S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **AMERITECH MICHIGAN** for a determination that directory assistance services provided to end users are competitive services under the Michigan Telecommunications Act.	))))))	Case No. U-13007

At the February 1, 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 July 6, 2001, Ameritech Michigan filed an application for a determination that the directory assistance (DA) services it provides to end-use customers are competitive services, pursuant to Sections 203, 207, and 208 of the Michigan Telecommunications Act (MTA), MCL 484.2203, 484.2207, and 484.2208.

At a prehearing conference on August 22, 2001, Administrative Law Judge George Schankler (ALJ) granted leave to intervene to Attorney General Jennifer M. Granholm (Attorney General), the Telecommunications Association of Michigan (TAM), MCImetro Access Transmission Services, LLC (WorldCom), AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T), the Michigan Pay Telephone Association (MPTA), and XO Michigan, Inc. (XO), although XO subsequently withdrew. The Commission Staff (Staff) also appeared and participated. The ALJ conducted an evidentiary hearing on October 9, 2001. Thereafter, the parties filed briefs, and, except for the MPTA and TAM, reply briefs.

On November 20, 2001, the ALJ issued a Proposal for Decision (PFD) recommending denial of the application. The basis for the recommendation was a finding that Ameritech Michigan had not met the criteria set forth in Section 208(3) to obtain a competitive determination. The ALJ also addressed other issues raised by the parties. He stated that Section 208(9) would permit Ameritech Michigan to seek approval of a total service long run incremental cost (TSLRIC) study for DA services in the same proceeding as its request for a competitive services determination, but that the cost study that Ameritech Michigan submitted with its application does not comply with the Commission's TSLRIC standards.

Ameritech Michigan, WorldCom, and the MPTA filed exceptions to the PFD. Ameritech Michigan, WorldCom, AT&T, the Attorney General, and the Staff filed replies to exceptions.

Section 207 of the MTA governs regulation of DA services, as follows:

> Until directory assistance service is determined by the commission to be a competitive service, the commission shall determine the manner in which all directory assistance service to the end-user is to be regulated under this act. The regulations shall include both rates, if any, and quality of service.

MCL 484.2207. Section 208 prescribes the procedure for obtaining a competitive determination and includes criteria for determining whether a given service is competitive. Although the parties have raised a number of issues relating to the competitiveness of DA services under Sections 207 and 208, the Commission finds a threshold provision to be dispositive in this case. Section 208(9) provides:

> A provider shall not file to have a service classified as competitive until the provider has received the approval of the commission of a total service long run incremental cost study for the service to be classified.

MCL 484.2208(9).

The meaning of the statute is plain. It does not require an intricate analysis applying principles of statutory construction. See Grievance Administrator v Underwood, 462 Mich 188, 194; 612 NW2d 116 (2000) ("When that language is unambiguous, we must enforce the meaning expressed, without further judicial construction or interpretation."). If the applicant has not complied with Section 208(9) as a threshold matter, the Commission must dismiss the application. The Commission previously reminded Ameritech Michigan of the requirement in Section 208(9) in the March 29, 2001 order in Case No. U-12765, at 12 ("The Commission therefore finds that Ameritech Michigan must obtain Commission approval of a TSLRIC study for DA service before seeking to have the service declared competitive.").

Ameritech Michigan seeks to avoid Section 208(9) by asserting that DA services are subject to the Commission's jurisdiction only under Section 207. It thus argues that Section 208(9) is wholly inapplicable. It further distinguishes the two sections by contending that a competitive determination under Section 207 completely eliminates prospective Commission jurisdiction over DA services, but that a Section 208 determination has the different effect of eliminating rate control, without going so far as to deregulate the service altogether. According to Ameritech Michigan, a cost study makes sense in the context of Section 208, in that it assists others in deciding whether or not to challenge a provider's self-declaration of a competitive classification. See MCL 484.2208(6)-(8). On the other hand, it continues, a cost study would not serve any purpose in Section 207, which does not permit a provider to make a self-declaration for DA services. Unlike competitive, regulated services under Section 208, Ameritech Michigan contends, non-jurisdictional DA services would not be subject to the TSLRIC price floor in MCL 484.2321.

Ameritech Michigan argues that, to the extent that Sections 207 and 208 appear to overlap, Section 207 is specific to DA services and should be construed as the exclusive provision dealing with those services. If it were otherwise, Ameritech Michigan suggests, Section 208 would subsume Section 207's meaning entirely.

WorldCom responds that Ameritech Michigan's application invoked Section 208 and that Ameritech Michigan is now trying to find a way around statutory requirements it cannot meet.

The Commission rejects Ameritech Michigan's attempt to treat an application under Section 207 as exempt from the requirements in Section 208. Section 207 permits the Commission to prescribe the scope of DA regulation only "[u]ntil directory assistance service is determined by the commission to be a competitive service." MCL 484.2207. Because competitiveness is the standard used in both sections, it is reasonable to interpret Section 207 as incorporating the procedures in Section 208 for making a competitive determination. Moreover, nothing in Section 208 purports to exclude DA services from its scope.

The Commission rejects Ameritech Michigan's suggestion that this interpretation would make Section 207 redundant. Section 207 empowers the Commission to prescribe the manner of DA regulation prior to a competitive determination. Unlike Section 207, Section 208 does not address how to regulate services before they are classified as competitive. Thus, the two sections do contain different provisions, each conveying a different meaning, and Section 208 does not subsume Section 207.

The present statutory framework can be understood in light of the substantive differences that existed between Sections 207 and 208 prior to 2000 PA 295 (Act 295). Before being amended by Act 295, Section 207 provided:

> The commission shall determine the manner in which local directory assistance service to the end user is to be regulated under this act. The regulations shall include both rates and quality of service.

Thus, the pre-Act 295 statute delegated determinations regarding the manner and extent of DA regulation to the Commission as long as the MTA remained in effect. The current version of Section 207 terminates DA rate regulation if and when a provider complies with Section 208 (and also extends its coverage between area codes). Although Act 295 narrows some of the differences between Sections 207 and 208, it does not eliminate the independent meaning that Section 207 conveys with respect to DA services.

Staff witness Louis R. Passariello testified, without contradiction, that Ameritech Michigan had not obtained approval of a DA cost study prior to this case. In fact, he noted, the Commission expressly rejected Ameritech Michigan's treatment of DA services in Case No. U-11831, the most recent examination of Ameritech Michigan's comprehensive cost studies. The Commission therefore finds that the application in this case should be dismissed.

In reaching this result, it is not necessary to review the new DA cost study that Ameritech Michigan submitted in this case. Section 208(9) requires approval of a cost study to be complete prior to the point in time that Ameritech Michigan files its request for a competitive determination. However, Ameritech Michigan and others did litigate the new DA cost study. To give the parties guidance regarding whether it, or something like it, would be an adequate basis for securing approval for purposes of Section 208(9), the Commission will briefly examine the issues raised by the cost study.

Staff witness Passariello testified that the cost study does not comply with the TSLRIC standards established in the September 8, 1994 order in Case No. U-10620, modified on rehearing on November 10, 1994. The ALJ agreed with the Staff's analysis and found that the cost study was unacceptable.

Ameritech Michigan argues that the cost study is proper in all respects and does comply with TSLRIC standards. Ameritech Michigan says that the Staff did not present any objection in principle to the cost model, but that it simply objected that the model is different than the one used in Case No. U-11831. Ameritech Michigan contends that it is reasonable to make improvements to a cost study. Similarly, Ameritech Michigan argues that it is forward-looking to use updated data and inputs instead of stale data from Case No. U-11831.

AT&T and the Staff argue that the cost study submitted in this case violates fundamental TSLRIC principles. They say that Ameritech Michigan did not account for the costs on a network-wide basis, varied the cost allocations for retail and wholesale DA services, and used timeframes and inputs that are inconsistent with Case No. U-11831. AT&T claims that the study produces DA costs that are less than those computed in Case No. U-11831 for providing unbundled network elements to other carriers, even though the services and costs are essentially the same in both the retail and wholesale contexts. Giving effect to both flawed studies, AT&T says, would produce a price squeeze that would make it impossible for other providers to offer a retail price that would be competitive with Ameritech Michigan's retail DA services.

The Commission finds that Ameritech Michigan's cost study cannot be approved as submitted. At least since the September 8, 1994 order in Case No. U-10620, the Commission has insisted that a provider perform cost studies that encompass its entire network, that it assign the same costs as inputs to various services without regard to the type of sale or customer using each service (whether wholesale or retail), and that it not make piecemeal changes. The Commission relied on these long-standing principles in Case No. U-11831, when it set forth requirements for future cost studies, as follows:

> Ameritech Michigan may not make piecemeal changes to its studies. If it changes an input that is used in other studies, or if the results of the changed study are inputs to other studies, it must change those studies as well. Even then, Ameritech Michigan cannot amend its studies more often than every two years unless there is a fundamental change in circumstances. It should accumulate less significant changes and incorporate them into the next general revision. The only exception is that it may file studies for new services when it first offers them, but it shall use the data and costs that were used and approved in this proceeding. . . . This approach recognizes the integrated nature of the network and reduces the likelihood that different costs will be assigned to similar uses of the network. It also assumes the continued gradual change in costs, while permitting a timely response to fundamental changes.

Order dated May 3, 2000, Case No. U-11831, at 12-13. Allowing Ameritech Michigan to revise its cost model, inputs, and assumptions for a DA-specific cost study would upset the cost study framework established in Case No. U-11831. It could also lead to a distortion of TSLRIC if changes in inputs can be manufactured to manipulate the cost outputs.

Ameritech Michigan says that if the Commission determines that the study should undergo revision to conform to the Staff's views, it will make the necessary revisions. The Commission expects Ameritech Michigan to make those revisions and submit a DA cost study within 30 days of the date of this order. Revised tariffs for any affected wholesale services should also be filed at that time. Approval of the DA study will be required before Ameritech Michigan may file another request for a competitive determination.

The parties in this case devoted the bulk of their efforts to the competitive issues framed by Section 208(3). Those issues, which this order does not resolve, appear to be unusually complex and would have required difficult judgments of fact, law, and policy (assuming prior approval of a cost study). If Ameritech Michigan decides to file a similar application after (and if) it secures approval of a cost study, it would shoulder a burden of demonstration under Section 208 that would be more than pro forma. It is the Commission's expectation that the record created in such a case would provide a substantial basis for adjudicating the complex issues raised by the application.

In the absence of a determination that DA services are competitive, Section 207 provides that the Commission "shall determine the manner in which all directory assistance service to the end-user is to be regulated under this act." MCL 484.2207. Section 207 thus delegates considerable discretion to determine how, and how intensively, to regulate DA services and empowers the Commission to devise a mode of regulation that fits the prevailing circumstances and competitive characteristics of DA services. The Commission believes that Section 207 gives it considerable latitude in determining how extensively to regulate DA. In its August 14, 1992 order in Case No. U-10074, the Commission recognized that DA was not basic local exchange service, but determined that it should be regulated in a similar fashion, and specified the means to do so, relying on Sections 304(10) and 203 of the 1991 statute. It also required all providers of local directory assistance to file tariffs. In 1997, in response to an application by Ameritech Michigan to change DA rates, the Commission found that, although the previous Section 304(10), relied upon in its 1992 order, was substantially changed, a rate proceeding pursuant to Section 203 was still required. In 2000, Section 207 of the MTA was amended to read:

> Until directory assistance service is determined by the commission to be a competitive service, the commission shall determine the manner in which all directory assistance service to the end-user is to be regulated under this act. The regulations shall include both rates, if any, and quality of service.

As discussed above, the Commission does not reach conclusions in this case as to Ameritech Michigan's compliance with the Section 208(3) competitive framework requirements. However, the record in this case and preceding Case No. U-12765 have presented evidence of increasing competition for DA services.

While the Commission declines to grant the application of Ameritech Michigan in this proceeding for the reasons previously specified, it believes that the recent amendment of Section 207 and the evidence of increasing competition suggest a change in its previous reliance on Sections 203 and 304 of the MTA for changes in rates for DA.

As stated in 1992, DA is not basic local exchange service. Increasing competition for this service during the last decade warrants a determination that it not be subject to the same rate regulation as it originally was. The Commission has determined that DA continues to be a regulated service and providers must file tariffs if they provide the service to their local exchange customers. However, beginning 60 days from the date of this order, changes to end-user rates will no longer require a rate application pursuant to Section 203. Instead, tariffs to effectuate rate changes may be filed 30 days before their effective date. The Commission reserves the right, on a complaint or pursuant to its own motion, to investigate DA rates or services if proposed changes are excessive, unreasonable, or discriminatory. Further, the Commission is not disposed to accept tariff filings at this time that totally eliminate the free call allowances or waivers for persons unable to use printed directories. It is the Commission's determination that these findings are consistent with the 2000 amendments of Section 207 and the state of DA competition.

In light of the disposition in this order, WorldCom's application for leave to appeal is moot.

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. Ameritech Michigan has not complied with Section 208(9) of the MTA with respect to DA services.

c. The application for a determination that DA services provided to end users in Ameritech Michigan's service territory are competitive should be dismissed.

d. Ameritech Michigan should file a revised DA cost study.

e. WorldCom's application for leave to appeal should be denied.

THEREFORE, IT IS ORDERED that:

A. The application for a determination that directory assistance services provided to end users in Ameritech Michigan's service territory are competitive is dismissed.

B. Ameritech Michigan shall file, within 30 days from the date of this order, a revised cost study for directory assistance services.

C. The application for leave to appeal filed by MCImetro Access Transmission Services, LLC, is denied.

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 February 1, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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

Laura Chappelle
Chairman

Commissioner

Robert B. Nelson
Commissioner

By its action of February 1, 2002.

Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

County of Ingham)

Case No. U-13007

Gloria P. Jones being duly sworn, deposes and says that on February 1, 2002, A.D. she served a copy of the attached order, by mailing copies thereof by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Gloria Paul Jones

Subscribed and sworn to before me
this 1st day of February 2002

Sharron A. Allen
Notary Public, Ingham, County, Michigan
My Commission expires August 16, 2004

SERVICE LIST FOR DOCKET # U - 13007- CASE #
DATE OF PREPARATION: 01/31/2002

MS. ROBIN GLEASON
AMERITECH
444 MICHIGAN AVENUE, ROOM 1750
DETROIT MI 48226 2517

MR. MICHAEL A. NICKERSON
ASSISTANT ATTORNEY GENERAL
6545 MERCANTILE WAY, 2ND FLOOR
LANSING MI 48910
ID MAIL

MR. LELAND ROSIER
CLARK HILL PLC
2455 WOODLAKE CIRCLE
OKEMOS MI 48864 5941

MS. CHRISTINE M. SONERAL
DYKEMA GOSSETT PLLC
800 MICHIGAN NATIONAL TOWER
LANSING MI 48933

MR. GARY L. FIELD
LOOMIS, EWERT, PARSLEY, DAVIS
& GOTTING, P.C.
232 SOUTH CAPITOL AVENUE
SUITE 1000
LANSING MI 48933

MR. BRUCE R. BYRD
AMERITECH
444 MICHIGAN AVENUE, ROOM 1750
DETROIT MI 48226 2517

MR. JOHN J. REIDY III
AT&T COMMUNICATIONS
215 S. WASHINGTON SQUARE
SUITE 230
LANSING MI 48933

MR. ORJIAKOR N. ISIOGU
DEPT. OF ATTORNEY GENERAL
SPECIAL LITIGATION DIVISION
6520 MERCANTILE WAY, SUITE 2
LANSING MI 48910
ID MAIL

MR. MICHAEL S. ASHTON
FRASER, TREBILCOCK, DAVIS & FOSTER PC
1000 MICHIGAN NATIONAL TOWER
LANSING MI 48933

BARBARA STUMP
PSC ALJ DIVISION
6545 MERCANTILE WAY
LANSING MI 48909
ID MAIL