MICHIGAN PUBLIC SERVICE COMMISSION

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's on motion, to establish service quality standards, including enforcement provisions, for Ameritech Michigan.
_______________________________________/

Case No. **U-12598**

REPLY BRIEF OF THE
MICHIGAN PUBLIC SERVICE COMMISSION STAFF

The Staff of the Michigan Public Service Commission ("Staff") submits the following Reply to the Initial Brief of the Michigan Bell Telephone Co., d/b/a Ameritech Michigan ("Ameritech").

I. Lawfulness of the Proceedings

Ameritech argues that the instant proceedings are unlawful. In reply, Staff adopts and incorporates by reference the arguments set forth in its Brief in Opposition to Ameritech's Motion for Summary Disposition.

II. Basic Guidelines

A. The Expectation of Absolute Compliance Is Reasonable.

Ameritech suggests that standards "should not be absolute" and "must be set in terms of either an average time or a certain percentage of transactions". (Ameritech's Initial Brief, p. 24-25). Such a concept does nothing to enhance service quality and instead, would operate to ensure the continuation of a system that is unfair to consumers, immeasurable by the Commission, and based solely on company data.

> It is no consolation to a customer who is waiting days for repair (or even 36 hours), or is waiting weeks for installation, or is being put on hold for a half an hour while trying to request a repair or installation order, that others in the service

territory may be faring better. Performance standards that measure only system wide-performance leave individual customers who are victimized by bad service without relief, comfort or meaningful redress.

> A system of benchmark measurements instead of strict accountability to each customer, allows Ameritech Michigan to be judged by a much more generous standard than is routine for any other consumer product or service. Just imagine the owner of a *lemon* of an automobile tolerating an auto manufacturer defense against accountability that would go something like this, "Oh, but only 10% of our cars are that bad, so you cannot really claim you are entitled to more than token relief."
> (See: Comments of the Michigan Consumer Federation).

Acceptable or permissible levels of substandard service are not the norm with any other customer product or service. A "recognition" that service quality results for a particular service measurement in a given month may be below the objective standard (Ameritech's Brief, p. 26) applies equally to the provision of other goods and services. Yet, that recognition does not render individual customer accountability inappropriate or impossible. Apprised of the required results, suppliers of consumer products and services are free to adopt and develop the means to meet those results, with built-in factors for such things as human error, weather, and Bruce Springsteen concerts.

B. Compensatory Customer Credits are Lawful

The paltry customer credits mandated by the current service quality rules provide no incentive for compliance and fail to take into account the resultant costs[1] incurred by the customer when his service needs are not met. "Time is money, a missed appointment costs a customer time away from work. A service outage to persons who rely on e-commerce is lost business". (4 Tr. 326). Customer credits that take those factors into account are not unlawful

[1]For example, the current "proportionate" credit fails to cover services, such as call waiting, sold by the company but unusable in the event of a service outage.

damage awards as contended by Ameritech. (Ameritech Initial Brief, pp. 27-30). The Commission may, consistent with it duty to ensure the provision of high quality basic local exchange service in the state, adopt standards and enforcement provisions that result in compensation through consumer credits as opposed to large fines awarded to the State. Like the Attorney General,[2] Staff did not advocate wholesale automatic customer credits whenever a standard has been violated, but, instead, the application of individual customer credits for Ameritech's violation of a standard as applied to a particular customer. This cannot, by any stretch of the imagination, be deemed to be "improper penalties" as contended by Ameritech. In fact, Staff's recommended customer credits for the violation of specified standards is consistent with similar "missed commitment" credits provided, by tariff in this state, to Verizon's customers.

Finally, Ameritech's self-imposed limitations on liability should not operate to preclude the Commission's adoption of enforcement provisions designed to carry out its duties under the MTA. The company cites *Waters v Pacific Telephone Co*, 12 Cal 3d 1 (1974) for the proposition that "numerous courts have held that limitations on liability like that in Ameritech Michigan's tariff are valid and reflect legitimate public policy concerns" (Ameritech Brief, p. 28). That case, decided in 1974 and quoting from a 1952 decision, predated by decades the current transitional phase from monopoly to competition. The *Waters* Court noted the rationale, now obsolete, underlying the legitimacy of such limitations as follows:

> The theory underlying these decisions [upholding tariff limitations] is that a public utility, being strictly regulated in all operations with considerable curtailment of its rights and privileges, shall likewise be regulated and limited as to its liabilities. In consideration of its being peculiarly the subject of state control, its liability is and should be defined and limited. There is nothing harsh or inequitable in upholding such limitations of liability when it is thus considered

[2](4 Tr. 302).

that the rates fixed by the commission are established with the rule of limitation in mind. (*Id.*, citations omitted).

Ameritech is not a strictly regulated public utility whose rates are set by the Commission, and the underlying rationale for permitting the company to limit its liability is contrary to the intent of the MTA and deprives customers of substantive relief for violations of Commission standards.

III. Conclusion

For the reasons previously stated, Staff recommends the adoption of enhanced service quality standards and enforcement provisions that provide adequate incentives for compliance and authorize the filing of customer complaints regarding call competition, integrity and billing. Standards should provide for improved customer education and enhanced monitoring with significant penalties for noncompliance.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

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Dated: November 15, 2000

STATE OF MICHIGAN

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Case No. **U-12598 (efile)**

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Pamela A. Walters, being first duly sworn, deposes and says that on November 15, 2000, she served a true copy of the Reply Brief of the MPSC Staff upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

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Subscribed and sworn to before me this 15th day of November, 2000.

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Ingham County, Michigan
My Commission Expires: 11/13/03