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September 17, 2003

Mr. Robert W. Kehres
Acting Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, P.O. Box 30221
Lansing, MI 48909

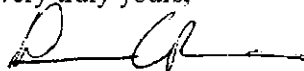
Re: MPSC Case No. U-13758, Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with MCImetro Access Transmission Services, LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996

Dear Mr. Kehres:

Please find enclosed for filing an original and four copies of SBC Michigan's Petition for Reconsideration and/or Clarification.

Thank you for your assistance.

Very truly yours,



Dennis G. Friedman

DGF/ds
Enclosures

FILED

SEP 17 2007

MICHIGAN PUBLIC
SERVICE COMMISSION

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Michigan Bell Telephone Company d/b/a SBC)	
Michigan)	
)	Case No. U-13758
)	
Petition for Arbitration of Interconnection)	
Rates, Terms and Conditions and Related)	
Arrangements with MCImetro Access)	
Transmission Services, LLC Pursuant to)	
Section 252(b) of the Telecommunications Act)	
of 1996)	

SBC MICHIGAN'S PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC Michigan") respectfully petitions the Michigan Public Service Commission to reconsider and/or clarify its resolution of Issue 5 in this arbitration. Of the approximately sixty issues that the Commission resolved adversely to SBC Michigan in whole or in part, SBC Michigan asks the Commission to take a second look at this one for two reasons:

First, the language the Commission approved for Paragraph 54 of the General Terms and Conditions of the parties' interconnection agreement ("ICA") would allow MCI to order services either out of the ICA or out of SBC Michigan's tariffs *without MCI telling SBC Michigan which one*. SBC Michigan accepts, for purposes of this petition, that MCI will be permitted to make its purchases either out of the ICA or out of the tariff. Obviously, though, SBC Michigan needs to know whether it is the tariffed rates and terms or the rates and terms in the ICA that are to apply to each order, and the only way for SBC Michigan to know that is for MCI to notify SBC Michigan. This question of notice was embedded in the competing contract language for Issue 5, but the main focus of the issue was elsewhere. SBC Michigan is

confident it was not the Commission's intent to allow MCIIm to place orders without notifying SBC Michigan whether they are pursuant to the ICA or the tariff, but that is the incidental result of the Commission's resolution of Issue 5 as it now stands. SBC Michigan now asks the Commission to clarify that MCIIm must give SBC Michigan such notice.

Second, the language the Commission approved for Paragraph 54 is inconsistent with the rationale the Commission gave for its resolution of Issue 5. The Commission stated that "MCIIm will not be permitted to mix and match terms from the contract and tariff for a particular order," but Paragraph 54, in its current form, does not prohibit – and in fact appears to allow – such mixing and matching. The language to be included in the ICA should be modified to reflect the Commission's determination that mixing and matching is not permitted.

This petition does not seek to undo the Commission's resolution of Issue 5. On the contrary, the relief SBC Michigan requests will leave intact everything the Commission decided in connection with Issue 5. SBC Michigan asks only that the parties' agreement reflect the Commission's determination on mixing and matching and that it require MCIIm, as basic common sense and appropriate business practice demand, to notify SBC Michigan when it is placing an order on the rates and terms in SBC Michigan's tariff.

PROCEDURAL BACKGROUND

Issue 5 was, "Should MCIIm be permitted to purchase the same service from either the interconnection agreement or approved tariff?" As often happens, however, the statement of the issue – assigned by the parties early in the process – did not precisely capture the parties' actual disagreement as it was presented to the Commission. As always, the actual disagreement was to be found in the competing contract language. In this instance, the parties' proposals were:

MCIm's language:

If Ameritech-Michigan has approved tariffs on file for interconnection or wholesale services, MCIm may purchase services from Ameritech-Michigan from this interconnection agreement, the approved tariffs, or both in MCIm's sole discretion.

SBC Michigan's language:

If Ameritech-Michigan has approved tariffs on file for local interconnection or wholesale services, MCIm may purchase such local interconnection or wholesale services from those tariffs so long as MCIm timely notifies Ameritech-Michigan in writing of its intent to do so. If, however, any local interconnection or wholesale service that MCIm seeks to purchase from Ameritech-Michigan's tariff is also available to MCIm in this Agreement, but on rates, terms or conditions that are inconsistent with the tariffed rates, terms or conditions for the same service, then the rates, terms and conditions set forth in this Agreement shall prevail; provided, however, that MCIm may substitute the tariffed rates, terms and conditions for the rates, terms and conditions in this Agreement by requesting an amendment to this Agreement on a prospective basis that points to such tariffed rates, terms and conditions and all legitimately related tariffed rates, terms and conditions, and SBC Michigan shall not unreasonably withhold consent to any such request.

There was no disagreement about whether MCIm would be free to purchase services under either the rates and terms in the ICA or the rates in terms in SBC Michigan's tariff; both parties' proposals allowed MCIm to make that choice. From SBC Michigan's point of view, the principal issue, as defined by the competing language, was whether MCIm would be permitted to mix and match terms and conditions from the tariff with terms and conditions from the ICA, *i.e.*, whether MCIm would be permitted to obtain unbundled local switching or collocation, for example, on terms and conditions that MCIm could pick, according to its preference, some from the tariff and some from the contract. An additional significant difference between the parties' proposals was that SBC Michigan's required that the ICA be amended if MCIm wanted to buy on tariffed rates and terms, while MCIm's proposal did not. And, of course, SBC Michigan's

language required MCIIm to give SBC Michigan notice if it was placing an order pursuant to tariff, while MCIIm's proposal did not.

SBC Michigan demonstrated that MCIIm should not be permitted to mix and match (*see, e.g.,* SBC Michigan's May 23, 2003, Proposed Decision of Arbitration Panel at 25-26), and the Commission agreed. It said,

The Commission agrees with the arbitration panel that MCIIm will not be permitted to mix and match terms from the contract and tariff for a particular order. For example, if MCIIm orders a service out of the interconnection agreement, it must do so according to all of the appropriate contract terms. If, however, in a particular instance MCIIm orders a service out of the tariff, all of the related tariff terms and conditions apply.

August 18, 2003, Opinion and Order, at 6. *On that basis*, and also because SBC Michigan's language would have required MCIIm to "seek amendment of the contract to obtain the terms and conditions available from the tariff" (*id.*), the Commission adopted the Panel's recommendation that MCIIm's proposed language be included in the parties' agreement.

Notably, neither the Panel nor the Commission made any reference to SBC Michigan's proposal that MCIIm be allowed to buy out of the tariff rather than the ICA only "so long as MCIIm timely notifies Ameritech-Michigan in writing of its intent to do so." SBC Michigan had explained why the notice requirement was reasonable (*see* SBC Michigan's May 23, 2003, Proposed Decision of Arbitration Panel, at 28), but the Decision of the Arbitration Panel merely incorporated by reference the analysis in MCIIm's PDAP (*see* DAP at 6), which said nothing one way or the other about notice. And the Commission's Opinion and Order, too, said nothing about SBC Michigan's proposal that MCIIm be required to give notice if it was buying out of the tariff. *See* Opinion and Order at 5-6.

As matters stand, therefore, the Commission has not spoken to the question whether MCIIm should be required to give SBC Michigan notice when MCIIm is placing an order under

the terms and conditions in SBC Michigan's tariff; the Commission has stated that mixing and matching will not be permitted; but Paragraph 54 of the General Terms and Conditions in the ICA will read as follows:

If Ameritech-Michigan has approved tariffs on file for interconnection or wholesale services, MCIIm may purchase services from Ameritech-Michigan from this interconnection agreement, the approved tariffs, or both in MCIIm's sole discretion.

PARAGRAPH 54 SHOULD INCLUDE A NOTICE REQUIREMENT

As stated above, SBC Michigan accepts, for purposes of this petition, that MCIIm will be permitted to purchase services either from the ICA or from tariff, in MCIIm's sole discretion. It is unthinkable, however, that MCIIm would be permitted to do so and not inform SBC Michigan which of the two instruments governs MCIIm's order. The reason is obvious: The rates and terms for a service may vary between the ICA and the tariff. That is why MCIIm wanted the right to choose between the two in the first place. But if MCIIm does not tell SBC Michigan whether it is buying out of the ICA or out of the tariff, SBC Michigan will not know which rates and terms apply. This could lead to nightmarish complications when, for example, SBC Michigan fills an order pursuant to the terms and conditions in the ICA when MCIIm had in mind (but did not tell SBC Michigan) that it was placing the order under the terms and conditions in the tariff.

For the most part, MCIIm will be buying out of the ICA, so SBC Michigan needs no notice when MCIIm is doing so. SBC Michigan needs notice only when MCIIm is placing an order pursuant to SBC Michigan's tariff otherwise, the order can be presumed to be pursuant to the ICA. Accordingly, SBC Michigan asks that the following sentence be added to paragraph 54: "MCIIm must timely notify SBC Michigan in writing of its intent to order from the tariff, otherwise the contract rates, terms and conditions will be assumed."

PARAGRAPH 54 SHOULD SPECIFY THAT MCI_m MAY NOT MIX AND MATCH

The Commission has already decided that MCI_m will not be permitted to mix and match by stating, in its resolution of Issue 5, "The Commission agrees with the arbitration panel that MCI_m will not be permitted to mix and match terms from the contract and tariff for a particular order. For example, if MCI_m orders a service out of the interconnection agreement, it must do so according to all of the appropriate contract terms. If, however, in a particular instance MCI_m orders a service out of the tariff, all of the related tariff terms and conditions apply." In its current form, however, Paragraph 54 does not say that MCI_m will not be permitted to mix and match; if anything, it indicates the opposite.

It is important that Paragraph 54 embody the Commission's prohibition against mixing and matching, for at least two reasons: (1) to provide certainty between SBC Michigan and MCI_m, and (2) to avoid disputes between SBC Michigan and carriers that adopt this ICA. With regard to the first reason, the people who will be placing orders for MCI_m and filling the orders on behalf of SBC Michigan a year or two from now will not necessarily be familiar with the arbitration decision that yielded the interconnection agreement under which they are operating. Also, corporate memories are imperfect. To ensure that the Commission's determination that there will be no mixing and matching is put into practice with as little room as possible for uncertainty, the Agreement should recite the prohibition so that the people who are implementing the Agreement will be on notice that mixing and matching is not permitted.

With regard to the second reason for including the prohibition in the Agreement, any carrier that gives consideration to the possibility of opting into the SBC Michigan/MCI_m ICA pursuant to section 252(i) of the 1996 Act needs to be aware that if it does so, it will not be permitted to mix and match ICA terms with tariff terms. And the only way to ensure that such

carriers will be aware of that is for the Agreement to say it. Carriers that are considering section 252(i) adoptions do not necessarily research how the agreements they are considering will be interpreted and enforced by reviewing the arbitration decisions that led to those agreements.

Paragraph 54 should recite, verbatim from the Commission's Opinion and Order, "MCIm will not be permitted to mix and match terms from the contract and tariff for a particular order. For example, if MCIm orders a service out of the interconnection agreement, it must do so according to all of the appropriate contract terms. If, however, in a particular instance MCIm orders a service out of the tariff, all of the related tariff terms and conditions apply."

THERE IS NO SOUND REASON FOR NOT MODIFYING PARAGRAPH 54

The modifications to Paragraph 54 that SBC Michigan has requested leave intact the core of the Commission's resolution of Issue 5 – they leave MCIm free to purchase out of tariff or out of the ICA in MCIm's sole discretion; they do not require MCIm to amend the ICA in order to make a purchase out of the tariff; and they do not permit mixing and matching, which the Commission said was not to be permitted. Indeed, there is no conceivable justification, on the merits, for not making the modifications SBC Michigan has suggested.

The only reason anyone might even suggest for not making the modifications is the Commission's baseball approach to arbitration, but that reason falls short. The Commission's baseball approach calls for a departure from the strict adoption of one party's or the other's language if such a "result would be clearly unreasonable or contrary to the public interest." Order, Case No. U-11134 (July 16, 1996), at 2-3. To allow MCIm to place orders pursuant to SBC Michigan's tariff without informing SBC Michigan would be patently unreasonable, and it would be just as patently contrary to the public interest for Paragraph 54 not to reflect the Commission's prohibition against mixing and matching.

Furthermore, the Commission took a relaxed approach to the baseball rules in this arbitration in any event. The Commission's resolution of at least seven of the arbitration issues did not simply adopt one party's or the other's proposed language,¹ and the Commission did not in any of those instances make a specific finding that the verbatim incorporation of the prevailing party's language would be clearly unreasonable or contrary to the public interest.

For both of these reasons, the Commission's baseball approach to arbitration is no obstacle to SBC Michigan's petition

CONCLUSION

The Commission should clarify that Paragraph 54 of the General Terms and Conditions portion of the parties' agreement is to read as follows:

If Ameritech-Michigan has approved tariffs on file for interconnection or wholesale services, MCIIm may purchase services from Ameritech-Michigan from this interconnection agreement, the approved tariffs, or both in MCIIm's sole discretion. MCIIm will not be permitted to mix and match terms from the contract and tariff for a particular order. For example, if MCIIm orders a service out of the interconnection agreement, it must do so according to all of the appropriate contract terms. If, however, in a particular instance MCIIm orders a service out of the tariff, all of the related tariff terms and conditions apply. MCIIm must timely notify SBC Michigan in writing of its intent to order from the tariff, otherwise the contract rates, terms and conditions will be assumed.


The first sentence is the language proposed by MCIIm and approved in the Opinion and Order. The last sentence is the indisputably reasonable and necessary notice requirement. The

¹ See Opinion and Order at 8 (resolution of CNAM download issues); 14 (inserting additional language into Section 2.7 of xDSL appendix); 24 (directing parties to develop new language concerning OSS audits); 31 (adopting MCIIm's proposed language concerning waiver of connection charge, but "with a modification"); 34 (rejecting MCIIm language concerning IDLC terms but stating that "[l]anguage should be added to reflect SBC Michigan's obligation . . ."); 40 (adopting MCIIm collocation proposal, but with some substitute language); 41 (adopting MCIIm's definition of UNE-P but with modification).

remainder recites verbatim the Commission's prohibition of mixing and matching in the Opinion and Order

Respectfully submitted,

Michigan Bell Telephone Company d/b/a/
SBC Michigan

By: 
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