condition 43 addresses the portability of interconnection arrangements to other states, but that it does not alter the obligation to provide shared transport in condition 56, which is independent of obligations created through interconnection agreements.

AT&T finds the Texas arbitration award significant, less for its legal effect, but more as corroboration of the technical feasibility of using shared transport for intraLATA traffic. CoreComm agrees that there is no reason why Ameritech Michigan cannot provide the type of shared transport that Southwestern Bell provides in Texas. AT&T, CoreComm, and the Staff argue that the Ameritech Michigan e-mail sent to CoreComm stating that Ameritech Michigan “will process intraLATA calls over shared transport

at the shared rate” provides further corroboration that Ameritech Michigan does have this functional capability.

AT&T and CoreComm say that Ameritech Michigan’s claims of adverse technical effects arising from the unrestricted use of shared transport were vague, unclear, and implausible. AT&T doubts that assigning new CICs would require modifications to the switch or the routing table or that sharing Ameritech Michigan’s CIC would create billing problems. The Staff and CoreComm say that Ameritech Michigan is capable of sharing its CIC, as is the practice in Texas. CoreComm says that Ameritech Michigan is incorrect to interpret FCC rulings as relieving ILECs of a duty to provide customized routing.

The Commission reaffirms its prior decision in Case No. U-12465 to require Ameritech Michigan to make its shared transmission facilities available for routing intraLATA traffic, including traffic that would be rated as toll calling under Ameritech Michigan’s tariffs. The Commission further finds that this outcome is mandated by the Merger Order. As noted by several of the CLEC parties and the Staff, condition 56 of the SBC/Ameritech merger requires Ameritech Michigan to “offer shared transport . . . under terms and conditions, other than rate structure and price, that are substantially similar to (or more favorable than) the most favorable terms SBC/Ameritech offers to telecommunications carriers in Texas as of August 27, 1999.” The Texas arbitration contains the finding that Southwestern Bell, an SBC operating company, was providing shared transport for intraLATA toll calling based on a record created prior to August 27, 1999. The Commission also agrees with CoreComm that condition 43 does not provide Ameritech Michigan with grounds for avoiding its obligations in condition 56. The portability

limitation in condition 43 affects obligations created through the arbitration process. It does not affect the shared transport obligation specifically and separately imposed by condition 56.

As the CLECs point out, the FCC's UNE Remand Order did apply the statutory "impair" test in concluding that ILECs must provide shared transport, although it did not consider specific restrictions based on local calling areas. The FCC's promulgation of 47 CFR 51.309 suggests that a restriction based on local calling would not be proper under federal law.

Moreover, the FCC's recent decision to grant Section 271 authorization in Kansas and Oklahoma noted with approval SBC's commitment to provide LATA-wide shared transport in the manner that Ameritech Michigan now seeks to withhold in Michigan. Joint Application by SBC Communications Inc, Southwestern Bell Tel Co, and Southwestern Bell Communications Services, Inc, d/b/a Southwestern Bell Long Distance, for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29 (rel'd Jan. 22, 2001), at para.174 (Kansas/Oklahoma 271 Order). SBC had memorialized that commitment in the K2A, O2A, and T2A standardized interconnection agreements it offers in Kansas, Oklahoma, and Texas. Those agreements are the model for comparable provisions in the M2A that the Commission is approving with modifications in orders issued on January 4, 2001 and today in Case No. U-12320.

SBC affirmed to the FCC that it would fulfill its obligations to provide UNEs for intraLATA calling as set forth in the Texas arbitration. In responding to a claim by Z-Tel that SWBT was unlawfully restricting CLECs from using UNEs to provide intraLATA toll service, SBC made the following representations:

[T]he Texas PUC has ordered SWBT to provide competitors with the ability to use UNEs to provide intraLATA toll service. [Cited sections] of the O2A and K2A UNE Appendices are exactly the same as those sections in the T2A UNE Appendix SBC will interpret those sections of the O2A and K2A in exactly the same fashion that it was ordered to in the Texas PUC's arbitration award in Docket Numbers 20745 and 20755 (Award issued 11/4/99; Commission order 12/1/99). Thus, Z-Tel does have the ability to use UNEs to provide intraLATA toll service in Kansas and Oklahoma using the O2A and K2A, either in their entirety or by invoking the Most Favored Nation (MFN) clause

Letter from Edwardo Rodriguez, Jr., Director-Federal Regulatory, SBC, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-217 (filed Dec. 22, 2000), cited in the Kansas/Oklahoma 271 Order at para. 174 & nn.499-500. The FCC accepted those representations as follows:

Because we find that the O2A and K2A, by its terms, do not restrict the use of [the UNE platform or UNE-P] to provide intraLATA toll service in Kansas and Oklahoma, and because we rely on SWBT's commitment to allow competing carriers to use UNE-P to provide interLATA toll service in Oklahoma and Kansas, we reject Z-Tel's claim.

Kansas/Oklahoma 271 Order at para. 174. This finding supported the FCC's primary determination that SBC had met the checklist requirement relating to UNE combinations.

In addition, the Commission's rejection of Ameritech Michigan's proposal to restrict how CLECs use shared transport for intraLATA calling rests on authority provided by the Michigan Telecommunications Act (MTA). See MCL 484.2201; MSA 22.1469(201). The Commission finds that the proposed restriction would withhold from the CLECs a network capability that is available to Ameritech Michigan in providing service to retail customers. This form of discrimination benefits Ameritech Michigan's intraLATA toll business and impedes intraLATA competition. Because it may interfere with the CLECs' efforts to develop innovative local calling plans or market packages of local and toll calling, it may also impede local competition directly. In the absence of a compelling justification, it is unreasonable.

Ameritech Michigan has failed to present any substantial technical justification for the restriction. The fact that another SBC operating company is providing shared transport for intraLATA toll calling in Texas undermines its position. Although Ameritech Michigan asserted that sharing its own CIC would interfere with billing, it has not made a cogent record showing of technical obstacles that cannot be fixed. The difficulty that purportedly prevents Ameritech Michigan from segregating CLECs' intraLATA traffic for billing purposes is unclear. However, Ameritech Michigan is willing to make system modifications that would prevent its network from carrying CLECs' intraLATA traffic to a non-local destination. Although not dispositive of the issue, the admission in an e-mail sent by an Ameritech Michigan employee is further evidence of its system's ability to carry intraLATA toll calls in the same manner for all carriers.

Ameritech Michigan's reliance on FCC requirements as a basis for not providing customized routing is not well placed. To support its position, Ameritech Michigan cited the FCC's order in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCCR 12460 (1997) (Third Reconsideration Order). However, that order did not foreclose CLECs from requesting alternatives to overcome the operating limitations of ILEC routing tables, but, rather, it rejected an attempt by the Ameritech Operating Companies to deny CLECs any and all access to those tables on proprietary grounds. The Third Reconsideration Order further notes that ILECs must make customized routing available upon request when it is technically feasible.

The Commission need not decide which of the two approaches that Ameritech Michigan outlined for routing CLECs' intraLATA traffic is more feasible. On this record, it is sufficient to find that providing

shared transport for intraLATA traffic without local calling restrictions is itself technically feasible.

However, the Commission further finds that Ameritech Michigan may not implement system modifications that make shared transport more burdensome to use or impose additional costs to use it on an intraLATA basis.

Ameritech Michigan requests that the Commission consider two additional matters if it requires unrestricted intraLATA calling. First, Ameritech Michigan says, consistent with prior Commission and FCC decisions, the Commission must require the toll customer to be a basic local exchange customer of the CLEC that is providing the retail toll service. Because this question was not developed on the record or briefed in detail, the Commission will not address it in this order.

Second, Ameritech Michigan says that its cost study now requires revision, as the study it submitted determines only the cost of local calling and does not reflect the increased usage of tandem switches and increased mileage associated with toll calling.

AT&T, WorldCom, CoreComm, and the Staff oppose further revisions to the study on this ground. AT&T and CoreComm say that there is no evidence showing that the current study understates the shared transport costs associated with toll calling. CoreComm claims that Ameritech Michigan's original proposal to route all intraLATA toll calling to an IXC would actually increase tandem switching. The Staff says that Ameritech Michigan's shared transport rates are comparable to the rates that Southwestern Bell charges in Texas. WorldCom says that the burden of proof regarding the cost study belonged to Ameritech Michigan. AT&T, WorldCom, CoreComm, and the Staff contend that Ameritech Michigan

has had ample opportunity to devise an appropriate cost study and should not be permitted to rework the study more to its liking.

The record in the present case does not provide a basis for finding that there would be a material cost effect if the study were to undergo revision. In any event, Ameritech Michigan was aware that the issue of using shared transport for intraLATA toll calling would be decided and could have taken that issue into account when it developed its study, but it did not. There is no reason to prolong this case with further cost study revisions.

If Ameritech Michigan can demonstrate that reflecting LATA-wide calling patterns in the tandem switching and transport mileage inputs of its current cost studies, as approved in Case No. U-11831 and this case, would in fact have a material effect on ULS-ST costs, it may file an application to approve a modified ULS-ST cost study within 30 days. However, the modifications must be limited to the cost effects of non-local LATA-wide calling on shared transport, and Ameritech Michigan may not change the cost assumptions or study methodology in other respects that differ from those approved in Case No. U-11831 and this case. Pending Commission action on an application by Ameritech Michigan, Ameritech Michigan must proceed to implement immediately the rates, terms, and conditions of ULS-ST that are approved in this order. An application to approve a modified ULS-ST cost study that fails to demonstrate a substantial basis for making a material modification to the cost findings of this order may be subject to sanctions under MCL 484.2209; MSA 22.1469(209).

Operator Services and Directory Assistance

In the UNE Remand Order, the FCC determined that if an ILEC provides customized routing that enables CLECs to obtain access to competitive operator services and directory assistance (OS/DA), the ILEC would no longer be required to provide unbundled access to its own OS/DA services.⁵ 15 FCCR at 3890-904, paras. 438-64. The FCC found that there was a wholesale market providing competitive alternatives to ILECs' own OS/DA services and that many CLECs were self-providing their OS/DA or were routing OS/DA calls to third-party OS/DA providers. However, the FCC further provided that if the ILEC does not offer customized routing to afford access to competitive OS/DA, the ILEC must continue to provide OS/DA as a UNE.⁶ UNE Remand Order at 3902-03, paras. 462-63.

In this case, the PFD recommends that the Commission reject Ameritech Michigan's request to discontinue providing its OS/DA on an unbundled basis at rates based on total service long run incremental cost (TSLRIC). The ALJ reasoned that the arrangements Ameritech Michigan offers for routing OS/DA calls to a CLEC's own OS/DA facilities or to a third party's OS/DA platform are not competitive relative to Ameritech Michigan's wholesale OS/DA service. In particular, the ALJ cited the

⁵The FCC required OS/DA unbundling in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCCR 15499 (1996).

⁶The UNE Remand Order explains how customized routing works as follows:

Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent, which will carry certain classes of traffic originating from the requesting provider's customers. This feature would allow the requesting carrier to specify that OS/DA traffic from its customers be routed over designated trunks which terminate at the requesting carrier's OS/DA platform or a third party's OS/DA platform.

15 FCCR at 3891 n.867.

cost of requiring CLECs to establish dedicated trunk facilities connecting each end office they serve to their OS/DA platform. The ALJ did not specifically direct Ameritech Michigan to implement the CLECs' preference for using shared transport facilities to aggregate OS/DA traffic at tandem switches, but he did indicate that Ameritech Michigan could overcome technical obstacles posed by this alternative or implement other solutions on a feasible basis. The ALJ also stated that it would be reasonable to require Ameritech Michigan to demonstrate the operational feasibility of its arrangements for routing calls to third-party OS/DA providers before freeing Ameritech Michigan from the obligation to unbundle OS/DA.

In its exceptions, Ameritech Michigan argues that the Commission accepted its position on OS/DA in the January 4, 2001 order in Case No. U-12320 addressing the UNE platform (UNE-P). According to Ameritech Michigan, the order implicitly found that wholesale OS/DA services are available on a competitive basis, that Ameritech Michigan has no obligation to charge TSLRIC-based rates, and that it does offer customized routing for alternative OS/DA services, as required by the FCC's UNE Remand Order. Ameritech Michigan further argues that the UNE Remand Order does not require an ILEC that provides customized routing to prove further that there is a viable market for competitive OS/DA services.

Ameritech Michigan contends that the CLEC intervenors' complaint is not that Ameritech Michigan fails to provide a workable type of customized routing, but that it does not provide the type of routing they want. Ameritech Michigan explains that customized routing enables the end office switch to route an incoming OS/DA call to the appropriate trunk. In acknowledging that some CLECs want to use shared

transport facilities to aggregate OS/DA traffic at tandem switches for routing to an OS/DA trunk, Ameritech Michigan claims that its shared transport facilities cannot accommodate OS/DA calling due to an incompatible OS/DA signaling protocol. Ameritech Michigan says that its own OS/DA traffic is subject to the same technical constraints and that it transports this traffic with separate trunks connecting its end offices with its OS/DA facilities. Ameritech Michigan states that no SBC-affiliated ILEC has the capability to provide the routing requested in this case and that it is not aware of any other ILEC that can do so. Ameritech Michigan says that the customized routing arrangements it proposes are the same as those found acceptable by the FCC in the Kansas/Oklahoma 271 Order. However, Ameritech Michigan notes that a CLEC has the option of using the bona fide request procedure to request other types of routing.

AT&T, WorldCom, and the Staff argue that Ameritech Michigan has not provided customized routing that would make competing OS/DA accessible and therefore it does not meet the FCC's conditions for removing OS/DA from UNE status. They suggest that a customized routing alternative that is not feasible or cost effective is not truly available for purposes of the UNE Remand Order. They also dispute Ameritech Michigan's contention that the order in Case No. U-12320 resolved the OS/DA unbundling issue. AT&T says that the order indicates only that the Commission would accept Ameritech Michigan's commitment to continue to provide for OS/DA in its tariffs. WorldCom says that the order accepted Ameritech Michigan's proposal to charge market-based OS/DA rates pursuant to tariff, but that it did not address whether Ameritech Michigan must concurrently maintain a TSLRIC-based OS/DA tariff.

AT&T claims that the restrictive type of customized routing described in Ameritech Michigan's ULS-ST tariff is not usable from an operational standpoint, primarily because it requires each CLEC to establish a separate trunk connection to every end office it serves. Noting that there are approximately 165 end offices in Ameritech Michigan's service territory, AT&T questions whether the proliferation of trunks necessary for each CLEC to provide retail OS/DA services is possible from an engineering standpoint. WorldCom says that Ameritech Michigan did not point to any CLEC that currently uses customized routing for OS/DA traffic in Michigan. AT&T and the Staff say that the Kansas/Oklahoma 271 Order did not address the issue of whether an ILEC must grant a CLEC's request to provide customized routing at the tandem switch and allow the use of shared transport to carry OS/DA calls to the tandem. AT&T generally objects to any unnecessary restrictions on using shared transport in connection with customized routing.

WorldCom's primary objection is that the signaling protocol used on Ameritech Michigan's network for OS/DA calling is incompatible with WorldCom's facilities using Feature Group D. WorldCom argues that Ameritech Michigan cannot meet the conditions of the UNE Remand Order until it resolves the signaling incompatibility.

WorldCom further argues that even if Ameritech Michigan were to comply with the UNE Remand Order, the MTA would continue to require unbundled OS/DA. WorldCom says that this requirement is part of the obligation to provide unbundled port components in Section 355(1), MCL 484.2355(1), MSA 22.1469(355)(1), which, as defined in Section 102(x), MCL 484.2102(x); MSA 22.1469(102)(x), includes "access to directory assistance [and] operator services." WorldCom notes

that the Commission relied upon the MTA's unbundling authority in requiring Ameritech Michigan to provide common transport in the January 28, 1998 order in Case No. U-11280 and cites other orders to similar effect.

As an initial matter, the Commission clarifies that Ameritech Michigan has misread the January 4, 2001 order in Case No. U-12320 with respect to OS/DA. At page 10 of the order, the Commission briefly noted that Ameritech Michigan had made some concessions on disputed issues, including the tariff requirement for OS/DA. The Commission also noted that Ameritech Michigan was not conceding "that OS/DA pricing will be TSLRIC-based." By accepting Ameritech Michigan's commitment to file an OS/DA tariff, the Commission made no findings regarding whether Ameritech Michigan was under a continuous obligation to offer OS/DA as a UNE at TSLRIC-based rates.

The record supports the ALJ's finding regarding the infeasibility and limited usefulness of the customized routing that Ameritech Michigan proposes to accommodate the CLECs' OS/DA requirements. The record indicates that providing this type of customized routing as the only alternative to purchasing Ameritech Michigan's wholesale OS/DA services at market prices (set by Ameritech Michigan) would require each CLEC to establish dedicated trunks to every end office it serves. The Commission finds that this alternative would be costly, inefficient, and burdensome. As WorldCom also notes, there are technical obstacles related to incompatible signaling protocols. The Commission further agrees with WorldCom that it has authority under the MTA to require OS/DA to be offered on an unbundled basis and to ensure reasonable access to competitive alternatives.

Ameritech Michigan has interpreted the customized routing conditions of the UNE Remand Order as requiring less of it than the FCC intended. The justification that the FCC provided for changing its approach was that competitive OS/DA had become widely available on a national basis and could be readily accessed if the ILEC provided appropriate customized routing arrangements. However, the FCC did not suggest that an ILEC could arbitrarily implement any form of customized routing it desired, without regard to whether that arrangement provided meaningful access to competitive OS/DA alternatives. The FCC emphasized instead that “customized routing is necessary to access alternative sources of OS/DA for competitors not deploying their own switches,” and that “[l]ack of a customized routing solution that enables competitors to route traffic to alternative OS/DA providers would therefore effectively preclude competitive LECs from using such alternative providers.” UNE Remand Order, 15 FCCR at 3902, para. 462.

This concern is also apparent in the FCC’s discussion of the substantial cost of reconciling WorldCom’s Feature Group D signaling with other systems used by ILECs, a difficulty that WorldCom raises in this case. SBC had taken the position in the UNE Remand case that customized routing of Feature Group D was not technically feasible for all end-office switches. The FCC concluded that it would “require incumbent LECs, to the extent they have not accommodated technologies used for customized routing, to offer OS/DA as an unbundled network element.” *Id.*, 15 FCCR at 3903, para. 463. The significance of the point, in this Commission’s view, is that the FCC did not regard technical issues as problems for the CLECs alone to address entirely at their own expense. Instead, the FCC

directed both parties to attempt to devise technical solutions and, failing that, it required the ILEC to make OS/DA available as a UNE.

The Commission finds that Ameritech Michigan must continue to offer OS/DA as a UNE at TSLRIC-based rates. The obligation to provide unbundled OS/DA will continue in effect until Ameritech Michigan provides reasonable accommodations for the problems presented by dedicated end-office trunking and other technological issues that inflate the CLECs' cost of obtaining access to competitive OS/DA services. When Ameritech Michigan believes that it meets the requirements relating to providing access to competitive OS/DA services, it may file an application for authorization to remove OS/DA from its list of UNEs. However, it may not remove OS/DA from UNE status without prior Commission authorization.

Transiting

Ameritech Michigan defines transiting as providing CLECs with the capability of routing their outbound calling over shared transport facilities that connect Ameritech Michigan switches to switches belonging to other carriers. Although Ameritech Michigan's ULS-ST tariff makes transiting available, Ameritech Michigan claims that it is not obligated to provide transiting, but that it is providing the service voluntarily. The alternative to transiting would be for CLECs to use dedicated trunks to route calls to non-Ameritech Michigan switches. The CLEC parties dispute that transiting is voluntary.

The ALJ interpreted the FCC's rules and orders to obligate Ameritech Michigan to provide transiting over existing transport facilities. The ALJ stated that an opposite conclusion would contradict

the principle that unbundling requires an ILEC to provide other carriers with nondiscriminatory access to the same facilities that it uses to provide service to its own customers.

Ameritech Michigan argues that the FCC's rule defining shared transport, 47 CFR 51.319(d)(1)(ii), precludes mandatory transiting. The rule defines shared transport as unbundled access to "transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network." Ameritech Michigan contends that facilities linking one of its switches with another carrier do not qualify under this definition, a point it says the FCC clarified by stating that "incumbent LECs must offer only dedicated transport, and not shared transport, between their switches, or serving wire centers, and requesting carriers' switches." Third Reconsideration Order, 12 FCCR at 12478, para. 28.

Ameritech Michigan also argues that Section 201(2) of the MTA, MCL 484.2201; MSA 22.1469(201), requires the Commission to adhere to federal law. However, Ameritech Michigan states that it has no present intention to discontinue transiting.

WorldCom argues that federal law does not support Ameritech Michigan's position regarding transiting. WorldCom asserts that the Third Reconsideration Order deals with transport links connecting an ILEC's switch with a CLEC's switching facilities and not a situation in which the CLEC subscribes to the ILEC's unbundled local switching for its switching functions. WorldCom says that transiting does not transport calls to the "requesting carrier" referenced in the Third Reconsideration Order, but that it provides a requesting CLEC with a transport link from the ILEC's switching facilities to a third-party carrier. WorldCom says that, in defining shared transport to include transport links "between end office

switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network,” the FCC did not make an exception for ILEC-owned trunks that transport calls to the switches of other carriers. WorldCom notes that 47 CFR 51.315(b) prohibits an ILEC from separating UNEs that are already combined. WorldCom and AT&T argue that it would be discriminatory within the meaning of federal and state law if Ameritech Michigan were to withhold unbundled access to the facilities that it uses to transit its own traffic to other carriers.

WorldCom and AT&T argue that the MTA authorizes the Commission to require transiting. WorldCom says that this requirement is part of the unbundling obligations in Section 355(1). WorldCom and AT&T argue that Section 201 of the MTA does not confine the Commission to enforcing only those requirements approved by the FCC, but that it empowers the Commission in broad terms to “exercise its jurisdiction and authority consistent with” the MTA and federal law. MCL 484.2201(2); MSA 22.1469(201)(2). AT&T argues that federal law does not preempt competitive requirements imposed under the MTA if they do not conflict with FCC rules or federal policies. AT&T cites prior arbitration orders dated November 26, 1996 in Cases Nos. U-11151 and U-11152, at 12, and November 20, 2000 in Case No. U-12465, at 8, as requiring Ameritech Michigan to provide transiting.

The Commission finds that Ameritech Michigan’s attempt to treat transiting as a voluntary offering is without merit. Although Ameritech Michigan advances no reason why it might limit transiting, there is the potential that it could attempt to do so out of a desire to inhibit competition at some point in the future. Notwithstanding Ameritech Michigan’s reliance on FCC pronouncements, a reading of the Third Reconsideration Order does not persuade the Commission that the FCC meant to address transiting in

clarifying which types of transport links must be provided as shared or dedicated transport. Moreover, nothing in 47 CFR 51.319(d) forecloses the Commission from imposing a transiting requirement under the MTA. Transiting is consistent with the FCC's principle that CLECs should have shared access to the same transport facilities that Ameritech Michigan uses for its own traffic. Third Reconsideration Order, 12 FCCR at 12474-75, para. 22. This consistency is all that is required by Section 201(2) of the MTA. It encompasses the facilities that Ameritech Michigan ordinarily uses to transmit calls that require termination with other facilities-based carriers. The same principle is reflected in the MTA's unbundling requirements. The Commission reaffirms its earlier rulings regarding transiting in arbitration cases.

Reciprocal Compensation

Ameritech Michigan seeks to incorporate a reciprocal compensation arrangement in its ULS-ST tariff that would require it and the exchanging CLEC to pay the same, or symmetrical, rates to each other. Ameritech Michigan argues that symmetrical rates are mandatory in 47 CFR 51.711, that Commission orders also impose symmetrical rate arrangements, and that there can be no difference between a CLEC's and Ameritech Michigan's costs in exchanging traffic when the CLEC is using Ameritech Michigan's UNEs. As an alternative, WorldCom suggests that the tariff provide an option for CLECs using the UNE-P to account for reciprocal compensation with Ameritech Michigan on a bill-and-keep basis.

The Commission rejects Ameritech Michigan's exception. The rates that another carrier charges in a reciprocal compensation arrangement with Ameritech Michigan are not a proper function of Ameritech Michigan's tariff. By the same token, it is not permissible for Ameritech Michigan to impose conditions in

its tariff that relate to the local termination rates charged by other carriers. Because reciprocal compensation arises from the interconnection of two carriers, a symmetrical rate structure is appropriately addressed in interconnection and arbitration proceedings.

Contract Language

AT&T proposes contract language to incorporate the determinations made in this order into its interconnection agreement with Ameritech Michigan, which the Commission arbitrated in the November 20, 1999 order in Case No. U-12465. The Commission does not address AT&T's proposed contract language, which is beyond the scope of this case. Parties to interconnection agreements in which disputed issues were deferred to generic cases should incorporate this order's determinations on those issues in accordance with the directive set forth in the March 7, 2001 order in Case No. U-12465, at 5.

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's application should be approved except as modified by this order.

THEREFORE, IT IS ORDERED that Ameritech Michigan shall file the tariff sheets necessary to comply with this order within ten days.

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 E A L)

/s/ Laura Chappelle
Chairman

By its action of March 19, 2001.

/s/ David A. Svanda
Commissioner

/s/ Dorothy Wideman
Its Executive Secretary

/s/ Robert B. Nelson
Commissioner

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.

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

By its action of March 19, 2001.

Commissioner

Its Executive Secretary

Commissioner

In the matter of the application of)
AMERITECH MICHIGAN for approval of)
a shared transport cost study and resolution)
of disputed issues related to shared transport.)
_____)

Case No. U-12622

Suggested Minute:

“Adopt and issue order dated March 19, 2001 granting an application by Ameritech Michigan for approval of a shared transport cost study and setting rates, terms, and conditions for making shared transport with unbundled local switching available as an unbundled network element, as set forth in the order.”