



Via Overnight Delivery

December 4, 1998

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

MICHIGAN PUBLIC SERVICE
COMMISSION

DEC 08 1998

FILED

Re: Case No. U-11830

Dear Ms. Wideman:

Enclosed for filing are the original and 15 copies of the reply comments of GTE North Incorporated and Contel of the South, Inc. to the comments of the Staff of the Michigan Public Service Commission on Ameritech Michigan's Proposal In Response To The Commission's October 2, 1998 Order Regarding Performance Measurements and Standards.

If you have any questions please contact me.

Very truly yours,

William H. Keating

Enclosures

c: Parties of Record

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

DEC 6 8 1998

AMERITECH MICHIGAN'S SUBMISSION)
OF PERFORMANCE MEASUREMENTS,)
REPORTING, AND BENCHMARKS IN)
IN COMPLIANCE WITH THE OCTOBER 2,)
1998 ORDER IN MPSC CASE NO. U-11654)

FILED

CASE NO. U-11830

REPLY COMMENTS OF GTE

COMES NOW, GTE North Incorporated and Contel of the South, Inc. ("GTE")
and hereby respectfully submit their reply comments in response to the Michigan Public
Service Commission Staff's initial comments in this proceeding.

As a preliminary matter, GTE wishes to reiterate its belief the Commission lacks
authority under applicable Michigan law to bind other incumbent or competitive local
exchange carriers to the performance measurements and standards that are determined in
this docket. Accordingly, by participating in this docket, GTE is not waiving, and
hereby expressly reserves, its right to take this position in future proceedings. Moreover,
GTE does not believe that one set of performance measurements and standards should be
imposed upon all incumbent and competitive carriers without having an industry
discussion and review of the various issues associated with differences in systems, carrier
requirements, etc. in a more expanded timeframe and proceeding than called for by this
docket.

GTE believes its November 23, 1998 submission in response to Ameritech's
proposal provided the Michigan Staff a comprehensive list of performance
measurements, reporting and benchmarks and the associated rationale supporting it. As
noted above, GTE provides these additional comments relative to Staff's comments on
Ameritech's proposal.

I. SCOPE OF MEASURES

GTE concurs with the Staff's recommendations that performance measurement standards should be based on the FCC's initial proposal. The measures GTE submitted were based on that premise and modified through collaborative efforts between CLEC's, ILEC's, and regulatory personnel. Further, GTE also concurs with Staff's recognition that any measure adopted should give meaningful information regarding potential discrimination.

However, to the extent a CLEC has customized routing, GTE agrees with Ameritech's observation that Operator Service and Directory Assistance calls cannot be distinguished. GTE believes parity exists between CLECs and ILECs by definition, because the origin of the traffic cannot be determined, and therefore discrimination cannot occur.

GTE does not agree that a separate measure is needed for customer requested due dates. Any due date commitments missed in this category are reflected in the measure, Percent Due Dates Missed.

II. REPORTING OF MEASURES

Staff suggests that at least initially, reporting should be on a LATA basis. This requirement would require some system modification to the ILEC to identify the data at that level. More importantly, reporting on a LATA basis would undermine the validity of the measure because the sample size would be too small. From a statistical perspective the impact is that small sample sizes cause stats tests to have low power. The power of a statistical test is "the ability of the test to reject the null hypothesis when the null hypothesis is in fact false".

III. ANALOGS AND BENCHMARKS

GTE believes its initial comments (section 2, A & B) on retail and surrogate analogs and benchmarks, addresses the staff's concerns on insuring parity and non-discrimination. GTE supports Staff's recommendation on reporting by interface type.

IV. REMEDIES

The Staff has asserted that "flat rate remedies are more appropriate" than a "weighting based on the volume of orders affected."¹ Unfortunately, there are serious efficiency problems with "flat rate remedies."

- 1) The whole concept of "remedies" raises the question of the purpose of the payments with respect to performance. Not tying this to damages suggests that they have nothing to do with "remedies." Instead, these payments are essentially penalties, and thus, clearly not enforceable under Michigan law. See, generally, Restatement of Contracts Ch. 16, Section 356. Moreover, even if enforceable, punishment must meet the extent of the offense.
- 2) To the extent the proposed remedies would be considered incentives, they should be proportional to the cost of achieving parity. Otherwise, parity will not be achieved at least cost. Flat rate remedies are not proportional to the cost of achieving parity. ILECs that are doing a good job of meeting parity might not need as large an incentive as ILECs that are having trouble meeting parity. Penalties should be allowed to vary over time, based on how well the ILEC is doing at meeting parity.
- 3) If the "remedies" are viewed as a "fine" or tax, their inappropriateness is even more clear. There is a basic economic principle that states that all taxes and

subsidies have effects on resource allocation. There are no neutral transfers (subsidies). In other words, there is no such thing as a neutral tax. Staff's proposals will result in positive payments to CLECs even when there is no discrimination. In other words, the measurement and calculations of these penalties would be an exercise in its own end, a game of seeking technical "violations" which would have no bearing on the amount of harm to the CLEC or whether GTE's service even violates the law. Consequently, the incentive proposals contain an implicit subsidy to CLECs, injecting a negative effect upon the industry. For example, one effect is a change in optimal firm size for a CLEC. With a sufficiently large subsidy, the optimal firm size would be one CLEC per customer. This would send an incentive to the CLEC industry to be driven to most efficiently receive the "greatest" amount of "remedy" payments from ILECs, rather than seek most efficient entry from an economic standpoint. This would drive CLECs to the optimal size of one (1) customer to every CLEC, which would undermine effective competition. The effect would be to make some inefficient firms profitable. The incentive scheme based on the "fine" concept will certainly promote inefficient entry.

- 4) Penalties should be viewed as an incentive for the ILEC to provide parity service. However, an incentive in this instance should be to the ILECs to maintain performance. Payment of the penalties to CLECs will incent them to affirmatively seek the penalties as a revenue source, in some cases providing them funds they could never recover were they to seek damages under the law because they could show no damage. Besides, paying penalties to the CLECs in

such event promotes inefficient entry. GTE does not support a plan that pays all of the penalty to the CLECs.

- 5) Fixed penalties do not account for random variation. Random variation is not indicative of discriminatory performance or lack of parity. Payment in such event imposes upon the parties a positive expected payment even when they are in parity.
- 6) Individual measures should be weighted on what impact they have on a customer's decision to stay with the CLEC. Staff suggests that each measure should be equally weighted. This scheme requires ILECs to equally allocate resources to measures that, if neglected, would cause different levels of damage to the CLEC.

Staff has rejected Ameritech's proposal for "second-stage analysis."² GTE supports "second-stage" or "root-cause analysis" in principle. Staff's objections to Ameritech's proposal are summarized in its comments:

Staff rejects Ameritech's proposal for a "second-stage analysis" which would allow it to determine, after the fact, whether there may, in its opinion, be a reason for non-performance which was not reflected in the measurements. Staff believes the measurements adopted should, up front, identify and measure items within Ameritech's control, delete situations where measurements are not within Ameritech's control and not allow further disaggregation or further attempts to "explain away" non-compliance after the deficiency has been documented.³

GTE heartily supports Staff's position that the performance measurements adopted should reflect only performance that is completely under the ILEC's control. This is an ideal that will only be approximated in practice. However, even with a perfect set of

² Ameritech Michigan's Proposal in Response, p. 37.

³ Comments of the Staff of the Michigan Public Service Commission on Ameritech's Performance Measurements Proposal, p. 19.

performance measurements, second-stage analysis will still be required because we will never have a perfect set of statistical tests.

GTE also supports Staff's position that there should be a one-year trial period before issuing a final order. Until we see how the data behave we cannot be certain that a finding of failure truly indicates discrimination on the part of the ILEC. However, "second stage" analysis would allow for continued monitoring of the tests even after the one-year trial period is over. This is important since there might be problems with determining the underlying distribution of the data (statistical testing assumes normality) and determining whether every measure is completely under the ILEC's control. The statistical tests that have been proposed were originally developed for the evaluation of experimental outcomes. The validity of the inferences that can be drawn from these tests is very dependent on consistency of the data with the assumptions underlying the statistical tests. Experiments typically feature random assignment to treatments. OSS performance data do not. This randomization is a critical feature for valid inference.

Box, Hunter and Hunter make this point:

Because in preceding chapters we have seen how things can go wrong, we can better appreciate what must be done to ensure that they go right. In this chapter, we introduce (1) randomization to guarantee inferential validity in the face of unspecified disturbances.⁴

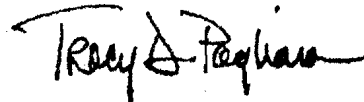
In some cases, the statistical tests may indicate (with some level of confidence) that the performances for the ILEC and CLEC customers differ. If the customer groups differ in

⁴ George E. P. Box, William G. Hunter and Stuart Hunter, *Statistics for Experimenters*, p. 93.

important ways, however, the difference in performance may be a result not of discrimination but a result of the differences in the customer groups. Second-stage analysis is critical for identifying cases where differences exist but discrimination does not.

Respectfully Submitted,

GTE NORTH INCORPORATED AND
CONTEL OF THE SOUTH, INC.



by _____

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THEIR ATTORNEYS

BEFORE THE
MICHIGAN PUBLIC SERVICE COMMISSION

Ameritech Michigan's submission on
performance measurements, benchmarks,
and reporting in compliance with the October 2,
1998 Order in MPSC Case No. U-11654
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Case No. U-11830

PROOF OF SERVICE

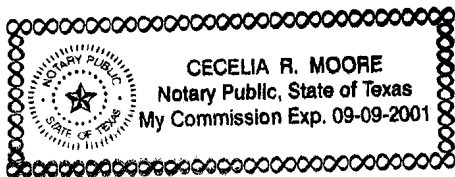
STATE OF TEXAS)
) ss
COUNTY OF DALLAS)

William Tien, after being duly cautioned and sworn, deposes and says that copies of the reply comments of GTE North Incorporated and Contel of the South, Inc. to the comments of the Staff of the Michigan Public Service Commission on Ameritech Michigan's Proposal In Response To The Commission's October 2, 1998 Order Regarding Performance Measurements and Standards are being served on the parties on the attached service list on December 7, 1998, by United States first class mail.

William Tien

Sworn to and subscribed in my presence this 4th day of December, 1998.

Cecelia R Moore
Notary



U-11830 SERVICE LIST

Ace Telephone Company of Michigan 102 E. Mesick Avenue P.O. Box 69 Mesick, MI 49668-0069	Allendale Telephone Company 6568 Lake Michigan Drive Allendale, MI 49401
ACI 7337 S. Revere Parkway Englewood, CO 80112	Ameritech Communications, Inc. 9525 W. Bryn Mawr, Suite 6045 Rosemont, IL 60018
A.R.C. Networks, Inc. 1770 Motor Parkway Suite 300 Hauppauge, New York 11788	AT & T Communications 215 S. Washington Square Suite 230 Lansing, MI 48933
Baraga Telephone Company 204 State Street Baraga, MI 49908	Barry County Telephone Company P.O. Box 128, 123 West Orchard Delton, MI 49046
Blanchard Telephone Company 425 Main St., P.O. Box 67 Blanchard, MI 49026	Bloomington Telephone Company P.O. Box 187 101 W. Kalamazoo St. Bloomington, MI 49026
Brooks Communications 2855 Oak Industrial Dr., NE Grand Rapids, MI 49506	BRE Communications, Inc. d/b/a Phone Michigan 4565 Wilson Ave. Grandville, MI 49418
Building Communications, Inc. 15500 19 Mile Road, Suite 310 Clinton Township, MI 48305	Carr Telephone Company 4325 Masten Road, P.O. Box 100 Branch, MI 49402
CenturyTel of Michigan P.O. Box 4065 Monroe, LA 71211-4065	Chapin Telephone Company 19994 W. Ridge Road Elsie, MI 48831
Chippewa County Telephone 101 State Street P.O. Box 309 Brimley, MI 49715	CIMCO Communications, Inc. 18W 100 22 nd Street, Suite 109 Oakbrook Terrace, IL 60181
Climax Telephone Company 110 North Main Street, P.O. Box 279 Climax, MI 49034	CMC Telecom, Inc. 28200 Orchard Lake Road, Suite 104 Farmington Hills, MI 48334-3761
Coast to Coast 5850 Dixie Highway Clarkston, MI 48436	City of Coldwater Telecommunications <u>Utility</u> 28 W. Chicago St. P.O. Box 469 Coldwater, MI 49036
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Easton Telecom Services, Inc. 4646 W. Streetsboro Road Richland, OH 44286	Frontier Communications of Michigan 109 Randolph St. Brooklyn, MI 49230
Frontier Telemanagement, Inc. 700 Frontier Center 180 S. Clinton Avenue Rochester, NY 14646	Great Lakes Commnet, Inc. P.O. Box 12097 Lansing, MI 48901-2097
GTE Communications Corporation 600 Hidden Ridge Irving, TX 75038	GTE North Incorporated 860 Terrace St. P.O. Box 269 Muskegon, MI 49443-0269
Hiawatha Telephone Company 108 W. Superior St. Munising, MI 49862	Image Paging of Michigan, Inc. 17321 W. Seven Mile Road Detroit, MI 48235
Kaleva Telephone Company 9281 Osmo Street, P.O. Box 6 Kaleva, MI 49645	KMC 1545 Route 206, Suite 300 Bedminster, NJ 07921-2567
LCI International 8180 Greensboro Drive, Suite 800 McLean, VA 22102	Level 3 Communications, LLC 3555 Farnam Street Omaha, NE 68131
Long Distance of Michigan, Inc. 8801 Conant Street Hamtramck, MI 48211-1403	Lennon Telephone Company 3095 S. Sheridan Ave. P.O. Box 329 Lennon, MI 48449
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Metronet-Telecom, Inc. 2182 N. Cedar Holt, MI 48842	MFS Intelenet of Michigan 1 Tower Lane, Suite 1600 Oakbrook Terrace, IL 60181
MIDCOM Communications, Inc. 26899 Northwestern Highway Suite 418 Southfield, MI 48034	Midway Telephone Company 108 W. Superior Street Munising, MI 49862-1192
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Springport Telephone Company 137 Main Street, Box 208 Springport, MI 49284	Sprint Communications Corp. 8140 Ward Parkway, 5E Kansas City, MO 64112
Sterling International Funding 2500 Industrial Ave. P.O. Box 9 Hubbard, OR 97302	Suretel, Inc. 5 N. McCormack Oklahoma City, OK 73127
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TDS Telecom/Chatham 130 Marquette St. P.O. Box 197 Chatham, MI 49816	TDS Telecom/Island P.O. Box 78 Sanford, MI 48657-0078
TDS Telecom/Millington 4712 E. Main Street P.O. Box 292 Millington, MI 48746	TDS Telecom/Perry 129 South Main Street Perry, MI 48872
TDS Telecom/Sanford P.O. Box 78 Sanford, MI 48657-0078	Teligent, Inc. 8065 Leesburg Pike Vienna, VA 22182
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Winn Telephone Company 2766 W. Blanchard Road P.O. Box 367 Winn, MI 48896	Winstar Wireless of MI, Inc. 1146 19th St. N.W. Suite 250 Washington, DC 20036
MichTel Inc. 21402 Laurelwood St. Farmington, MI 48336	Century Telephone Enterprises, Inc. 4399 N. Huron Road Pinconning, MI 48650
Midway Telephone Company Highway M-28 Box 97 Watton, MI 49970	Ontonagon County Telephone Company 618 River St. Ontonagon, MI 49943
GTE Telephone Operations, Inc. 602 Michigan National Tower Lansing, MI 48933	Century Telephone Enterprises 4399 N. Huron Road Pinconning, MI 48650
Michigan Independent Network P.O. Box 12097 Lansing, MI 48401	WRONG ADDRESS