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November 9, 2000

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

RE: **MPSC Case No. U-12598**

Dear Ms. Wideman:

Enclosed please find the original and four copies of the **Initial Brief of AT&T Communications of Michigan, Inc. and TCG Detroit.** Please file the same in your usual manner. An electronic copy in the PDF format will also be filed with the Commission.

Thank you.

Very truly yours,

Arthur J. Le Vasseur

Arthur J. LeVasseur (fb)

AJL:dmm
Enclosure
cc: Parties Listed on Service List
(w/encls.)

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE CORPORATION

In the matter, on the Commission's own motion, to establish service quality standards, including enforcement provisions, for Ameritech Michigan	))))	Case No. U-12598

INITIAL BRIEF OF AT&T COMMUNICATIONS OF MICHIGAN, INC. AND TCG DETROIT

Pursuant to the schedule established in this matter, AT&T Communications of Michigan, Inc. and TCG Detroit (collectively referred to as "AT&T") submit their initial post-hearing brief to inform the Commission of their position with respect to certain issues raised in connection with this proceeding. Because this proceeding will adopt enhanced quality of service standards and enforcement provisions for Ameritech and Staff has not proposed that identical standards be adopted at this time for other providers, AT&T will not address the substantive merits of the Staff's proposed Ameritech quality standards. However, to the extent certain witnesses have addressed other matters of concern to AT&T, its views on these subjects will be set forth herein.

I. The Commission should recognize that the conditions under which services are provided may warrant variations in service quality standards.

Ameritech witness Harry Semerjian suggested that no service quality standards should be adopted for Ameritech unless the identical standards are applied in a uniform manner across all providers. TR 111. However, the Commission should reject that position based upon the evidence submitted in this case. In addition to the independent assessment made by Staff witness Ronald Choura, the testimony of both Ameritech witnesses and an exhibit offered by Ameritech support the conclusion that variations in service quality standards may be appropriate depending on the circumstances under which those services are provided.

Exhibit R-28, which was admitted into evidence at the behest of Ameritech, is an Order of the Kansas Commission setting forth a Quality of Service Plan for that state. While Ameritech presumably sought its admission for other reasons, the Kansas Order clearly undermines Mr. Semerjian's testimony that service quality standards should be uniform for all providers no matter what the circumstances. The Kansas Commission recognized that different service quality benchmarks may be appropriate and adopted a Kansas Staff plan that included different benchmark levels depending on company size. The plan recommended avoiding any "one size fits all" service quality plan notwithstanding a statutory requirement that the Commission establish minimum quality of service standards equally applicable to local exchange carriers throughout Kansas. Ex. R-28 pp. 11, 17. It is also interesting to note that unlike Ameritech in this case, in that case Southwest Bell Telephone Company did not even challenge the use of different benchmark levels for large and small carriers. Id. p. 6.

In addition, even Mr. Semerjian conceded during cross-examination that it may not always be appropriate to adopt uniform standards for all situations:

> Q Okay. So you would agree that a uniform standard is not always appropriate, correct?
>
> A That is correct. There should be some modification of the standard to reflect the density of lines in a particular exchange.
>
> TR 174
>
> ***
>
> Q Applying a different standard, depending on the number of access lines in the wire center or exchange, would be appropriate?
>
> A That is correct.
>
> TR 175

Mr. Semerjian also admitted that it may be appropriate to vary the application of standards depending upon the level of competition that exists:

> Q. Okay. And you are suggesting -- or are you suggesting that it is appropriate to take into consideration the competitiveness of a market and adopt, perhaps, different standards depending on the level of competition?
>
> A. I am suggesting that that may be a factor in determining the standards and also who the standards should apply to, what providers, rather than making a comment on different standards for different competitive situations.
>
> TR 177, 178.

Ameritech's expert economist, Dr. Michael Carnall, agreed that it is not appropriate to apply an identical set of standards to both competitive and non-competitive markets. From an economist's perspective, in competitive markets providers attempt to differentiate themselves on the basis of quality. TR 207. Customers can therefore select a provider who offers the best combination of pricing and quality of service suited to the customers needs. TR 194. In contrast in markets where there is only a single provider, customers do not have any option. Hence, under those conditions detailed quality standards are more appropriate. TR 206, 207.

Finally, in both his direct prefiled testimony and during cross examination, Staff witness Ronald Choura agreed that it may be entirely appropriate to adopt different quality standards depending on the circumstances of a provider:

> Q. Should Ameritech have different standards than other providers?
>
> A. *** Staff believes that it may be desirable for more than one set of standards. Where competition is vigorous, such standards could be minimized because customers will seek out other providers of good service. However, where customers lack choice, economic development is threatened and service quality problems have been evident, more stringent standards are appropriate for the Commission to ensure compliance with section 101 of the Michigan Telecommunications Act (MTA).
>
> TR 323.

When questioned by Ameritech's counsel, Mr. Choura confirmed that the circumstances may warrant the application of relaxed standards to some providers:

> Q On page 9, lines 9 and 10, you refer to the Commission, having stated it anticipates this docket will form the basis for similar proceedings for other providers. Do you see that?
>
> A Yes.
>
> Q Once all of those similar proceedings are complete, is it your recommendation that there be separate standards for each provider?
>
> A There may be relaxed standards that apply in different ways to different size companies, yes.
>
> TR 346.

In this case, the Commission will be adopting quality standards with respect to Ameritech Michigan and Staff developed its proposals as they pertain to Ameritech. TR 333. Therefore, the standards adopted in this case should be crafted to reflect what is appropriate given the conditions that exist with respect to Ameritech Michigan's services, not what may be appropriate for services provided by other providers. Factors to be considered should include the size of the provider, a factor that the Kansas Commission deemed relevant and Mr. Choura endorses, the number of access lines that a provider may have in total, or within a wire center or an exchange as suggested by Mr. Semerjian, or the level of competition a provider faces, as suggested by Dr. Carnall and Mr. Choura. In contrast, there is no evidence in the record to suggest that there is any need to impose service quality standards appropriate for Ameritech on all providers in all circumstances.

The factual record developed in this case clearly establishes that Ameritech occupies a unique position among local exchange providers in Michigan. Ameritech has 5.4 million access lines. TR 178. Mr. Choura described Ameritech Michigan as a "virtual monopoly." TR 320. This assessment is supported by the testimony of Ameritech's own witnesses. Mr. Semerjian testified that Ameritech controls a 95% share of the combined residential and business markets within its serving area. TR 180. He also conceded that at least some of the markets in which Ameritech operates are not competitive. TR 177. According to Dr. Carnall, the threshold level of market share that economists consider indicative of monopoly power varies, but the range is between 60% and 90%. In other words a market share above the threshold is indicative of monopoly power. TR 208, 209. Ameritech's 95% market exceeds the high end of the range identified by Dr. Carnall and clearly supports Mr. Choura's assessment.

On the other hand, given Ameritech's overwhelming market it is obvious that any other provider operating in the Ameritech serving areas can have no more than a tiny fraction of the market and at all times is subject to the competitive threat posed by Ameritech. A CLEC faces the real possibility of losing all of its business to another provider, including Ameritech, if its own service quality deteriorates to unacceptable levels. Hence, there is simply no reason to blindly accept Ameritech's argument that quality standards can never vary and that only one set of uniform standards are appropriate. Indeed, the evidence submitted in this case mandates exactly the opposite conclusion. Finally, if the Commission were to undertake to address quality service standards for other providers, there is no evidence in the record in this case that addresses what specific standards would be appropriate for any provider other than Ameritech Michigan. Such a determination should be made only in another proceeding in which the circumstances of other providers can be properly evaluated and appropriate standards developed to address their unique situations.

II. Ameritech Michigan has failed to meet the burden of demonstrating that its Project Pronto will not confer a competitive advantage.

In its Order initiating this proceeding, the Commission directed Ameritech to file standards and, in its filing, to demonstrate that the "means" by which it intends to achieve its proposed standards, including Project Pronto, are consistent with the competitive policies of the MTA and "do not confer an anticompetitive advantage on Ameritech Michigan." Commission Order 9/7/2000 p. 2.

Ameritech witness Semerjian offered some vague testimony regarding Project Pronto. However this testimony fails to even address the specific issues raised by the Commission, let alone make the required demonstration. TR 104-107. Due to the deficiency of the filing, Staff submitted discovery requests to Ameritech in an attempt to ferret out the necessary information. However, Staff was never provided sufficient information regarding Project Pronto to make any assessment. TR 368. Mr. Choura confirmed that the situation had not changed between the date he pre-filed his direct testimony and the date of the hearing in this matter, November 3, 2000. TR 336 Thus, to date, Ameritech has failed to make the demonstration required by the Commission in its September 7, 2000 Order.

Conclusion

Wherefore, AT&T requests that the Commission adopt such service quality standards in this proceeding as it deems appropriate for Ameritech Michigan, based upon the unique circumstances that exist with respect to Ameritech Michigan and crafted to address the problems that the Commission has identified with that provider's services. AT&T requests the Commission reject Ameritech Michigan's argument that no service quality standards can be adopted for Ameritech Michigan unless identical service quality standards are also applied to all other local exchange providers in Michigan.

DATED: November 9, 2000

AT&T Communications of Michigan, Inc.
and TCG Detroit

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