

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

**AMERITECH MICHIGAN'S RESPONSE TO
STAFF'S MOTION TO STRIKE
AMERITECH MICHIGAN'S MOTION FOR SUMMARY DISPOSITION**

Ameritech Michigan, by its counsel, submits its response to the Michigan Public Service Commission Staff's Motion To Strike Ameritech Michigan's Motion For Summary Disposition ("Staff Motion" or "Motion") filed in this case on October 31, 2000. This response is being filed pursuant to the direction of the Administrative Law Judge (ALJ) at the hearing on November 3, 2000 (Tr 391).¹ The Staff Motion should be denied for several reasons.

First, the Motion is predicated solely upon the ground of alleged prejudice, an argument that cannot be made with any legitimacy. The Motion claims that Ameritech Michigan improperly noticed up the summary disposition motion and limited parties to one day for preparation and filing of a response (Motion, p 2). Since Staff will now have had the interval

¹ As to the schedule for filing of responses to the Staff motion and Ameritech Michigan's motion for summary disposition, the ALJ initially indicated that he would allow for oral argument at the close of the evidentiary hearing, also indicating that he did not view himself as having any authority to rule on the summary disposition motion since it was the Commission itself that had convened this proceeding (Tr 85). The ALJ subsequently revised this ruling and directed that any responses to the Staff Motion and the summary disposition motion be filed the same day as the initial briefs are due to be filed, being today, November 9, 2000.

from the date the notice of hearing was served (Monday, October 30) until its response is to be filed pursuant to the ALJ's directive (Thursday, November 9), Staff actually will have had more time than is required under Rule 335 of the Commission's Rules of Practice and Procedure, R460.17335. The rule requires 7 days notice for bringing on a motion²; Staff will have had 10 days. Thus, no prejudice could exist.

Second, Staff asserts that the summary disposition motion should be stricken for failure to comply with Rule 335. Since the ALJ has set a schedule that provides Staff with more than the requisite time to respond, as described above, this ground should also be rejected. The basis of the Staff Motion is that Ameritech Michigan failed to file a notice of hearing simultaneously with the filing of the motion. Ironically, Staff did the same thing with its Motion, filing the notice a day after the Motion was filed. Of course, Rule 335 does not prohibit such a procedure and simply sets forth the calculation of time from the date notice is actually given.

Finally, Staff's underlying complaint about the timing of the summary disposition motion amounts to arguing that Ameritech Michigan should have noticed the motion up for some date after the evidentiary hearing on November 3. That such an argument is lodged against Ameritech Michigan is truly ironic, since Ameritech Michigan did not set the schedule for this case. Ameritech Michigan, as stated in its summary disposition motion, has shown that the timetable of this case fails to afford it requisite due process. Since the record was to close at the end of the evidentiary hearing, which had been set for November 3, there appeared to be no other date that could be noticed up for the motion. Consequently, the last possible hearing date was used for the notice. If there is a failure of due process associated with the motion, then, it is

² If the motion is served by delivery, as Ameritech Michigan's summary disposition motion was.

because of the schedule set in the case, something that is not within Ameritech Michigan's control.

In reality, Ameritech Michigan could have waited until the filing of its initial brief on November 9 to raise the arguments brought on summary disposition. Instead, it teed the issues up and disclosed its position on those issues some 15 days before the deadline for filing initial briefs.³ To maintain that this is somehow an attempt to shortcut the rights of other parties is completely inconsistent with the realities of the situation. The prejudice in this case has been to Ameritech Michigan; the other parties all have had more time to prepare and respond to Ameritech Michigan's filings.

Based on all of the foregoing, Staff's Motion should be summarily denied.

Respectfully submitted,

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Dated: November 9, 2000

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³ Based on the original schedule set at the prehearing, the period at that point was calculated to be 16 days (October 25 to November 10). Since November 10 is a State holiday, the parties concurred and the ALJ directed that the previous day be the date for filing of initial briefs (Tr 391).