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October 24, 2001

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

Re: MPSC Case No. U-13007

Dear Ms. Wideman:

Enclosed for filing please find the original and four copies of the Initial Brief Of The Michigan Pay Telephone Association in the above-entitled matter. Proof of service upon parties of record is also enclosed. Thank you.

Sincerely,

CLARK HILL PLC

Leland R. Rosier

LRR/pgs
Enclosure

cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter, on 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

INITIAL BRIEF OF THE MICHIGAN PAY TELEPHONE ASSOCIATION

NOW COMES the Michigan Pay Telephone Association ("MPTA"), and for its Initial Brief in this proceeding, states:

INTRODUCTION

In the amendments to the Michigan Telecommunications Act ("MTA") adopted in 2000 PA 195, the Michigan Legislature provided in Section 207:

> "Sec. 207. 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."

Section 208 of the MTA governs the procedures and standards to apply when deciding if a service is to be deemed a competitive service. In order for a service to be considered competitive, Section 208(3) requires that, for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service is available from more than 1 unaffiliated provider, and 3 or more of the following must apply:

> (a) Actual competition, including facilities based competition, exists within the local exchange, group of exchanges, or geographic area.
>
> (b) Both residential and business end-users have service alternatives available form ore than 1 unaffiliated provider or service reseller.

(c) Competition and end-user usage has been demonstrated and measured by independent and reliable methods.

(d) Rates and charges for the service have changed within the previous 12-month period.

(e) There is a functionally equivalent service, reasonably available to end users form an unaffiliated provider or supplier.

Once the MTA amendments were passed, it did not take Ameritech long to seek a finding of competitiveness. On December 15, 2000, Ameritech filed an application in Case No. U-12765 seeking to have directory assistance services declared competitive under Sections 207 and 701 of the MTA. However, on March 29, 2001,after receiving comments from several parties, including MPTA, the Commission rejected that application. The Commission indicated that a contested case application under Section 203 would be necessary prior to declaring directory assistance competitive, that a TSLRIC study for DA service be filed and approved, and that the application address the impact on customers who traditionally have been exempted from charges or have an increased directory assistance free call allowance, including payphones.

On July 6, 2001, Ameritech made its second attempt to deregulate directory assistance through filing this case. This time Ameritech made the "identifiable class or group of customers" end users or retail customers, but has failed to define expressly the end users or retail customers. The geographic area is all of Ameritech's exchanges. However, it is unclear whether Ameritech has established the factors required under Section 208. For example, Mr. Lehmkuhl testified that Ameritech still has a lock on the directory assistance market in Michigan. TR 182. Only facilities-based providers can provide directory assistance service through 1-555-1212. TR 183. CLECs that provide service through resale or UNE combinations cannot provide their own directory assistance alternative. TR 183. Ameritech has failed to meet several of the requirements of Section 208. TR 196-198. Mr. Lehmkuhl and Staff witness Louis Passariello

testify that there is no approved TSLRIC cost study and that there are problems with the TSLRIC study filed in this case in that it does not comply with Commission orders. TR 199, 290-294.

It thus appears that Ameritech has failed to make its case, and that the Commission should deny the application. Even if the Commission decides to grant (or conditionally grant, as Staff's witnesses recommend), the Commission should carefully craft its order to specifically define the "identifiable class or group of customers" to both limit the class to the tariffed business and residential retail customers identified by Ameritech's witness, and to specifically indicate that other tariffed directory services are not included. As other parities will adequately address the reasons why the application should be denied, a position with which MPTA agrees, this brief will instead address the need to make any decision to grant the application as narrow as necessary to assure regulation until all facets of directory assistance are competitive.

STATEMENT OF INTEREST OF MPTA

The MPTA is an incorporated nonprofit association of business owners that own and operate pay telephones within the state of Michigan, commonly referred to Independent Payphone Providers ("IPPs"). Members of the MPTA own or operate a majority of the independent payphones in Michigan. IPPs provide payphone services governed by §§ 318-320 of the Act, and do so through purchasing local exchange service and directory assistance service from Ameritech Michigan.

STATEMENT OF PROCEEDINGS

On July 6, 2001, Ameritech Michigan ("Ameritech") filed with the Michigan Public Service Commission ("Commission" or "MPSC") an application for a determination that directory assistance ("DA") services provided to end users are competitive. In so doing,

Ameritech did not indicate a definition of "end user" or specify how it would limit the requested authority to services to end users.

On August 22, 2001, a prehearing conference was conducted by Administrative Law Judge George Schankler. At the prehearing conference, AT&T Communications of Michigan and TCG Detroit (collectively "AT&T"), MCI Metro Access Transmission Services ("MCI"), the Attorney General, XO Michigan, MPTA, and the Telecommunications Association of Michigan ("TAM") were granted intervenor status.[1] TR 31-32.

The evidentiary hearing in this matter was held on October 9, 2001. The record in this case consists of three volumes of transcript containing 321 pages, and 15 exhibits numbered A-1 through I-15. Initial briefs are due October 24, 2001, and reply briefs are due October 31, 2001. TR 39.

ARGUMENT

1. Independent Payphone Providers Purchasing Directory Assistance As Bundled Under Ameritech's IPP Service Tariff, or CLECs Reselling Ameritech's IPP Service, Are Not Purchasing Directory Assistance Service To The End User.

Ameritech's application is specifically limited to a request for "a determination that directory assistance services provided to end users are competitive" throughout Ameritech's service territory. The application did not indicate a definition of "end user" or specify how it would limit the requested authority to services to end users. For example, no tariffs were specified that Ameritech would be authorized to change or remove if the application were to be granted. Ameritech also did not address the provision of directory assistance to IPPs except in directly addressing the monthly exemption.

[1] XO Michigan later withdrew its intervention. TR 49.

This was brought out in cross-examination. Ms. Moore, testifying for Ameritech, specifically indicated that Ameritech's application would affect only directory assistance to end users, who are defined as "the ultimate consumer of the directory assistance service which would be the retail customer." TR 119. Ms. Moore specifically limited the application to retail services under Ameritech's Tariff 20 R, Part 11, Section 2, or to new services to end users as limited by her definition. TR 119-120. Consequently, the Commission's order should limit any finding of competitiveness as applying only to the customers affected by this tariff, or to new services, if any, that would be limited to the customers affected by this tariff.

Ms. Moore further testified that Ameritech is not seeking the authority to change any terms or conditions relating to the provision of directory assistance service to IPPs. This service is currently being provided under Ameritech's Tariff 20 R, Part 13, Section 2, and is resold to CLECs under Ameritech's Tariff 20 R, Part 22, Section 13. Ms. Moore indicated that these tariff provisions were beyond the scope of Ameritech's application, and that Ameritech would not have the authority to change either tariff if the application is granted. TR 120.

Moreover, The Commission has specifically ruled that the monthly allowance of 20 free calls and the rate of $0.22 per call that are available to COCOT providers (now known as IPP Service) under current tariffs shall remain in effect until changed by a Commission order in an appropriate application or complaint case. See Case No. U-10282, Order Denying Rehearing, September 8, 1994. Ameritech concedes that this application does not address either the exemption or the rate for directory assistance to IPPs, so this case cannot be such an "appropriate application or complaint case." TR 121. Consequently, there is no basis in this proceeding to allow Ameritech to change either the rate or the call allowance for IPP Service. Any order should thus not only find that IPPs are not end users of directory assistance, but should

specifically find that the rate and call allowance for directory assistance to IPPs is not affected by the decision in this case.

2. Ameritech Has Presented No Evidence That Competition Exists For Providing Directory Assistance to IPPs.

Independent from references to specific tariffs, any finding as to the competitiveness of directory assistance services to IPPs would fail from lack of evidence. During cross examination, the following exchange took place:

> Q. Would you turn to page 5 of your direct testimony, lines 5 through 11, where you have listed alternatives consumers.
>
> In preparing your testimony, did you look at potential alternatives for stand-alone directory assistance service that can be used by independent payphone providers?
>
> A. I did not focus on the independent pay phone provider market.
>
> Q. And again, on page 8, when you list those companies, again, you did not look at whether those companies provide directory assistance to independent pay phone providers?
>
> A. That's correct.

Consequently, even if the Commission were to look at directory assistance services to IPPs as service to end users, the record in this case would not support granting Ameritech's application. The witness did not even look at whether there are potential alternative providers for IPPs, or as to whether the companies she looked at as alternative providers in fact provide directory assistance service to IPPs. Consequently, there is no evidence that any such alternative providers exist, let alone whether there is viable competition. For this additional reason, then, if the Commission is inclined to grant the application, the Commission should be careful to limit the "identifiable class or group of customers" to which it applies so as to exclude IPPs purchasing directory assistance service as part of IPP Service from the class or group of customers affected by the Commission's order.

RELIEF

MPTA recommends that the Commission deny Ameritech's application and continue to regulate directory assistance service provided to end users in this state. If the Commission nevertheless decides to grant Ameritech's application, the Commission should 1) expressly limit any finding of competitiveness as applying only to the customers affected by Ameritech's Tariff 20 R, Part 11, Section 2, or to new services, if any, that would be limited to the customers affected by this tariff; 2) specifically find that directory assistance service to IPPs under Ameritech Tariff No. 20 R, Part 13, Section 2 (IPP Service) or Tariff No. 20 R, Part 22, Section 13 (Resale of IPP Service) is not directory assistance service to end users and is, therefore, not deemed competitive; 3) specifically find that there is no evidence that directory assistance to IPPs is competitive, and specifically exclude IPPs from the class or group of customers affected by the Commission's order.

Respectfully submitted

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Dated: October 24, 2001

STATE OF MICHIGAN

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PROOF OF SERVICE

STATE OF MICHIGAN)
) SS:
COUNTY OF INGHAM)

Kristi A. Grieve, being duly sworn, deposes and says that she is an employee of Clark Hill P.L.C., and that on October 24, 2001, a copy of the Initial Brief Of The Michigan Pay Telephone Association was served upon:

See attached service list

Except as otherwise noted on the attached list, service was accomplished by depositing same in a regular mail depository, enclosed in envelopes bearing postage fully prepaid and addressed properly and via electronic mail.

Kristi A. Grieve

Subscribed and sworn to before me
this 24th day of October, 2001.

Haran C, Rashes, Notary Public
Washtenaw County, Michigan
acting in Ingham County
My Commission Expires: September 18, 2003

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U-13007

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