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December 6, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, Ste. 7
Lansing, MI 48909

Re: Case No. U-13007
WorldCom Exceptions to PFD

Dear Ms. Wideman:

Enclosed please find original and four copies of WorldCom Exceptions to PFD in the above referenced matter. Also enclosed is Proof of Service upon the Parties of Record.

If there are any questions or comments, do not hesitate to contact me.

Sincerely,

DYKEMA GOSSETT PLLC

Christine Mason Soneral/dc

Christine Mason Soneral

CMS/jmb
Enclosures
cc: Jim Denniston
Parties of Record

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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-uses are competitive services under the Michigan Telecommunications Act.	))))	**Case No. U-13007 BOH Docket No. 2001-1227**

WORLDCOM EXCEPTIONS TO PFD

MCImetro Access Transmission Services, LLC (a WorldCom company, hereinafter referred to as "WorldCom") respectfully submits its Exceptions to the PFD issued on November 16, 2001, and in support, states as follows:

INTRODUCTION

WorldCom agrees with many points set forth in the PFD. However, WorldCom hereby files exceptions to certain rulings in the PFD as follows:

A. The PFD erroneously concluded that no issue was joined on the tools that the Commission should and may legally have available to ensure a continued healthy competitive market for DA service. (PFD, pages 24-25). The erroneous conclusion was caused by the PFD failing to consider or adopt the WorldCom proposed criteria to be used to determine whether a competitive market exists and whether DA providers are "dominant" or not. (PFD, page 13). Furthermore, the PFD failed to inquire as to "why" the DA market is not presently competitive. (PFD, page 14). In order to determine how to maintain a competitive DA market, it is first important to know how to identify whether the DA market is competitive, and if it is not competitive it is important to find out why not and to address the root causes as to why the market is not competitive.

B. The PFD erroneously misconstrued Section 208(3)(a) of the MTA to ignore the clear mandate that a checklist item is that DA competition must be "facilities based". (PFD, page 15-16).

C. The PFD erroneously misconstrued Section 208(3)(b) and Section 208(4) and 208(5) of the MTA to find that Ameritech has established compliance with these statutory provisions. (PFD, pages 17-20). Also, Ameritech has failed to show that as of the time of the evidentiary hearing that the "competitors" that it claims are competitive each have more than 250,000 local exchange customers.

D. The PFD erroneously misconstrued Sections 207 and 208(9) of the MTA and the Commission's prior order in Case No. U-12765, and the PFD failed to require Ameritech to obtain approval of its TSLRIC cost study for DA before filing to have DA declared competitive. (PFD, page 21).

Exception A: Tools for identifying whether the DA market is competitive and necessity of identifying why the DA market is not competitive.

As set forth above, the PFD erroneously concluded that no issue was joined on the tools that the Commission should and may legally have available to ensure a continued healthy competitive market for DA service. (PFD, pages 24-25). The erroneous conclusion was caused by the PFD failing to consider or adopt the WorldCom proposed criteria to be used to determine whether a competitive market exists and whether DA providers are "dominant" or not. (PFD, page 13) [1]. Furthermore, the PFD failed to inquire as to "why" the DA market is not presently competitive. (PFD, page 14). In order to

[1] On October 8, 2001, Ameritech's motion to strike the testimony of WorldCom witness Michael Lehmkuhl was granted in part. On October 22, 2001, WorldCom filed an emergency application for leave to appeal this ruling. The PFD erroneously failed to reconsider the ALJ's prior ruling on this issue.The present brief accordingly raises matters contained in the testimony which was stricken, but which is the subject of the pending application for leave to appeal.

determine how to maintain a competitive DA market, it is first important to know how to identify whether the DA market is competitive, and if it is not competitive it is important to find out why not and to address the root causes as to why the market is not competitive.

1. The PFD has failed to define what is "competition" under Sections 208(3)(a) and 208(3)(c).

Sections 208(3)(a) and 208(3)(c) require that Ameritech show that there is "competition" but these sections do not detail the methodology for this determination. Only WorldCom offered a previously approved methodology to determine whether there is "competition" and the ALJ erroneously struck this testimony which is the subject of the emergency appeal filed on October 22, 1001, with the Commission. This emergency appeal is incorporated herein by reference. The PFD failed to reconsider or reverse the sticking of this pertinent and essential testimony. (PFD, page 13).

Ameritech witness Sandy Moore stated that a monopoly market would not be competitive, but could not say whether an oligopoly market would be competitive. (Tr 102). Ameritech merely looks to alternatives that are available to the Ameritech end-user customers. (Tr 103). Ameritech does not look at how often customers change their choice of DA providers or churn rate (Tr 103), and does not look at elasticity of demand or elasticity of supply (Tr 103-104). The Commission should look at these categories of information similar to the way in which the FCC looked at this information in deciding whether AT&T was competitive (or non-dominant) in long distance. (Tr 188).

a. Proper Methodology to Determine Whether there is "competition"

The FCC has already charted the course and applicable principles in *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, FCC 95-427, 11FCC Rcd. 3271, Released October 23, 1995 (hereinafter, "*AT&T*"). An understanding of the findings and analysis in *AT&T* is helpful for making the proper findings and using the appropriate analysis in Michigan as to whether there is "competition."

In *AT&T*, the FCC determined that AT&T lacked market power in the interstate, domestic, interexchange market, and accordingly granted AT&T's motion to be reclassified as a non-dominant carrier with respect to that market.[2] Between 1979 and 1985, the FCC conducted the *Competitive Carrier* proceeding[3], in which it examined how its regulations should be adapted to reflect and promote the increasing competition in telecommunications markets. A major purpose of the *Competitive Carrier* rulemaking was to reduce or eliminate the application of economic regulation to new competitive entrants, since such entrants would improve market performance as rivals to AT&T and

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2 *AT&T*, Par. 1.

3 *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980)* (*First Report and Order*); Further *Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981)* (Further NPRM); Second Further Notice of Proposed Rulemaking, FCC 82-187, *47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983);* Third Further Notice of Proposed Rulemaking, *48 Fed. Reg. 28,292 (1983);* Third Report and Order, *48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983)* (*Fourth Report and Order*), vacated *AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992),* cert. denied, *MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984)* (*Fifth Report and Order*); *Sixth Report and Order, 99 FCC 2d 1020 (1985),* vacated *MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985)* (collectively referred to as the *Competitive Carrier* proceeding).

other incumbent, monopoly providers of telecommunications services and should not be viewed as potential monopolists requiring the same degree of economic regulation.[4]

In a series of orders, the FCC distinguished two kinds of carriers -- those with market power (dominant carriers) and those without market power (non-dominant carriers). The FCC gradually relaxed its regulation of non-dominant carriers because it concluded that non-dominant carriers could not charge rates or engage in practices that contravene the requirements of the Communications Act of 1934 as amended (*Act*), since affected customers always had the option of taking service from a dominant carrier whose rates, terms and conditions for interstate service remained subject to close scrutiny by the FCC. The FCC concluded, however, that AT&T, as a dominant carrier, should be subject to the "full panoply" of then-existing Title II regulation.[5] In the same way, under the MTA, under Sections 208, 701(3) and 701(4), upon a determination a carrier may be deemed to be a competitive or "non-dominant" carrier for local and DA and thus not subject to rate regulation by the Commission as customers always have the option of taking service from the dominant carrier whose rates are subject to close scrutiny.

Twenty years ago, in its *First Report and Order*, the FCC defined a dominant carrier to be a carrier that "possesses market power." In determining whether a firm possessed market power, the FCC focused on certain "clearly identifiable market features," including "the number and size distribution of competing firms, the nature of barriers to entry, and the availability of reasonably substitutable services," and whether the firm controlled "bottleneck facilities." With respect to the relevant market within

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4 *AT&T*, Par. 3.

5 *AT&T*, Par. 4

which to assess a carrier's market power, the FCC stated that it was treating all carriers as single-output firms for purposes of analysis and that a firm's classification as dominant would apply to all its services.[6]

In the FCC's *Fourth Report and Order*, issued just before implementation of the AT&T divestiture, the FCC elaborated on its definition of market power, citing the definitions of Areeda and Turner, and of Landes and Posner. Areeda and Turner define market power as "the ability to raise prices by restricting output," while Landes and Posner define it as "the ability to raise and maintain prices above the competitive level without driving away so many customers as to make the increase unprofitable." The FCC also defined the relevant product and geographic markets that it would apply in assessing the market power of the carriers covered by the *Competitive Carrier* proceeding. The FCC found that, for those carriers, "all interstate, domestic, interexchange telecommunications services comprise a single relevant product market with no relevant submarkets."[7]

The FCC concluded that AT&T had demonstrated that it should be reclassified as non-dominant in the overall interstate, domestic, interexchange telecommunications market. In assessing whether the record supported such reclassification, the FCC first addressed whether AT&T possessed market power in the overall interstate, domestic, interexchange market. Based on this analysis, it concluded that, while the long-distance marketplace was not perfectly competitive, AT&T neither possessed nor could

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6 *AT&T*, Par. 5

7 *AT&T*, Par. 7.

unilaterally exercise market power within the interstate, domestic, interexchange market taken as a whole.[8]

In assessing whether AT&T possessed market power in the overall interstate, domestic, interexchange market the FCC addressed:(1) the supply elasticity of the market; (2) the demand elasticity of AT&T's customers; and, (3) AT&T's market share. The FCC found that, in the interstate, domestic, interexchange market, supply is sufficiently elastic to constrain AT&T's unilateral pricing decisions. In making this determination, the FCC found that "AT&T's competitors have enough readily available excess capacity to constrain AT&T's pricing behavior -- i.e., that they have or could quickly acquire the capacity to take away enough business from AT&T to make unilateral price increases by AT&T unprofitable."[9] The FCC noted that MCI and Sprint alone could absorb overnight as much as fifteen percent of AT&T's total 1993 switched demand at no incremental capacity cost; that within 90 days MCI, Sprint, and LDDS/WilTel, using their existing equipment, could absorb almost one-third of AT&T's total switched capacity; or that within twelve months, AT&T's largest competitors could absorb almost two thirds of AT&T's total switched traffic for a combined investment of $ 660 million. Thus, AT&T's competitors possessed the ability to accommodate a substantial number of new customers on their networks with little or no investment immediately, and relatively modest investment in the short term. The FCC therefore

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8 *AT&T*, Par. 35.

9 *AT&T*, Par. 58.

concluded that due to supply elasticity AT&T's competitors have sufficient excess capacity available to constrain AT&T's pricing behavior.[10]

The record in the *AT&T* proceeding also indicated that residential customers are highly demand-elastic and will switch to or from AT&T in order to obtain price reductions and desired features. AT&T's studies showed that as many as twenty percent of its residential customers, representing nineteen percent of annual revenue to AT&T, change interexchange carriers at least once a year. This high churn rate among residential consumers -- approximately 30 million changes were expected in 1995 -- demonstrated that these customers found the services provided by AT&T and its competitors to be very close substitutes.[11]

The FCC also found that business customers are highly demand-elastic and "routinely request proposals from carriers other than AT&T and accord full consideration to these proposals." Furthermore, the FCC found that business users consider the offerings of AT&T's competitors to be similar in quality to AT&T's offerings. Purchasers of business services, the FCC found, were also more sophisticated and knowledgeable about the products they buy and often make decisions based on advice from consultants and in-house telecommunications experts about the service offerings and prices that are available to them. The willingness of business and residential customers to switch long-distance providers was evidence of a lack of market power on the part of AT&T.[12]

AT&T's steadily declining market share for long-distance services also supported the conclusion that AT&T lacked market power in the relevant market. At the time of the

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[10] *AT&T*, Par. 59.

[11] *AT&T*, Par. 63.

Competitive Carrier First Report and Order, AT&T had approximately 90 percent of the overall long-distance industry revenues. From 1984 to 1994, AT&T's market share, in terms of both revenues and minutes, fell from approximately 90 percent to 55.2 and 58.6 percent in terms of revenues and minutes respectively.[13] Although several parties argued that AT&T's overall market share of 60 percent was inconsistent with a finding that AT&T lacked market power, the FCC disagreed and noted that market share, by itself, is not the sole determining factor of whether a firm possesses market power. Other factors, such as demand and supply elasticities, conditions of entry and other market conditions, must be examined to determine whether a particular firm exercises market power in the relevant market.[14]

Applying this standard to the record in that proceeding lead the FCC to conclude that AT&T lacked market power in the relevant market -- that is, the overall market for interstate, domestic, interexchange telecommunications services. In arriving at this conclusion, the FCC concluded, in light of the fact that business, 800 and residential services constitute the vast majority of the interstate, domestic, interexchange services market, that the market-structure characteristics and the indicia of market conduct and performance all indicate that AT&T lacked market power in the relevant product and geographic market. Accordingly, the FCC found that AT&T lacked market power in the interstate, domestic, interexchange telecommunications market.[15]

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12 *AT&T*, Par. 65.

13 *AT&T*, Par. 67.

14 *AT&T*, Par. 68.

15 *AT&T*, Par. 141.

b. Ameritech Market Share

Based on the above review of the applicable standards for a competitive market set forth by the FCC, Ameritech should not be deemed to be competitive or "non-dominant" in DA in Michigan. Simply stated, competition is not present. Ameritech has the lion's market share of the directory assistance market in the Ameritech service territory in Michigan. For example, it is estimated that CLECs have about 8.3% of the lines in the Ameritech service territory in Michigan and Ameritech has 91.7% of the lines. (Tr 183). This market share for lines approximates the market share for the dialed DA calls by customers. (Tr 280). This compares to the 55% to 58% market share of AT&T when AT&T was declared non-dominant in long distance. Clearly, Ameritech's market share is way too high for it to be considered non-dominant or for there to be a determination that "competition" exists in DA.

c. Supply Elasticity

Based on the ubiquitous network which Ameritech has in place in its own service territory, it is believed that Ameritech could readily absorb all local DA traffic of its competitors immediately. On the other hand, there is no information supplied by Ameritech which would support the conclusion that other carriers could absorb all local DA traffic of Ameritech in Michigan. Therefore, similar to the reasoning in *AT&T,* the Commission should find that there has been no showing that the competitors of Ameritech have sufficient excess capacity available to constrain any pricing behavior of Ameritech and that therefore the supply is not sufficiently elastic to constrain any unilateral pricing decisions of Ameritech. (Tr 195).

d. Demand Elasticity

There is also no evidence that the regulated DA customers of Ameritech's DA service are highly demand elastic and will switch to or from Ameritech in order to obtain price reductions and desired features. DA is frequently tied to Ameritech's local offerings and the churn rate of the local DA has not been shown by Ameritech but is believed to be extremely low.[16] This shows that the DA service offered by Ameritech is dominant and that there its customers are not highly demand elastic. (Tr 195).

The above analysis shows that the DA service offered by Ameritech should be declared non-competitive (dominant) pursuant to Sections 207, 701(3) and 701(4) of the MTA. (Tr 196) and there is no effective competition.

2. Reasons why the DA market is not competitive and what must be done to preserve competition once it is competitive.

While it would be difficult to list all factors as to why the DA market is not presently competitive, the evidence here shows at least some of the reasons. As shown below, customized routing is needed to allow facilities based DA competition to develop, and the prices by which CLECs need to obtain the DA listings must be at TSLRIC. Neither of these two critical requirements have been met in Michigan.

a. Customized routing is needed.

CLECs offering UNE-P service to customers in Michigan cannot provide their own facilities-based DA services to their own customers because Ameritech Michigan has not instituted customized routing. In the case of WorldCom's UNE-P operations, those customers are actually getting their DA service from Ameritech Michigan. Despite the claims Ms. Moore makes at Tr 78, lines 15-19, Ameritech has ignored the present

reality of the marketplace because it does not provide customized routing to allow WorldCom to self-provision or use third-party DA vendors where WorldCom services the customer via UNE-P. (Tr 183).

Further, Ameritech's analysis of the DA marketplace fails to consider the fact that it remains in control of the bottleneck facilities and data that effectively restrict access to the local DA marketplace. (Tr 184). The FCC recognized this fact in the *UNE Remand Order* (FCC 99-238, November 5, 1999, CC Docket No. 96-98, par. 462) when it determined that customized routing is necessary for competitors relying on the incumbent's UNE-P to access alternative sources of Operator Services ("OS") and DA. The Michigan Commission also recognized this limitation in Case No. U-12622. In that case, the Commission, among other matters, stated at pages 21-23 of its March 19, 2001, order as follows:

> The record supports the ALJ's finding regarding the infeasibility and limited usefulness of the customized routing that Ameritech Michigan proposes to accommodate the CLECs' OS/DA requirements. . . . The Commission finds that this alternative would be costly, inefficient, and burdensome. The Commission further agrees with WorldCom that it has authority under the MTA to require OS/DA to be offered on an unbundled basis and to ensure reasonable access to competitive alternatives. . . .
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> The Commission finds that Ameritech Michigan must continue to offer OS/DA as a UNE at TSLRIC-based rates. The obligation to provide unbundled OS/DA will continue in effect until Ameritech Michigan provides reasonable accommodations for the problems presented by dedicated end-office trunking and other technological issues that inflate the CLECs' cost of obtaining access to competitive OS/DA services. When Ameritech Michigan believes that it meets the requirements relating to providing access to competitive OS/DA services, it may file an application for authorization to remove OS/DA from its list of UNEs. However, it

[16] With an estimated 91.7% market share, there is basically no where for customers to go, thus showing that Ameritech has a very low churn rate. This compares to the 20% churn rate in *AT&T*.

may not remove OS/DA from UNE status without prior Commission authorization.

Since the entry of this March 19, 2001, order in Case No. U-12622, Ameritech has not filed an application to remove DA from the list of UNEs which it is required to provision. (Tr 185).

b. DA Listings must be Provisioned on non-discriminatory terms, including pricing at TSLRIC

There are other areas in which Ameritech Michigan controls the DA marketplace which inhibit competition. Ameritech Michigan also has a lock on the source of DA listings ("DAL"). DAL information is derived from the local service order process when customers establish local phone service. Ameritech Michigan serves the vast majority of customers in Michigan, and it is the largest source of accurate DAL in Michigan. While there are other sources of information, most sources of accurate DA services rely on the DAL derived from Ameritech Michigan's service order process. Since Ameritech Michigan controls about 91.7% of the lines in its service territory, Ameritech Michigan has the most accurate information on the status of lines. These lines generate about 91.7% of the DAL in the Ameritech Michigan service territory. Ms. Moore's statement on Tr 87, line 11, that no company has a monopoly on such listings is unsupportable when one considers that Ameritech Michigan controls the local service order process for most of the phone lines in Michigan. (Tr 200).

Where to the extent that WorldCom does provide DA in Michigan with its own facilities, it is dependent on Ameritech Michigan's DAL data which is supposed to be provided to other carriers on nondiscriminatory terms, including pricing. (Tr 200). Also, when in the future Ameritech provides customized routing, it is essential that it appropriately provide DAL data. Otherwise, competition will be inhibited.

In addressing the appropriateness and need for DAL information the FCC has recently stated as follows in the *DAL Provisioning Order*[17]:

> 1 . . . We conclude today that local exchange carriers (LECs) must provide competing directory assistance (DA) providers . . . that qualify under section 251(b)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act") . . . with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates. . . . To the extent that such DA providers qualify under section 251(b)(3), we find that LEC failure to provide such access may also violate section 201(b). . . .
>
> 3. Essential to a competitor's ability to provide directory assistance is access to an accurate local directory assistance database. . . . Because incumbent LECs derive their local directory assistance database through their service order processes, they continue to maintain a near total control over the vast majority of local directory listings that form a necessary input to the competitive provision of directory assistance. Without nondiscriminatory access to the incumbents' directory assistance databases, competing DA providers may be unable to offer a competitive directory assistance product. This, in turn, may affect the ability of both the DA providers and the CLECs that rely on them to compete in the local exchange marketplace. The directory assistance market will not be fully competitive as long as incumbent LECs have the ability to leverage their monopoly control of their DA databases into market dominance. . . .
>
> 6. The Commission acknowledged that many LECs offered directory assistance for purchase or resale to competitors, but concluded that under the general definition of "nondiscriminatory access," CLECs must be able to obtain at least the same quality of access to these services that a LEC itself enjoys, and that merely offering directory assistance and directory listing services for resale or purchase would not, in and of itself, satisfy this requirement. . . . Rather, the Commission concluded that section 251(b)(3) required LECs to share their directory assistance databases with their competitors, in "readily accessible" tape or electronic formats, and that such data had to be provided in a timely fashion upon request. . . . The purpose of requiring "readily

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[17] *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 01-27, First Report and Order, rel. January 23, 2001, *("DAL Provisioning Order")*.

> accessible" formats was to ensure that no LEC, either inadvertently or intentionally, provided subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems. . . .The Commission concluded that a highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, would be to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing such access. . . . The Commission believed that access to such databases would promote seamless access to directory assistance in a competitive local exchange market.

Yet, Ameritech does not provide DAL at cost based rates and has no Michigan Commission approved TSLRIC cost study for DAL. Until this is accomplished, potential competitors will continue to be stymied in attempts to compete with Ameritech in Michigan. Moreover, Ameritech Michigan continues to flex its market power in this area by seeking discriminatory rates for the DAL it offers. Even though the Michigan Commission has not approved any specific TSLRIC rate for DAL, the Texas PSC has ruled that the TELRIC rate for the Ameritech Michigan affiliate SWBT for DAL is $.0011 per initial load and $.0014 per update. This compares to the rate Ameritech Michigan presently charges WorldCom of $.028 per initial load and $.0362 per update. Thus, it appears that the Michigan DAL rates for DAL are at least 25 times economic cost. (Tr 202).

Exception B: The PFD erroneously misconstrued Section 208(3)(a) of the MTA to ignore the clear mandate that a checklist item is that DA competition must be "facilities based". (PFD, page 15-16).

Exception C: The PFD erroneously misconstrued Section 208(3)(b) and Section 208(4) and 208(5) of the MTA to find that Ameritech has established compliance with these statutory provisions. (PFD, pages 17-20). Also, Ameritech has failed to show that as of the time of the evidentiary hearing that the "competitors" that is claims are competitive each have more than 250,000 local exchange customers.

Exceptions B and C are considered together here. Section 208(3) provides for a filing by a provider with the Commission to classify local services as competitive for "an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographic area . . . "[18] if 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 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 from an unaffiliated provider or supplier.

It is first important to be clear that the markets at issue in the present application are the residential and business DA customers in the Ameritech Michigan service area. (Tr 197).

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[18] *See*, Sec. 208(3). Sec. 208(1) also provides for such a determination for "all providers within the competitive market." Apparently conflicting statutes should be construed, if possible to give each full force and effect. *Krim v. Commercial Union Assur. Co.* 288 N.W.2d 463, 94 Mich.App. 639 (1979). Where conflict exists between two statutory provisions, last expression of legislature will control. *Capps v. Michigan Dept. of Social Services* 320 N.W.2d 272, 115 Mich.App. 10 (1982). In light of Section 701(3), Section 208 must be read so as to also allow for a competitive finding for "an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographic area" in addition seeking such a finding for all providers within the competitive market. *See*, Sec. 701(3) and 208(3). The present application could be seeking such a finding for "an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographic area" or for the entire market in Ameritech's service territory.

Pursuant to Section 208(4), a service is not competitive if for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographic area, 1 of the alternative providers of the service identified in the application is an unaffiliated provider of facilities based local exchange service to less than 250,000 end-users in the state.[19] Ameritech in its application has identified numerous alternative providers who provide facilities based local exchange service to less than 250,000 end users in this state. Accordingly, based on the present facts and what was submitted in the application, under Section 208(4) Ameritech Michigan is not able to claim that their local DA service is competitive under Section 208. Therefore, Ameritech does not comply with Section 208(3)(b) because under Section 208(4) the alternative local exchange service provider must serve at least 250,000 end-users in the Michigan service territory. There has been no showing that the alternative carriers identified by Ameritech fit into this category. (Tr 198).

The PFD incorrectly misconstrues the WorldCom position. The PFD erroneously states that:

> 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. (PFD, page 20).

The simple and clear reading of Section 208 is that when Ameritech points to competition it must point to other carriers who serve more than 250,000 local customers

[19] Pursuant to Section 208(5), Section 208(4) would not apply if there are 3 or more providers of facilities based basic local exchange service throughout the competitive market and 1 or more of the providers is a provider of facilities based basic local exchange service to less than 250,000 end-users in this state. Section 208(5) does not apply (and thus Section 208(4) is applicable) because as to the present application there are

on a facilities basis in Michigan. The PFD has made up a strawman WorldCom position solely to then shoot down that position. The WorldCom position is the only position which gives effect to all portions of Section 208 as written. The PFD never addressed the actual WorldCom position here. Also, the PFD has adopted a reading of Section 208 which does not give effect to the words in Section 208(4) which addresses the necessity of having alternative providers who each provide service to more than 250,000 customers for local service on a facilities basis. This portion of the PFD must be rejected.Thus, under Sections 208(4) and 208(3)(b) the unaffiliated provider must have at least 250,000 local end users in the state. To show competition, Ameritech can not rely on "competition" from providers with less than 250,000 local customers in this state.

Exception D: The PFD erroneously misconstrued Sections 207 and 208(9) of the MTA and the Commission's prior order in Case No. U-12765, and the PFD failed to require Ameritech to obtain approval of its TSLRIC cost study for DA before filing to have DA declared competitive. (PFD, page 21).

By statute, Ameritech is required to obtain approval of its TSLRIC DA cost study prior to filing an application to have its DA service declared competitive. (MTA, Section 208(9)). Ameritech has not complied with this requirement.

The Michigan Commission has addressed the requirement that a provider must first obtain approval of a DA cost study before it can file an application seeking to have DA declared competitive. The Commission in its March 29, 2001, order in Case No. U-12765 (*In the matter of the application of Ameritech Michigan for a determination that directory assistance and related services are competitive pursuant to Sections 207 and 701 of the Michigan Telecommunications Act*), stated, in part at page 12, as follows:

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no facilities based local carriers with a facilities based presence throughout the Ameritech Michigan exchanges other than Ameritech and Ameritech has more than 250,000 end-users in the state.

> Moreover, Section 208(9) of the MTA, MCL 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.

Ameritech has not yet obtained Commission approval of a TSLRIC study for DA. (Tr 198). Therefore, Ameritech is prohibited from filing the present application seeking to have DA declared competitive. The PFD is clearly erroneous in its ruling to the contrary.

CONCLUSION

Based on the above, the Commission should adopt the exceptions of WorldCom.

Dated: December 6, 2001

By: James R. Denniston /bjc

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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-uses are competitive services under the Michigan Telecommunications Act.	)))))	Case No. U-13007

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Jeanne M. Beachnau, being first duly sworn, deposes and says that on December 6, 2001, she caused to be served upon the parties listed in the attached Service List, copies of WorldCom Exceptions to PFD in the above-captioned matter by United States First Class Mail and electronic mail.

Jeanne M. Beachnau

Jeanne M. Beachnau

Subscribed and sworn to before me
on December 6, 2001.

H. Sharyl Stofer

H. Sharyl Stofer, Notary Public
Ingham County, Michigan
My commission expires: 12/17/03

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