DICKINSON WRIGHT PLLC

215 S. WASHINGTON SQUARE, SUITE 200
LANSING, MICHIGAN 48933-1816
TELEPHONE: (517) 371-1730
FACSIMILE: (517) 487-4700
http://www.dickinson-wright.com

WILLIAM J. CHAMPION III
wchampion@dickinson-wright.com
(517) 487-4764

November 5, 2001

Via Electronic Case Filing and Hand Delivery

Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48909

Re: 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
BOH Docket No. 2001-1227

Dear Ms. Wideman:

Enclosed for filing regarding the above-captioned matter please find the original and four copies of ***Ameritech Michigan Response to WorldCom's Emergency Application For Leave To Appeal Ruling On Motion To Strike***. Also enclosed is the original ***Proof of Service***.

If you should have any questions, please contact me. Thank you.

Very truly yours,



William J. Champion III

WJC/mds
Enclosures
cc: Parties of Record (w/encl.)

LANSING 34060-128 287248

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

RESPONSE OF AMERITECH MICHIGAN TO WORLDCOM'S EMERGENCY APPLICATION FOR LEAVE TO APPEAL RULING ON MOTION TO STRIKE

On October 22, 2001, fourteen days after Administrative Law Judge Schankler granted, in part, Ameritech Michigan's[1] Motion to Strike certain parts of the direct testimony of Michael Lehmkuhl, and two days before the parties' initial briefs were due, WorldCom filed a so-called "Emergency Application for Leave to Appeal," seeking review of Judge Schankler's decision. The Application is without merit and should be denied.[2]

While Rule 337(1) of Commission's Rules of Practice and Procedure[3] permits a party to file an application for leave to appeal the ruling of a presiding officer within 14 days of the

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1 Michigan Bell Telephone Company d/b/a Ameritech Michigan, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc. Michigan Bell offers telecommunications services and operates under the names "Ameritech" and "Ameritech Michigan" (used interchangeably herein) pursuant to assumed names filings with the state of Michigan.

2 Ameritech Michigan notes that the application fails to comply with R.460.17337(4) in that it is not supported by a "clear and concise brief."

3 R.460.17337.

ruling, WorldCom's decision to wait until the last possible minute to file its motion says a great deal both about the merits of its substantive arguments and its claim that hearing the motion will "materially advance a timely resolution of the proceeding." R.460.17337(2)(a).

WorldCom's application fails to meet the requirements for interlocutory review of a presiding officer's evidentiary rulings. First, WorldCom has not shown how a decision at this time will materially advance a timely resolution of the proceedings.[4] Second, WorldCom has not, and cannot, demonstrate that it, or the public at large, will suffer substantial harm.[5] The bottom line is that Judge Schankler's decision to exclude portions of Mr. Lehmkuhl's testimony was correct.

The overwhelming majority of the evidence excluded by Judge Schankler consists of extensive legal arguments by Mr. Lehmkuhl on the meaning and intent behind an FCC order determining that AT&T should be accorded "non-dominant" regulatory treatment under applicable federal law and FCC rules governing the classification of interexchange carriers into "dominant" and "non-dominant" classifications.[6]

Judge Schankler ruled that the proffered testimony was improper legal argument and, in any event, was irrelevant. While the ruling was clearly correct, any doubt about Judge Schankler's ruling has been put to rest by WorldCom. Its Initial Brief, filed October 24, 2001,

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4 As the Commission is aware, the timeline for determining proceedings under MTA section 203 is extremely tight. For that reason, parties often stipulate to shorten the time period for seeking leave to appeal from evidentiary rulings of the administrative law judge. WorldCom did not seek such a stipulation.

5 R.460.17337(2)(b).

6 The ALJ granted, in part, and denied, in part, Ameritech Michigan's Motion to Strike. WorldCom's application fails to specifically identify which portions of the ALJ's ruling it challenges. It would appear, however, that WorldCom challenges only those portions of the ALJ's ruling that struck Mr. Lehmkuhl's testimony regarding the FCC's classification of interexchange carriers.

contains legal argument that is taken *verbatim* from Mr. Lehmkuhl's stricken testimony.[7] WorldCom's reference to, let alone recitation of, stricken testimony in its brief clearly be would be improper if the stricken testimony was anything other than legal argument.

WorldCom defends its conduct by asserting that the Commission's invitation to "fully present evidence and arguments"[8] was an invitation for WorldCom to present legal argument about an irrelevant FCC decision in the guise of evidence in a contested case hearing. This is nonsense. As the Commission knows full well, and as WorldCom should know, evidence is presented by witnesses at hearings. Argument is presented by counsel. The proffered testimony was argument, not evidence.

Furthermore, even if the proffered testimony was not legal argument, it was irrelevant to the issue of whether directory assistance to end-users should be determined to be competitive under the MTA. An FCC decision regarding whether a particular carrier should be treated as "dominant" or "non-dominant" in the interexchange marketplace for purposes of applying FCC regulations under the Communications Act of 1934 is hardly helpful to the determination the Commission must make in this case. First, the services at issue are not similar. Second, and more important, the "dominant/non-dominant" analysis conducted by the FCC under then-applicable federal law is totally foreign to the MTA. In fact, the terms do not even appear in the MTA.

Finally, WorldCom's assertion that it will somehow be harmed if the Commission fails to grant it leave to appeal is belied by the fact that WorldCom has included every word of the

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7 Mr. Lehmkuhl's stricken testimony at Tr. 188 – 195 is repeated word for word at pages 6 – 12 of WorldCom's Initial Brief.

8 *Application of Ameritech Michigan for a determination that directory assistance services are competitive*, Case No. U-12765, March 29, 2001 Opinion and Order, at 12

stricken testimony as argument in its initial brief. WorldCom has made its arguments. They simply have not been admitted as evidence. Accordingly, contrary to the assertion in its application, there is no risk that WorldCom has "won a ticket for a train which has left the station." [Application, at 3] Given its patently frivolous application, however, a railroading analogy does seem appropriate.

The Commission should deny WorldCom's Emergency Application for Leave to Appeal. In the alternative, the Commission should grant the application, and affirm Judge Schankler's ruling on Ameritech Michigan's Motion to Strike.

Respectfully submitted,

Craig A. Anderson (P28968)
AMERITECH MICHIGAN
444 Michigan Avenue, Room 1750
Detroit, Michigan 48226
(313) 223-8033

and

DICKINSON WRIGHT PLLC



By: _____
John M. Dempsey (P30987)
William J. Champion III (P31934)
Attorneys for Ameritech Michigan
215 South Washington Square, Suite 200
Lansing, Michigan 48933
Telephone: (517) 371-1730

Dated: November 5, 2001

LANSING 34060-128 288629

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 BOH Docket No. 2001-1227

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Mindy D. Smith, being first duly sworn, deposes and says she is employed at Dickinson Wright PLLC; and that on November 5, 2001, she served upon the parties listed below a copy of ***Ameritech Michigan Response to WorldCom's Emergency Application For Leave To Appeal Ruling On Motion To Strike*** via email and first class mail at the following address by depositing the same in a United States postal depository, enclosed in an envelope, bearing postage fully prepaid in Lansing, Michigan:

Administrative Law Judge
George Schankler
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
Lansing, MI 48909
(Via Hand Delivery)

Counsel for Attorney General
Orjiakor N. Isiogu
Assistant Attorney General
Special Litigation Division
6520 Mercantile Way, Suite 2
Lansing, Michigan 48911

Counsel for Staff
Michael A. Nickerson
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Ste. 15
Lansing, MI 48911

Counsel for TAM
Harvey J. Messing
Gary L. Field
Loomis, Ewert, Parsley, Davis & Gotting
232 South Capitol, Suite 1000
Lansing, Michigan 48933-1525

Counsel for XO Michigan
Michael S. Ashton
Fraser Trebilcock Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933

Counsel for MPTA
Leland R. Rosier
Clark Hill PLC
2455 Woodlake Circle
Okemos, Michigan 48864-5941

Counsel for AT&T
John J. Reidy, III
AT&T Corp
222 West Adams, Ste. 1500
Chicago, IL 60606

Arthur J. LeVasseur
Fischer Franklin & Ford
3400 Guardian Building
Detroit, MI 48226

Counsel for WorldCom
Albert Ernst
Dykema Gossett
800 Michigan National Tower
Lansing, Michigan 48933-1742

James R. Denniston
MCI WorldCom Communications, Inc.
205 North Michigan Ave., Ste. 3700
Chicago, IL 60601



Mindy D. Smith

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 5th day of November, 2001.



Deann Baillargeon, Notary Public
Ingham County, Michigan
My Commission Expires: 2/16/03

LANSING 34060-128 284313