STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of 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 (e-file)**

MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
REPLY BRIEF

In accordance with the briefing schedule established in this case, Michigan Public Service Commission Staff (Staff), by counsel, submits the following reply brief.

ARGUMENT

Ameritech argues, at page 29 of its brief, that nothing in Section 207 of the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq,* requires a provider to submit a cost study before a service can be determined by the Michigan Public Service Commission (Commission) to be competitive. Ameritech's reliance on this isolated provision of the MTA is misplaced and must be rejected.

Ameritech filed its Application in the instant case on or about July 6, 2001. In that Application, Ameritech states:

> Pursuant to sections 203, 207 and 208 of the Michigan Telecommunications Act ("MTA"), 1991 PA 179, as amended, MCL 484.2203, 484.2207 and 484.2208, Ameritech Michigan respectfully submits this application to the Michigan Public Service Commission (Commission) for a determination that directory assistance services provided to end-users are competitive in all areas of the State of Michigan in which Ameritech Michigan provides such services. … (Footnote omitted).

Ameritech submitted its Application relying not just on Section 207, but on Sections 203 and 208 of the MTA as well. Section 208(9) of the MTA provides:

> A provider shall not file to have a service classified as competitive until the provider has received the approval of the commission of a total service long run incremental cost study for the service to be classified.

In rejecting Ameritech's initial attempt to have directory assistance (DA) declared competitive, the Commission had previously determined that Section 208 is implicated in a determination by the Commission in classifying a service as competitive. March 29, 2001 Order in MPSC Case No. U-12765. As noted by Staff in its initial brief, the Commission had, in its disposition of the initial Ameritech filing, specifically ordered Ameritech to obtain Commission approval of a cost study before filing the instant Application.

Ameritech's attempt to focus attention on the isolated provisions of Section 207 is also contrary to well-established rules of statutory construction. In *Delta County v Department of Natural Resources*, 118 Mich App 458, 462; 325 NW2d 455 (1982) the Michigan Court of Appeals observed:

> [A] statute must be read in its entirety. The meaning given one section must be arrived at after due consideration of other sections so as to produce, if possible, a harmonious and consistent enactment as a whole. *King v Director, Midland County Dep't of Social Services,* 73 Mich App 253; 251 NW2d 270 (1977).

Ameritech should not be permitted to ignore the requirements of Section 208.

Ameritech, at pp. 31-34 of its brief, nonetheless launches into a less-than-convincing defense of its filing, arguing that: (1) its filed cost studies are consistent with the total service long run incremental (TSLRIC) definition set forth in the MTA; (2) its use of the OSCARS cost

model is the "best of breed" among various cost models previously used; (3) the chosen 2001-2004 study period is the most forward-looking; (4) the labor rates, inflation factor, and other inputs reflect the most recent data; and (5) its DA cost studies are consistent with the Commission's adopted TSLRIC costing principles. Ameritech nevertheless concludes by indicating that, if required to file a compliance cost study consistent with the recommendations outlined by Staff in its initial brief, it will do so.

Ameritech's concession in this regard is hardly a surprise. First, Ameritech has admitted to making changes to approved costs. Second, the approved costs to which Ameritech has made these changes are Ameritech's estimate of its forward-looking costs approved by the Commission in MPSC Case No. 11831 less than two years ago. Third, retail DA is an existing service (as opposed to a new service) and cost updates or piecemeal changes for such service were specifically prohibited by the Commission in its May 3, 2000 Order in MPSC Case No. U-11831.

Ameritech's arguments in this regard must be rejected.

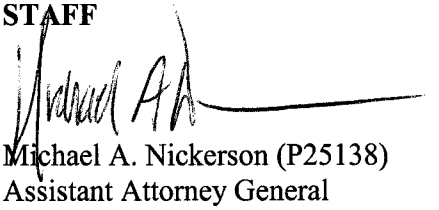
CONCLUSION

Subject to the concerns reflected above and in Argument I of Staff's initial brief, Staff submits that the Ameritech Michigan application satisfies the criteria set forth in MTA, § 208. Staff would again, however, recommend that the Commission condition the grant of any competitive declaration relating to DA service on (1) Ameritech Michigan's submission of a compliant cost study for DA; and (2) a requirement that tariffs include provisions that exempt customers from directory assistance charges who have a physical or mental limitation that

restrict the use of a telephone directory similar to that provided by Ameritech Michigan Tariff, 20R, Part II, § 2, Sheet 4.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF



Michael A. Nickerson (P25138)
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

DATED: October 31, 2001
13007/RB

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of 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 (e-file)**

PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF INGHAM)

TINA L. BIBBS, being first duly sworn, deposes and says that on **October 31, 2001**, she served a true copy of **MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S REPLY BRIEF** 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:

BRUCE R BYRD
AMERITECH MICHIGAN
444 MICHIGAN AVENUE
ROOM 1750
DETROIT, MI 48226

JOHN M DEMPSEY
WILLIAM J CHAMPION III
DICKINSON WRIGHT PLLC
215 S WASHINGTON SQUARE, SUITE 230
LANSING, MI 48933

HON GEORGE SCHANKLER
ADMINISTRATIVE LAW JUDGE
MICH. PUBLIC SERVICE COMM
6545 MERCANTILE WAY, SUITE 14
PO BOX 30221
LANSING, MI 48909

ORJIAKOR N ISIOGU
ASSISTANT ATTORNEY GENERAL
SPECIAL LITIGATION DIVISION
6520 MERCANTILE WAY
SUITE 2
LANSING, MI 48911

ALBERT ERNST
CHRISTINE MASON SONERAL
DYKEMA GOSSETT PLLC
800 MICHIGAN NATIONAL TOWER
LANSING, MI 48933

JAMES R DENNISTON
WORLDCOM
205 NORTH MICHIGAN AVENUE
11th FLOOR
CHICAGO, IL 60601

LELAND R ROSIER
CLARK HILL PLLC
2455 WOODLAKE CIRCLE
OKEMOS, MI 48864-5941

JOHN J REIDY, III
AT&T CORPORATION
222 WEST ADAMS
SUITE 1500
CHICAGO, IL 60606

MICHAEL S ASHTON
FRASER TREBILCOCK DAVIS & DUNLAP, PC
1000 MICHIGAN NATIONAL TOWER
LANSING, MI 48933

ARTHUR J LEVASSEUR
FISCHER, FRANKLIN & FORD
3500 GUARDIAN BUILDING
DETROIT, MI 48226

TINA L. BIBBS

Subscribed and sworn to before me

this 31st day of October, 2001.

Carol Ann Dane, Notary Public
Eaton County, Michigan
My Commission Expires: 7-23-2004