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**

POST-HEARING REPLY BRIEF OF
AT&T COMMUNICATIONS OF MICHIGAN, INC.

AT&T Communications of Michigan, Inc. ("AT&T") submits its post-hearing reply brief recommending that the Administrative Law Judge ("ALJ") issue a proposal for decision denying the relief requested by the application in this case.

ARGUMENT

A. The Application Must Be Denied Because There Is No Approved TSLRIC Study For Ameritech Michigan's DA Services

In its initial post-hearing brief, AT&T explained that while it does not generally dispute that the local directory assistance marketplace may be competitive, AT&T does not believe that Ameritech Michigan's Application in this case should be granted. AT&T Br., pp. 2-3. AT&T's principle quarrel with Ameritech Michigan's proofs is based upon its failure to obtain approval for a Directory Assistance TSLRIC study *prior to* filing the instant application. Ameritech Michigan's initial post-hearing brief does not change (or even challenge) AT&T's position. Indeed, with very little discussion of the issue, Ameritech Michigan continues to claim that no TSLRIC study is even required.

Therefore, AT&T's unrebutted position – as articulated in its opening brief – remains the same. Ameritech Michigan should have obtained approval for its TSLRIC study before filing the instant case. When dismissing Ameritech Michigan's earlier

application, the Commission specifically ordered Ameritech Michigan to obtain Commission approval of a TSLRIC study for DA services *before seeking to have the services declared competitive.* Ameritech Michigan acknowledges the Commission requirement (Ameritech Brief, at 2),[1] but admits that it has done nothing to comply with the order (with regard to the *approval* of a TSLRIC study). *Id.*, p. 29.[2] Ameritech Michigan's failure is unexplainable and unfortunate.

Ameritech Michigan can be expected to argue (as it has previously) that its Application should only be considered under § 207 of the Michigan Telecommunications Act ("MTA") and that, therefore, § 208's requirement of an approved TSLRIC study is inapplicable. The fallacy in such an argument is easily seen when it is remembered that Ameritech Michigan was ordered by the Commission to obtain approval of a TSLRIC study before filing the instant case. Ameritech Michigan did not seek rehearing on that requirement. As the Commission recently reminded Ameritech Michigan in another case, "Commission orders are effective until changed by the Commission through another order, in the same or another docket." Opinion and Order, Case U-13082, p. 7 (October 29, 2001). The Commission's order in U-12765 remains unchallenged and unchanged. The Commission must either waive this requirement (which AT&T does not support) or must once again deny Ameritech Michigan its relief for violating its previous order.

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[1] Perhaps only an oversight, but Ameritech Michigan misstates the Commission's requirement in its brief when it states, "[t]he Commission further determined that Ameritech Michigan should submit a total service long run incremental (TSLRIC)." Amer. Br., p. 2. As AT&T pointed out in its opening brief, the Commission's March 29, 2001 Order was far more direct: "The Commission therefore finds that Ameritech Michigan *must obtain Commission approval* of a TSLRIC study for DA services *before* seeking to have the service declared competitive." March 29, 2001 U-12765 Order, p. 12 (emphasis added).

[2] Ameritech Michigan's Brief claims that its Application and testimony in this case was filed "[I]n accordance with the Commission's direction…[,]" referring to the Commission's order in Case No. U-12765. At least with regard to the TSLRIC study requirement, it is clear that Ameritech Michigan's filing was *not* in accordance with the Commission's direction.

B. The Commission Should Not Address Any Issues Relating to UNE DA

Neither the PFD or the Commission's ultimate order in this case should take any position on whether Ameritech Michigan provides operational customized routing for use by CLECs to provide *alternate* DA services. This issue has already been decided by the Commission in Case U-12622. Moreover, Ameritech Michigan has expressly disclaimed any interest in raising this issue in this case. For example, in its written objection to AT&T's intervention in this case, Ameritech Michigan states:

> While noting that "Ameritech Michigan's Application indicates that such 'wholesale directory assistance' will not be affected by the Commission's determination in this case," AT&T nonetheless wants to litigate the issue. According to AT&T, it "has a direct interest in rebutting any claim that OS/DA services need no longer be offered a wholesale." If AT&T has an interest in rebutting such a claim, its resources would undoubtedly be better spent in a case where such a claim is raised. *It is not raised in this case.*

Ameritech Michigan's Objection to AT&T Communications of Michigan, Inc. and TCG Detroit's Petition to Intervene, Case No. U-13007, p. 2 (filed Aug. 21, 2001) (citations omitted; emphasis added). Counsel for Ameritech Michigan made similar statements at the hearing on the petitions for intervention. Vol. I, Tr. 8 ("This case is not about the UNE and unbundled provision of OS/DA and TSLRIC rates."); *see also id.*, Tr. 34 (indicating that Ameritech Michigan would not be submitting evidence addressing the obligation of Ameritech Michigan to provide UNE DA).

Nevertheless, in its brief, Ameritech Michigan mentions at various points that it provides "customized routing" for UNE DA via its tariffs. *See, e.g.,* Ameritech Br., p. 11. Such statements, if offhandedly approved by the PFD or the Commission, could be used as a "bootstrap" for an Ameritech Michigan argument to remove OS and DA from the list of UNEs Ameritech Michigan is now required to provide.

But as admitted even by Ameritech Michigan the issue of whether DA is a UNE that should be provided at TSLRIC is not raised in this case. Neither is the question of whether Ameritech Michigan provides suitable customized routing options at issue or required to be decided in the present case. The Commission has already decided (in Case No. U-12622) that DA should remain a UNE and that Ameritech Michigan's customized routing options are insufficient to support CLEC local entry. *See* Order and Opinion, Case No. U-12622, pp. 22-23 (March 19, 2001) (finding Ameritech Michigan's customized routing offering insufficient to support removal of OS/DA from UNE obligations).

Thus, the PFD (and ultimately the Commission's order) should make no finding in this case on the issues already decided in Case No. U-12622.

C. Ameritech Michigan Has Admitted Its TSLRIC Studies Are Flawed.

In its opening brief, AT&T explained that Ameritech Michigan's DA/NDA Cost Studies were flawed and noncompliant with the Commission's TSLRIC principles. Far from dispelling this notion, Ameritech Michigan's brief provides confirmation that the studies may not be approved.

For example, Ameritech Michigan admits that it chose to use a new, completely untested model (the OSCARS model) for preparation of its DA/NDA Cost Studies. Ameritech Michigan's witnesses claim that the model is "the 'best of breed' among various cost models that previously were used." Amer. Br., p. 32. Unfortunately, that is the only basis Ameritech Michigan provides for using a completely new model to develop DA TSLRICs. Ameritech Michigan has never before submitted the model for approval in Michigan. Tr. 169. It submitted no detailed description of the model other

than the surface level explanation contained in Mr. Barch's testimony. *Id.* Indeed, as Mr. Barch admitted, "[a]n explicit detailed narrative of the model identifying assumptions is not at this point part of the record outside of my direct testimony." Tr. 169.

That Ameritech Michigan used a new model is not necessarily the point.[3] The problem is that Ameritech Michigan introduced a new model without giving any creditable justification for using the model. The Commission has approved new models where Ameritech Michigan has adequately explained the new costs (and even increased costs) that the model produces. *See, e.g.*, Opinion and Order, Case No. U-11831, p. 6 (Nov. 16, 1999). Here, however, Ameritech Michigan has provided no explanation of the new costs developed, has provided no real explanation for its decision to use the new model, and certainly has not explained how the new OSCARS model "fits" within the previous TSLRIC studies considered by the Commission. In such cases, the Commission has either rejected the model or refused to approve it without substantial modification. *Id.*, pp. 13-14.

Consistent with the points made in AT&T's opening brief, Ameritech Michigan's DA/NDA Cost Studies cannot be found to be compliant with the Commission's TSLRIC principles. The TSLRICs produced cannot be verified to be consistent with forward-looking, economic principles. The results should not be approved.

[3] Nevertheless, Ameritech Michigan has never adequately explained the need for the new model. The previous model was not claimed to be insufficient. Moreover, as Staff member Mr. Passariello testified, the Commission has previously concluded that there should be one study for all DA services. Tr. 291 (referring to the Commission's August 31, 2000 order in Case No. U-11831 at page 11). Ameritech Michigan's use of two models, one for wholesale DA services and one for retail DA services, would seem to violate that requirement.

CONCLUSION

AT&T respectfully requests that the Commission deny Ameritech Michigan's Application and require Ameritech Michigan to refile and obtain approval of TSLRICs for its retail DA services before any future application is filed.

Respectfully submitted this 31st day of October 2001.

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