S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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

NOTICE OF PROPOSAL FOR DECISION

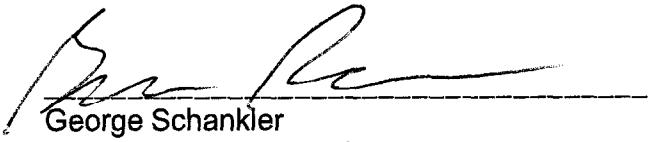
The attached Proposal for Decision is being issued and served on all parties of record in the above matter on November 20, 2001.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before December 6, 2001, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before December 14, 2001. An original and 15 copies of either document are necessary to meet proper filing requirements, as well as proof of service on all other parties of record.

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for

Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before they are due.

MICHIGAN PUBLIC SERVICE COMMISSION



George Schankler
Administrative Law Judge

November 20, 2001
Lansing, Michigan
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S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

On July 24, 2001, Ameritech Michigan (Ameritech) filed the above-entitled application, together with supporting testimony and exhibits. Ameritech seeks a determination by the Commission that directory assistance (DA) services provided to end-users are competitive in all areas of the state of Michigan served by Ameritech. Such a determination is a necessary step towards deregulation of rates and quality of service of DA under Section 207, as amended of 2000 PA 295, MCLA 484.2207.

Pursuant to due notice, a prehearing conference was held on August 21, 2001. In addition to Ameritech, the Commission Staff (Staff) appeared. Intervention was granted to AT&T Communications of Michigan, Inc. and TCG Detroit (AT&T), the Telecommunications Association of Michigan (TAM), the Michigan Pay Telephone Association (MPTA), XO Michigan, Inc. (XO), the

Attorney General of Michigan (AG) and MCI Metro Access Transmission Services, LLC, a WorldCom Company (WorldCom). XO later withdrew from the case. Filing dates for Staff, Intervenor and rebuttal testimony were set, as well as hearing dates.

At the prehearing, argument was also heard on a Motion In Limine filed by WorldCom. The Motion was denied.

Ameritech presented the direct testimony of Sandy Moore, Executive Director-Consumer Product Marketing-Ameritech; and David Barch, Associate Director - Cost Analysis and Regulatory, Southwestern Bell Telephone Company (SWBT), a subsidiary of SBC Communications, Inc. (SBC). Witness Moore sponsored five exhibits and witness Barch sponsored three exhibits, all of which were received in evidence.

Staff presented two witnesses, Thomas R. Lonergan, Director of the Communications Division of the Commission; and Louis R. Passariello, the Staff member responsible for developing the "Staff Report on Refining the Definition of and Developing a Methodology to Determine Long Run Incremental Cost." Staff offered no exhibits through these witnesses.

WorldCom presented the testimony of Michael Lehmkuhl, a Regulatory Specialist with WorldCom. Mr. Lehmkuhl sponsored one exhibit, which was received in evidence. Portions of Mr. Lehmkuhl's testimony were stricken by the Administrative Law Judge on a motion by Ameritech.

Ameritech witnesses Moore and Barch also presented rebuttal testimony.

The record in this matter consists of 320 pages of transcript and 15 exhibits. Briefs were filed on October 24, 2001 and reply briefs on October 31, 2001.

II.

STATUTORY FRAMEWORK AND BACKGROUND

Section 207 of the MTA provides:

> 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. MCL 484.2207; MSA 22.1469(207)

Section 208(3), MCL 484.2208(3); MSA 22.1469(208)(3) provides:

> A service is competitive under this section if 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 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 from more than 1 unaffiliated provider or 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 from an unaffiliated provider or supplier.

The subject matter of this application is governed by the above-cited provisions of the MTA. The application was also filed pursuant to the directives of the Commission in Case No. U-12765, Order issued March 29, 2001, wherein Ameritech had first sought a determination that DA services were competitive services under the MTA. After allowing comments from interested parties, the Commission stated:

> After reviewing the parties' comments, the Commission is not persuaded that it may grant the application without a more extensive record basis for making such a determination. Rather, the Commission finds that, pursuant to the authority granted in MCL 484.2208(8); MSA 22.1469(208)(8), before making the requested determination, it should require Ameritech Michigan to file an application for a contested case hearing pursuant to Section 203 of the MTA, MCL 484.2203; MSA 11.1469(203), on the issue of whether DA service is competitive within Ameritech Michigan's service territory for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area. In light of the fact that this will be the first case of its type, the Commission encourages all participating parties to fully present evidence and arguments on issues pertinent to whether the Commission should find DA service to be competitive at this time. Additionally, the Commission invites comments and arguments on the tools it should and may legally have available to ensure a continued healthy competitive market for DA service, should the Commission find the service to be competitive.
>
> Moreover, Section 208(9) of the MTA 484.2208(9); MSA 22.1469(208)(9), prohibits a filing to establish a service as competitive until the provider has received Commission approval of a TSLRIC study for the service. The Commission notes that, as WorldCom points out, Ameritech Michigan has no Commission-approved TSLRIC study for DA service. The Commission notes that Ameritech Michigan

> filed a cost study for DA service in an effort to comply with the Commission's November 16, 1999 and August 21, 2000 orders in Case No. U-11831. That study has not yet been specifically approved by the Commission. The Commission therefore finds that Ameritech Michigan must obtain Commission approval of a TSLRIC study for DA service before seeking to have the service declared competitive.
>
> Finally, the Commission is concerned about those customers who traditionally have been exempted from charges for DA service, or for whom the free DA call allowance has been increased to accommodate difficulties with using a directory. Included within these groups are those with mental or physical impairments that restrict the ability of the customer to use directories, those calling from hospitals or hotels, and those using payphones. The parties to the contested case should address those issues. Order, pps. 12-13.

Thus, the Commission, has set forth the parameters of this proceeding.

III.

SUMMARY OF EVIDENCE

1. Ameritech's case

Ameritech takes the position that all directory assistance services provided to end-users are competitive in all areas of the state of Michigan in which Ameritech provides such services. Ameritech notes that this case does not address or affect wholesale directory assistance offered to providers.

Ameritech maintains that there are several options for obtaining listed telephone numbers, including printed directories, telephone company operators, and on-line access to directory databases.

Ms. Moore testified that facilities-based CLECs provide DA to their customers in Ameritech's service area. Customers of interexchange carriers

(IEC) can also receive DA from their IEC, according to Ameritech. Additionally, Ms. Moore notes that AT&T, Sprint and WorldCom all offer and promote DA through access codes such as "10-10-ATT-00." Ms. Moore testified that all three companies have spent many millions of dollars advertising and promoting these services. Ms. Moore cited a Forbes Magazine claim that AT&T and WorldCom handle more than a billion DA calls annually.

Ms. Moore stated that several third-party providers of DA serve Michigan, including Metro One and Info NXX, and printed telephone directories are another source for DA. Ms. Moore testified that Metro One and Info NXXX are experiencing triple digit growth. She points to a number of internet telephone directory sites as frequently used alternative sources for DA and notes that these services are usually free of charge. Additionally, directory data bases, or portions thereof, can be downloaded from internet sources such as Yahoo's "People Search", and such directories are also available in a CD-Rom format.

Finally, Ms. Moore says that wireless providers are an alternative source for DA. A customer would access a wireless provider's DA by dialing 555-1212 in the same manner as would be done for traditional phone service.

As further evidence of the existence of competition for DA service, Ms. Moore notes that, while the DA market has grown, Ameritech's DA volume has declined. Ameritech attributes this phenomenon to the growth of competition by the DA alternatives discussed above. Ameritech relies on studies by Frost and Sullivan as further support Ameritech's position that competition is growing and has reduced Ameritech's own DA volume. According to Ms. Moore, these

studies show that the overall DA market is growing at a moderate pace and that Internet DA is growing rapidly.

If DA is declared to be competitive by the Commission, Ameritech says it has not decided whether it will maintain current exemptions for the physically or mentally handicapped, nor has it decided whether it will maintain exemptions for hotels or hospitals. In the latter cases, Ameritech does indicate that it does not see a strong rationale for those exemptions.

Mr. Barch sponsored the cost studies for DA, as required by MTA Sec. 208(9), entitled "Directory Assistance 2001-20014 TSLRIC Study" (Ex. A-7) and "Natural Directory Assistance 2001-2004 RSLRIC Study" (Ex. A-8). Mr. Barch cited the Commission's nine approved costing principles per Case No. U-10620. He testified that he utilized a costing model known as Operator Services Cost Analysis Reporting System (OSCARS), as opposed to the Operator Analysis Cost Information System (OACIS) model utilized in Case No. U-11831 for unbundled OS/DA costs.

2. Staff's Case

Mr. Lonergan supported a finding by the Commission that DA is a competitive service under the MTA's Section 208(3) criteria. Specifically, Mr. Lonergan concluded that DA is available from more than one unaffiliated provider and that three of the five criteria, as required and which are enumerated in 208(3)(a) thru (e), have been met.

Mr. Lonergan first noted that, under 208(3)(a), the existence of facilities-based competition would be inapplicable given the nature of DA service.

He went on to state that 208(3)(a) was satisfied because DA is available from a number of sources, including print directories, the internet, commercially available data bases, and through other providers such as WorldCom, AT&T and Sprint.

Mr. Lonergan found that 208(3)(b) had been met in that end-users had available alternatives "from more than one unaffiliated provider or reseller." Mr. Lonergan again cited the alternatives listed above for Sec. 208(3)(a). He noted that CLECs have 8% of access lines in Ameritech's service area; that 100% of end-users can access DA through AT&T, WorldCom and Sprint; that 42% of U.S. households have internet service and over half have computers; that 3.4 million people in Michigan are wireless subscribers (wireless providers may provide DA access, as well); and that 100% of end-users have print directories.

Regarding Section 208(3)(c), Mr. Lonergan stated that competition and end-user usage had not "been demonstrated and measured by independent and reliable methods." Mr. Lonergan felt that the FCC observations and media reports cited by Ameritech did not meet these criteria.

As Mr. Lonergan stated regarding Sec. 208(3)(d), no evidence has been presented to establish that Ameritech's rates or charges have been changed during the previous 12-month period. Hence, that provision has not been met.

Mr. Lonergan did agree with Ameritech that a "a functionally equivalent service, reasonably available to end-users from an unaffiliated provider or supplier" exists per Sec. 208(3)(e). Mr. Lonergan again cited back to his testimony regarding Sec. 208(3)(a) and (b); to wit that many alternatives exist in

the marketplace for DA, even though every end-user may not have access to every alternative.

Again, based on Mr. Lonergan's conclusion that three of the five criteria have been met, Staff supports a finding that DA is a competitive service within Ameritech's service area. However, Mr. Lonergan maintained that, while rates and charges would be deregulated based on this finding, the Commission could and should condition this finding upon the maintenance of exemptions for customers with "physical or mental limitations, that restrict the use of a telephone directory." Tr. 312-313.

Mr. Lonergan also recommended that a grant of this application be conditioned on maintenance of the current exemptions from DA charges for handicapped customers. Mr. Lonergan also maintained that Ameritech could and should be required to file tariffs even after approval of this application.

Staff also would condition approval of the instant application upon submission by Ameritech of TSLRIC study for DA which corrects deficiencies described in Mr. Passariello's testimony. As noted above, Ameritech witness Barch submitted a TSLRIC study for DA with the application in this case in an attempt to comply with the Commission's directive in Case No. U-12765 and as required by MTA Sec. 208(9), MCLA 484.2208(9). However, Mr. Passariello testified that Mr. Barch's study was unsatisfactory for several reasons.

First, Mr. Passariello cited an admonition in the Commission's Order of November 16, 1999 in Case No. U-11831 (Ameritech's last TSLRIC study) against piecemeal cost studies for individual services. Accordingly,

Mr. Passariello maintained that any DA cost study must be consistent with Ameritech's last approved cost study presented in U-11831. However, Mr. Passariello found a number of changes to and inconsistencies with the U-11831 TSLRIC study.

First, the U-11831 study used a cost period of the year 2000, while the DA study used 2001-2004. Second, Ameritech uses a different model for analysis of costs in the DA study as opposed to the U-11831 study. Mr. Passariello also contended that it is improper to use different cost models for unbundled, wholesale rates than for retail DA, which is the subject matter of this case. Mr. Passariello maintained that Mr. Barch's approach violates the Commission's costing principle No. 8 which ". . . ensures that costs for services which use the network in the same way are treated consistently ", and costing principle No. 3, which requires a study to consider the entire quantity of demand in the context of one unified study. September 24, 1994 Order in Case No. U-10620.

Regarding the use of different study periods, Mr. Passariello notes that this resulted in updating U-11831 costs for labor rates, inflation, average operator work (AWT), additional network holding time beyond AWT, investment for operator service equipment/switching and other inputs.

Based on Mr. Passariello's testimony, Staff recommends that Ameritech be required to submit a cost study for DA consistent with the model and inputs used in U-11831 as a condition to approval of this application.

3. WorldCom's Case

Mr. Lehmkuhl contested both the request that DA be deemed competitive and the cost studies submitted by Ameritech.

Mr. Lehmkuhl first points out that print directories and internet sources have been available for some time and do not support a finding of increased competition. He testified that wireless access to DA is limited to those with wireless service. Alternatives for DA over the telephone are limited, according to Mr. Lehmkuhl.

Mr. Lehmkuhl felt that Ameritech still maintains dominance in the DA market because a customer seeking DA will dial 1-555-1212 and that these customers will normally be routed to Ameritech because only facilities-based CLECs can provide DA for 1-555-1212 calls. These providers account for only 8% of the lines in Ameritech's service area. Mr. Lehmkuhl maintained that CLECs utilizing UNE-P provided by Ameritech are unable to offer their own local DA services because of a lack of customized routing availability from Ameritech.

Mr. Lehmkuhl felt that other alternatives, such as 1+(NPA) 555-1212 and other access codes, e.g. 10-10-9000 offered by WorldCom, are not viable competition because of the additional dialing necessary to gain access.

Mr. Lehmkuhl also contended that there are other possible explanations for the reduction in the use of Ameritech's DA, cited by Ms. Moore, than increased competition. Mr. Lehmkuhl cited the availability of speed dialing and electronic organizers as possible explanations aside from increased competition.

Mr. Lehmkuhl took the position that Ameritech, in fact, still dominates the DA marketplace because it has 92% of the lines in its service area and it controls listing information through the local service order process. According to Mr. Lehmkuhl, Ameritech charges other providers a rate for listings information well above cost, based on comparison of rates in Texas and in Michigan. Finally, Mr. Lehmkuhl maintained that alternatives to DA such as print directories, the internet and CD-ROM data bases, should not be considered because they serve a different market and function differently than retail DA as offered by Ameritech.

IV.

DISCUSSION AND FINDINGS

1. Competitive Service

Ameritech and Staff support a finding that DA is a competitive service under Section 208(3) of the MTA for the reasons described above. WorldCom, based on Mr. Lehmkuhl's testimony summarized above, opposes such a finding. Other parties' positions and the issues raised in this proceeding will be discussed and decided below.

WorldCom generally contends that DA alternatives such as the internet are not "functionally similar" services to traditional DA services provided by Ameritech, which, according to WorldCom, are services available over the telephone. Here, competition has not taken hold because Ameritech controls over 90% of the lines and customers must dial a special access code to reach an Ameritech competitor. Since customers are used to dialing 1-555-1212, which

provides access only to Ameritech's DA, competition is thwarted. WorldCom maintains that significant competition for DA in this realm has not been shown by Ameritech to exist.

WorldCom also argues at length that FCC determinations regarding "dominant" carries should be applied here. This is based on testimony of Mr. Lehmkuhl which was stricken, in part, on the grounds that it was irrelevant, i.e. the standards here are the criteria set forth in the MTA. Hence, the Administrative Law Judge will not address those arguments.

An additional argument advanced by WorldCom is that, even if end-users were inclined to utilize a functionally equivalent service offered by other providers, there is no evidence to show that these carriers can accommodate the additional load. WorldCom says this must be shown in order to find that DA service is competitive.

WorldCom also cites Section 208(4) of the MTA, which states:

> (4) Except as provided under subsection (5), a service is not competitive under this section if for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, 1 of the providers of the service is an unaffiliated provider of facilities based basic local exchange service to less than 250,000 end-users in this state. A provider may apply to the commission for a review of the service under section 203 to determine whether the service is competitive and the rate deregulated.

Since there are a number of such alternative providers "of facilities based basic local exchange service to less than 250,000 end-users in this state" within Ameritech's service area, WorldCom contends that the service is not competitive under this provision.

AT&T does not contest, in its brief, the competitive aspect of this application but focuses instead on the TSLRIC cost studies issue, which will be discussed below.

MPTA opposes the granting of this application but also takes the position that Ms. Moore did not examine competitive services available to independent payphone providers (IPPs) and has not shown that service to be competitive. Therefore, MPTA suggests that the Commission limit the findings in this case to DA services provided to residential and business end-users. In this way, IPPs would be protected. Since this application is limited to retail DA to residential and business end-users, the MPTA's concerns are moot.

The AG also believes that this application should be denied. However, the AG has not advanced any arguments beyond those presented by WorldCom. TAM, on the other hand, supports granting the application without advancing any evidence or arguments beyond those presented by Ameritech.

As a prefatory matter, there is some discussion by Mr. Lehmkuhl regarding Ameritech as the source for directory listings and the charges for such listings to other providers. An interconnection issue was also raised regarding whether or not customized routing was being made available to facilitate the provision of DA by CLECs. The Administrative Law Judge sees the instant proceeding as one in which it will be determined <u>whether</u> competition exists, not <u>why</u> is may or may not exist. Hence, while the "why" issues are informative, they are not germane to the "whether" issues which must be decided. A discussion of those issues follows.

In addressing the competitive service criteria under Sec. 208(3) of the MTA, the discussion focuses on 208(3)(a)(b)(c), and (e) because it is conceded that Ameritech has not changed its rates for DA during the previous 12 months per 208(3)(d). Also, the first paragraph of Sec. 208(3) is satisfied because, as will be discussed below regarding Sec. 208(3)(b), "more than one unaffiliated provider" exists.

In evaluating 208(3)(a), Mr. Lonergan notes that "facilities based" competition is inapplicable to DA, which is not a facilities based service. The Administrative Law Judge agrees, therefore, the question is whether "actual competition exists within the Ameritech service area." In addressing this question, one must define what "actual competition" means in the DA marketplace.

First, the Administrative Law Judge agrees with WorldCom that print directories cannot be considered as competition for 1-555-1212 DA. Print directories have been ubiquitous in Ameritech's service area for many years. Had the legislature deemed print directories to be competition for DA, it would have deregulated DA when it passed the MTA. After all, virtually every end-user has a free print directory.

On the other hand, it is reasonable to at least look at internet directory services and services offered via access codes, such as "10-10-ATT-00", in evaluating whether "actual competition" exists. As to internet DA, Ameritech has not established that this service provides "actual competition" for 1-555-1212 DA. A substantial percentage of end-users do not have computers with internet

access, and the process for obtaining a phone number over the internet is far different than simply dialing 1-555-1212. Yes, the internet is an alternative to 1-555-1212, but is it "actual competition"? In the opinion of the Administrative Law Judge, it is not.

Access code services offered by other providers and DA from third-party providers do compete with 1-555-1212 DA in that an end-user can pick up a telephone and dial an alternate provider's access code to receive the same service supplied by Ameritech. And everyone who has basic local exchange service has access to this alternative. Hence, DA via access code and from third-party providers are competitive services for 1-555-1212 service.

However, do these forms of DA provide "actual competition"? "Actual" connotes that there is some significant level of competition so that some fledgling or nominal alternative to 1-555-1212 DA would not satisfy Sec. 208(3)(a). In the view of the Administrative Law Judge, Ameritech has not established that access code DA, while it exists and has been promoted to some extent, represents "actual competition" for 1-555-1212 DA. Ms. Moore did testify that third-party providers Info NXX and MetroCom have experienced triple digit growth, but no source was given for this information nor was the base from which growth was calculated provided. The absolute level of service provided in Michigan would be much more pertinent. There is really no evidence as to the extent to which those services have penetrated the DA market in Michigan so that one could determine whether this alternative has matured to the point that it provides "actual competition."

Ameritech also presents DA via wireless service as competition for 1-555-1212 DA. This alternative suffers from the same shortcoming as internet service. It requires a separate device which must be acquired and utilized to access DA. A substantial number of end-users do not have wireless service. More importantly, the notion that an end-user attempting to make a call using a telephone would likely choose to pick up a cell phone for DA instead of picking up the telephone and dialing 1-555-1212 is not supported by evidence on the record. The fact that wireless end-users seek DA via wireless providers does not demonstrate how often local exchange service end-users elect wireless DA, rather than simply dialing 1-555-1212. Again, wireless DA is an alternative, but Ameritech has not shown that it represents "actual competition" for retail DA.

For the reasons stated above, the Administrative Law Judge finds that Sec. 208(3)(a) has not been satisfied.

While Sec. 208(3)(a) has not been met, Sec. 208(3)(b) has been satisfied. "Service alternatives" are available "from more than 1 unaffiliated provider." Ameritech has, as noted above, shown that access code and third-party DA is available from several alternative providers, including Info NXX, MetroCom, AT&T and WorldCom. Thus, Sec. 208(3)(b) has been satisfied. The Administrative Law Judge so finds.

Regarding Sec. 208(3)(c), the Administrative Law Judge agrees with Mr. Lonergan that "competition and end-user usage" of DA have not "been demonstrated and measured by independent and reliable methods." The primary evidence put forth by Ameritech on this point is data showing a decline in

utilization of Ameritech's DA in light of an overall national growth of the DA market, per the Frost and Sullivan studies noted by Ms. Moore. The Administrative Law Judge concurs with Mr. Lonergan:

> Reliance on certain observations in FCC or other national reports does not in Staff's view constitute "measurement by independent and reliable methods." While Ameritech's directory assistance volumes may have declined, Ameritech has not demonstrated the reasons for the decline or provided any evidence that other providers have been the beneficiaries. Ameritech has referenced studies that show that, directory assistance, in particular internet services, are increasing, but Staff does not believe this is sufficient proof to satisfy this criterion. Tr. 311.

Mr. Lehmkuhl makes the same points. The support provided by Ameritech is generalized and requires speculation to draw conclusions regarding usage levels and the quantitative profile of competition in Michigan. It is not reliable methodologically. The Administrative Law Judge finds that Sec. 208(3)(c) has not been satisfied.

Sec. 208(3)(e) provides that there must be "a functionally equivalent service, reasonably available to end-users from an unaffiliated provider or supplier." The function of DA as provided by Ameritech is to provide the end-user with the ability to conveniently obtain directory listings. This does not mean that the mode of providing DA must be identical nor does it mean, on the other hand, that any source for DA, no matter how it functions in actuality, is an equivalent service. Certainly those services available by picking up a telephone and dialing the appropriate numbers are "functionally equivalent." WorldCom is correct in saying that the necessity to know and use an access code, such as

10-10-ATT-00, for each alternative provider does differentiate 1-555-1212 from services from third-party providers or from AT&T and WorldCom via access codes. However, given that different numbers must be entered in order to access other providers, functionally the services are the same. Albeit 1-555-1212 is a more familiar way to access DA to the general public, the functionality is equivalent.

As discussed above, the same cannot be said for internet DA, internet data base downloads, CD-ROM data bases (merely an electronic phone book), or wireless DA service. These are not functionally equivalent because of the equipment and/or procedures required for access. However, because DA via access code and third-party providers are functionally equivalent services available from unaffiliated providers, the Administrative Law Judge finds that Sec. 208(e)(e) has been satisfied.

Before leaving the competitive service topic, WorldCom's argument that application of Sec. 208(4) to this case warrants denial should be addressed. Sec. 208(4) provides that ". . . a service is not competitive under this section if for an identifiable class or group of customers, . . . 1 of the providers of the service is an unaffiliated provider of facilities based basic local exchange service to less than 250,000 end-users in this state." Since there are a number of CLECs in Ameritech's territory fitting that description, WorldCom contends that DA is not competitive under Sec. 208.

Ameritech says that a finding that service is not competitive under Sec. 208(4) merely means that the ". . . provider may apply to the Commission for a

review of the service under section 203 to determine whether the service is competitive . . . ", as provided in the second sentence of Sec. 208(4). Ameritech has done so in U-12765 and in this case.

The Administrative Law Judge agrees with Ameritech on this point. WorldCom's interpretation simply makes no sense because it would require a denial of competitive status to a service which has met all the criteria under Sec. 208(3) because there exists one unaffiliated facilities based provider of basic local exchange service in the service territory. WorldCom's position would mean that no service could ever be deemed competitive as long as there is one small facilities based CLEC in Ameritech's territory. Ameritech's reading of the provision is clearly more consistent with the other provisions of Sec. 208 and with the MTA as a whole. WorldCom's position is rejected.

Finally, since Ameritech has met only 2 of the 5 criteria under Sec. 208(3), Ameritech's application should be denied. In the event the Commission concludes otherwise, the remaining issues are discussed below.

2. Cost Studies

It should be noted at the outset that Ameritech objects to the Commission's requirement that a cost study for DA be provided as a condition to deregulating DA under Sec. 207 of the MTA. Ameritech discusses the extent of Commission jurisdiction over DA in its briefs. Given that the Commission has ordered, in Case No. U-12765, a contested case hearing to determine whether DA is competitive and has required the filing of a cost study under Sec. 208(9), the Administrative Law Judge is bound to follow those directives. Further, since

Ameritech raises jurisdictional issues, those should more properly have been raised at the commencement of the case. In any event, the Administrative Law Judge, following the Commission's directives in U-12765, will determine whether the cost studies presented by Ameritech should be approved.

It should also be noted at this point that AT&T and WorldCom argue that a DA cost study must be approved before Ameritech can even apply for deregulation of DA as a competitive service, i.e. the TSLRIC approval and competitive service determination cannot be brought, as it has here, in the same proceeding. While it is true that TSLRIC approval must be granted prior to requesting a competitive determination, there is nothing prohibiting this from happening in one proceeding, and, in fact, the Commission appeared to contemplate a single proceeding in Ordering paragraph B. in its Order in Case No. U-12765, wherein the Commission said that ". . . Ameritech must file an application . . . and address the issues raised in this order." Order, p. 14. Of course, the TSLRIC requirement and issues surrounding a competitive determination were all highlighted by the Commission in that Order. Accordingly, it is proper to consider the TSLRIC studies for DA in this proceeding along with the competitive determination issues.

The specific contentions of Staff regarding the cost studies are outlined in the Summary of Evidence above. Regarding the change in the cost model utilized by Mr. Barch, Ameritech says that the OSCARS model is utilized by SBC companies and is superior to the OACIS model used in U-11831. Regarding the change in study periods, Ameritech maintains that the use of forward looking

data is actually consistent with what was done in U-11831, wherein the 1998-99 study utilized projected 2000 data.

As to the updating of inputs to which Mr. Passariello objected, Ameritech again maintains that updating inflation and labor rates is consistent with a forward looking approach.

In the view of the Administrative Law Judge, Mr. Passariello's criticisms of the Ameritech cost studies are well taken. Mr. Passariello relied on the fundamental concept stated by the Commission in Case No. U-11831 that cost studies for individual services not be done on a piecemeal basis. Mr. Passariello took a very fair approach by essentially saying that, if an individual service is going to be studied, the study should use a methodology, time frames and inputs consistent with the broader TSLRIC study in U-11831. Not only does this make cost allocations more valid, but it satisfies the costing principles no. 8, to ensure consistency for services using the network in the same way, and no. 3, which requires that a study consider the entire quantity of demand in a single unified study. The array of changes proposed by Ameritech in the DA cost studies as compared to the approved study in U-11831 creates inconsistencies which lead to "apples and oranges" results. For these reasons, the Administrative Law Judge finds that Ameritech's DA cost studies should be rejected. Mr. Barch testified that, while he did not agree with Staff's proposals, Ameritech could provide revised cost studies if required to do so. Tr. 151.

Accordingly, should the Commission deem DA to be a competitive service, deregulation of DA should be deferred until Ameritech files and gains approval of a DA cost study which is consistent with the U-11831, TSLRIC study.

3. Other Issues

Staff proposes that Ameritech be required to continue to submit its tariffs to the Commission and that the grant of any competitive declaration relating to DA service be conditioned on "a requirement that tariffs include provisions that exempt customers from directory assistance charges who have a physical or mental that restrict the use of a telephone directory . . ." Staff brief, pp. 12-13.

Ameritech says that imposing such an exemption only on Ameritech, given that other DA alternatives do not have such exemptions, would be anti-competitive and distort the marketplace. While Ms. Moore testified that Ameritech has no current plans to modify the exemption for handicapped end-users (Tr. 91), Ameritech also maintains that, once the Commission deregulates DA service under Sec. 207 and 208, the Commission cannot require Ameritech to file tariffs, let alone require particular provisions for exempt service be included in those tariffs. Ameritech cites Sec. 402(1), MCL 484.2402(1), which provides that a provider "may" file a tariff for an unregulated service. Ameritech also cites Sec. 207, which is specific to DA and which allows the Commission to determine the manner of regulation of DA ". . . until directory assistance service is determined by the Commission to be a competitive service." The inference drawn by Ameritech is that, once DA service is deregulated, the Commission cannot determine the manner of regulation.

Ameritech's arguments go the fundamental authority of the Commission to impose what Staff is recommending. Staff's briefs did not respond to Ameritech's arguments and did not provide any statutory or other authority for its position, which in essence attempts to impose one element of the regulatory framework upon Ameritech even after DA service is found to be competitive and thus deregulated. The only support is Mr. Lonergan's comment that a competitive finding under Sec. 208 deregulates only rates. However, since mandating exemptions from DA charges is in fact a rate determination, even this rationale cannot justify what Staff is proposing. The Administrative Law Judge finds that Ameritech's unrebutted arguments are persuasive and Staff's recommendation regarding the filing of tariffs and the maintenance of exemptions should be denied.

Ameritech also addresses other existing exemptions in its tariffs for hotels and hospitals. Ameritech made no commitment to continue these exemptions, but, given Ms. Moore's critique of the exemptions (Tr. 91), it is likely that they will be eliminated at some point after DA is deregulated. In any event, no party commented on these exemptions, and Ameritech takes the position that these decisions be left to the marketplace.

Given that no issue has been joined regarding exemptions for hospitals and hotels, the Administrative Law Judge makes no finding here.

Finally, the Administrative Law Judge notes that only Ameritech responded to the Commission's call for comments in its Order in Case No. U-12765 regarding "tools it should and may legally have available to ensure a

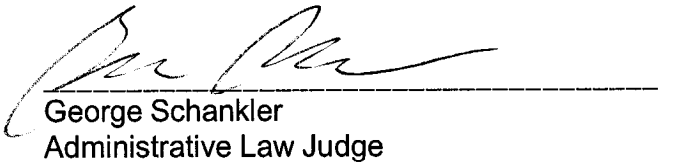
continued healthy competitive market for DA service." No issue was joined here, and the Administrative Law Judge simply refers the Commission to Ms. Moore's testimony on this subject. (Tr. 89-90)

V.

CONCLUSION

Based on a full consideration of the evidence and arguments in this matter, the Administrative Law Judge recommends that the Commission adopt the findings contained herein and deny the application.

MICHIGAN PUBLIC SERVICE COMMISSION



George Schankler
Administrative Law Judge

November 16, 2001
Lansing, Michigan
dp

ISSUED AND SERVED: November 20, 2001

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN)
) SS.
County of Ingham)
_____)

Case No. U-13007

PROOF OF SERVICE

Dawn M. Prawdzik deposes and says that on the 20th day of November 2001, she served a copy of the attached Proposal for Decision, upon those persons shown on Attachment A, by enclosing same in a sealed envelope addressed as indicated above and delivering the envelope to the Commission's mail courier for (1) postage prepayment and deposit with the United States Postal Service, or (2) delivery through interdepartmental mail (I.D.M.).

Dawn M. Prawdzik

Subscribed to before me this 20th
day of November, A.D. 2001.

Susan Webber

Notary Public, Eaton County Acting in
Ingham County, Michigan

My Commission expires 2-14-2004.

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