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

December 14, 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

Dear Ms. Wideman:

Enclosed for filing regarding the above-captioned matter please find the original and four copies of ***Ameritech Michigan's Reply to Exceptions to Proposal For Decision*** and ***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

AMERITECH MICHIGAN'S REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION

Ameritech Michigan[1] submits the following reply to WorldCom's Exceptions to the Proposal for Decision (PFD).

WorldCom's Exceptions, like its brief and reply brief, improperly rely on testimony that is not a part of the record in this contested case proceeding. In its Response to WorldCom's Emergency Application for Leave to Appeal, Ameritech Michigan demonstrated that the Administrative Law Judge (ALJ) properly granted Ameritech Michigan's motion to strike portions of the testimony of Michael Lehmkuhl. Those arguments will not be repeated here.[2]

---

[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] WorldCom's appeal is still pending. In the unlikely event that the Commission reverses the ALJ's decision, Ameritech Michigan and the other parties would be entitled to cross-examine Mr. Lehmkuhl regarding the stricken testimony.

Instead, Ameritech Michigan will focus on WorldCom's creative, albeit somewhat desperate, attempt to rewrite the Michigan Telecommunications Act (MTA) to suit its purposes.

I. THE MTA DOES NOT INCORPORATE THE FCC'S FORMER "NON-DOMINANT CARRIER ANALYSIS"

In its March 29, 2001 Opinion and Order in Case No. U-12765[3], (March 29 Order) the Commission invited "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." *Id.*, at 12. Ameritech Michigan was the only party to this proceeding that submitted testimony on this issue.[4] Ameritech Michigan was also the only party to address the Commission's question in its Initial Brief.[5] As the PFD found,

> Finally, the Administrative Law Judge notes that only Ameritech responded to the Commission's call for comments in its Order in Case No. U-12725 regarding "tools it should and may legally have available to ensure a continued healthy 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. *Id.*, at 24-25.

Having never submitted testimony and having not even bothered to brief the issue, WorldCom purports to except to the PFD's determination that "no issue was joined."[6] In reality, WorldCom has simply chosen to (once again) urge the Commission to disregard the criteria

---

3 *In the matter of Ameritech Michigan's Application for a Determination that Directory Assistance and Related Services are Competitive.*

4 Direct Testimony of Sandy Moore, Tr. 89-90.

5 Initial Brief of Ameritech Michigan, at 26-27.

6 While the PFD referred the Commission to Ms. Moore's testimony, it is not entirely clear whether the PFD adopts her position, or merely defers to the Commission.

established by the Michigan Legislature for determining whether a service is competitive in favor of an inapplicable, pre-Telecommunications Act of 1996, analysis utilized by the FCC to determine whether AT&T was a "non-dominant" carrier in the interstate interLATA business.[7]

The PFD found that WorldCom's attempt to import the FCC's standards under a 1995 decision in a completely different context was misguided.

> WorldCom also argues at length[8] that FCC determinations regarding "dominant" carries [sic] 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. PFD, at 13.

The PFD's finding is entirely consistent with the ALJ's earlier ruling striking Mr. Lehmkuhl's testimony. At that time, the ALJ stated,

> I don't believe this lengthy discussion of the FCC's determination of what is a dominant and not a dominant carrier, under their legal constraints and rules and regulations, has anything to do with this case. I don't even know why it's in here." [Tr. 56-57]

Apparently hoping that the third time will be the charm[9], WorldCom has repeated the same shopworn arguments that have twice been rejected by the ALJ in this proceeding.

In its Response to WorldCom's Application for Leave to Appeal (Response) from the ALJ's ruling striking the proffered testimony of Michael Lehmkuhl, Ameritech Michigan demonstrated that the FCC's analysis regarding whether a carrier is "dominant" for purposes of

---

7 *In the Matter of the Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, FCC 95-427 (Rel'd October 23, 1995).

8 In fact, WorldCom copied the stricken testimony *verbatim* in its initial brief, thus validating the ALJ's ruling that even if the "testimony" was relevant, it was improper legal argument.

9 WorldCom's Exceptions essentially restate the "testimony" of Mr. Lehmkuhl that was stricken by the ALJ. [Tr. 188 – 195] The ALJ's ruling is the subject matter of an appeal filed by WorldCom. See Note 2, *supra.*

its rules is irrelevant to a determination of whether directory assistance is competitive under section 207 of the MTA and the competitive criteria set forth in section 208(3). The determination that the Commission must make in this case is whether directory assistance services provided to end-users are competitive *as that term is used in MTA section 207*, not whether some carrier should be classified as "dominant" or "non-dominant" for purposes of FCC tariffing or other requirements.[10] In the interest of saving a tree or two, Ameritech Michigan refers the Commission to its Response and will not repeat those arguments here.

The Legislature has set forth specific criteria for determining whether a telecommunications service is competitive under section 208. Other jurisdictions have also set forth specific criteria for determining whether telecommunication services are competitive there. For example, Connecticut has set forth eight statutory criteria for determining whether a service is competitive, many of which are similar to the criteria under section 208(3):

> 1. The number, size and geographic distribution of certified telecommunications providers of the service, provided the department shall not reclassify any service as competitive if such service is available only from a telephone company or an affiliate of a telephone company that is a certified telecommunications provider;
>
> 2. The availability of functionally equivalent services in the relevant geographic area at competitive rates, terms and conditions;
>
> 3. The financial viability of each company providing a functionally equivalent service in the relevant market;
>
> 4. The existence of barriers to entry into, or exit from, the relevant market;
>
> 5. Other indicators of market power which the department deems relevant, which may include, but not be limited to, market penetration and the extent to which the provider of the service can sustain the price for the service above the cost to the company of providing that service;
>
> 6. The extent to which other telecommunications companies must rely upon the service to provide their telecommunications services;
>
> 7. Other factors that may affect competition; and

[10] The terms "dominant" and "non-dominant" do not even appear anywhere in the MTA.

8. Other factors that may affect the public interest.

The Connecticut Department of Public Utility Control found that directory assistance met each of the applicable criteria.[11] Directory assistance services have also been fully or partially deregulated in Colorado, Delaware, Illinois, Idaho Kansas, Maryland, Nebraska, New Jersey, South Dakota, Texas, Washington, Wisconsin and Wyoming. [Moore Direct, Tr. 76]

Even if the FCC's analysis of the interexchange marketplace had any relevance to this proceeding, WorldCom's exception would still miss the mark. The Commission's March 29 Order asked for comments on the tools available to the Commission to ensure that, *following deregulation*, a healthy competitive market for DA continues to exist. As discussed above, WorldCom never submitted any testimony on this issue, nor did it brief the issue. WorldCom's arguments in its Exceptions do not even address that issue. Instead, WorldCom has simply trotted out its hackneyed arguments to as to why the Commission should determine that there is no competition for directory assistance services.[12] WorldCom has waived it right to except to the PFD's conclusion that "no issue was joined."

---

11 *Application of SNET to Reclassify Directory Assistance Service as Competitive*, Docket No. 00-08-17 (January 31, 2001).

12 Even the portions of Mr. Lehmkuhl's testimony that survived the motion to strike were clearly on life support. Mr. Lehmkuhl demonstrated an almost uncanny ability to express opinions on subjects of which he had no apparent expertise by training, education or otherwise based upon "facts" of which he had no knowledge. For example, he didn't know whether WorldCom has any operators in Michigan. [Tr. 268] He had not research why customers choose one directory assistance provider over another, and had not consulted with WorldCom's marketing department. [Tr. 269] He was unaware of the number of facilities-based providers in Michigan. [Tr. 271] He was unaware of whether WorldCom or any of its facilities was a reseller in Michigan. {Tr. 272] He was unaware of promotional activities undertaken by other carriers for their "00" service. [Tr. 274] He was unaware of any data regarding usage of WorldCom's "00" service. [Tr. 275] Even though he "had know way of knowing," Mr. Lehmkuhl assumed that the number of calls to WorldCom's 10-10-9000 service would be the same from every state, regardless of

Footnote continued on next page …

To correct the record, Ameritech Michigan will briefly respond to WorldCom's misleading statements regarding Ameritech Michigan's alleged "market share" for directory assistance. First, WorldCom asserts that Ameritech's claimed 91.7% share of local exchange lines in its service territory somehow equates to its share of directory assistance calls. [WorldCom's Exceptions, at 10] While it is clear that end-users who receive local service from CLECs do not use, or even have access to, Ameritech Michigan's directory assistance service, Mr. Lehmkuhl forgot to tell "the rest of the story."

Mr. Lehmkuhl acknowledged, for example, that calls to WorldCom's 10-10-9000 directory assistance service "are not tied" to which carrier provides an access line. [Lehmkuhl Cross, Tr. 276] Similarly calls to interexchange carrier directory assistance services have no relationship to which local exchange carrier provides service to the customer. It is undeniable that Ameritech Michigan's "market share" for directory assistance calls dialed using 1 (NPA) 555-1212 or "00" is zero percent. Ameritech Michigan's "market share" for directory assistance provided by CLECs is zero percent. Ameritech Michigan's share of directory assistance services provided by telephone directory publishers, internet directory assistance providers, and cellular directory assistance providers is zero percent. Access lines are not a determinant of the usage of directory assistance provided by telephone, let alone directory assistance as a whole.

WorldCom also complains that Ameritech Michigan has not priced its directory assistance listings (DAL), one of many sources of directory listings available to competitive

---

Footnote continued from previous page …

> population or number of telephone lines. [Tr. 277] He was unaware the WorldCom had previously filed an application in Michigan in which it claimed that directory assistance services were competitive. [Tr. 279] He testified that there was a one-to-one relationship between the number of access lines and the number of DA listings, although he had never even looked at the relationship. [Tr. 280]

directory assistance providers, at "cost." [WorldCom Exceptions, at 13-15] Apart from having nothing to do with this proceeding, and not causing competitors to shy away from providing directory assistance services, WorldCom, through selective quotation of the FCC's *DAL Provisioning Order*,[13] failed to mention that the FCC's order *rejected* proposals to require DAL to be provided at cost.[14]

II. WORLDCOM'S TORTURED READING OF SECTION 208 MUST BE REJECTED

WorldCom's Exceptions badly misconstrue section 208 of the MTA. First, WorldCom claims the PFD erred in concluding that the "facilities-based" requirement in section 208(3)(a) has no applicability to directory assistance services. [WorldCom's Exceptions, at 16] WorldCom's exceptions contain absolutely no discussion or argument, however, as to why this is so.[15] The PFD adopted Staff's commonsense position that section 208's criteria must be read with reference to the particular service at issue.

---

13 *Provision of Directory Listing Information First Report and Order,* CC Docket 97-173 (Rel'd January 23, 2001.)

14 "[W]e concluded in the *UNE Remand Order* that UNE pricing was no longer required for directory assistance , and therefore removed the service from the list of UNEs." *Id.,* at 16. The FCC also declined to impose the "presumptively reasonable" rate established by the Commission for directory publishing listings of $.04 per listing and $.06 per listing update. *Id.,* at 17

15 While WorldCom indicates that "Exceptions B (section 208(3)(a) argument) and C (section 208(3)(b) argument) are considered together here," there is no discussion at all of section 208(3)(a) in its Exceptions.

Directory assistance is not a "facilities-based" service, as the term would be commonly understood in the context of local exchange competition. Obviously, providers of directory assistance, whether by wired or wireless telephone, the internet, or other competing services do use "facilities" such as operator call centers, host computers, and publishing centers. Some telecommunications providers use their own directory assistance facilities; others resell third party directory assistance services.

To the extent the facilities-based requirement of section 208(3) is applicable to directory assistance at all, it must be read to mean "directory assistance facilities." It is not necessary, however, for the Commission to determine whether the facilities-based requirement of section 208(3)(a) is applicable to directory assistance, since the evidence is undisputed that other telephone directory assistance providers, including facilities-based telecommunications providers, do operate in Michigan using their own facilities, as opposed to reselling Ameritech Michigan's directory assistance services.

Second, WorldCom claims that Ameritech Michigan's directory assistance service cannot be competitive under section 208(4) as long as there is one facilities-based provider of basic local exchange service with less than 250,000 customers in the state. Its contention is totally without merit. Section 208(4) provides,

> 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 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.* (Emphasis added.)

In WorldCom's world, as long as there is a small facilities-based CLEC in Michigan, no service could ever be competitive under section 208(4). WorldCom also contends that the "less than

250,000 end-users" language in section 208(4) should somehow be imported into section 208(3)(b).[16] The PFD properly determined that "WorldCom's interpretation simply makes no sense." [PFD, at 20]

Section 208(4) was intended to limit the ability of a provider to use the competitive self-declaration provisions of section 208(6) if one of the competitors it relies upon to prove competition is a small local exchange carrier. It is not a bar to finding a service competitive. It simply requires a section 203 proceeding. If Section 208(4) applies, a provider must "apply to the commission for a review of the service under section 203 to determine whether the service is competitive and the rate deregulated." Of course, that is exactly what Ameritech Michigan has done in this proceeding.

In effect, WorldCom invites the Commission add language to section 208(b)(3) that the Legislature didn't see fit to include, while ignoring the clear language in section 208(4) that a provider may apply to the Commission under section 203. The Commission should decline the invitation. The PFD correctly found that "Ameritech's reading of the provision is clearly more consistent with the other provisions of Sec. 208 and with the MTA as a whole." [PFD, at 20]

Finally, WorldCom contends that Ameritech Michigan was required to obtain some type of advance approval of a TSLRIC study before it even filed its application in this case. The ALJ determined that while,

> "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." [PFD, at 21]

---

[16] Apparently, WorldCom would rewrite section 208(3)(b) to read: "Both residential and business end-users have service alternatives available from more than 1 unaffiliated *facilities based* provider *that has more than 250,000 end-users* or service reseller *that has more than 250,000 end-users.*

While Ameritech Michigan disagrees that a TSLRIC study is required prior to finding directory assistance competitive[17], the PFD correctly ruled that, to the extent such a study is required, it serves no useful purpose to require multiple proceedings. There is no reason why the normal process of approving cost studies as part of an overall proceeding should be disregarded. Such a process would only waste the resources of the Commission and interested parties.

III. CONCLUSION

WorldCom's Exceptions to the PFD should be rejected. Ameritech Michigan has established that directory assistance services provided to end-users are competitive. Now is the time for the Commission to allow directory assistance service to compete on a level playing field in Michigan. As the Commission has recognized on a number of occasions, the Legislature has established a policy that favor competitions to enable customers to make choices, to spur innovation, and to secure the other benefits of the free enterprise system. The Commission should issue a determination that directory assistance services provided to end-users are competitive in all areas of the State of Michigan where Ameritech Michigan provides such services.

---

[17] As set forth in Ameritech Michigan's Exceptions, nothing in section 207 suggests that a TSLRIC study is required before a service can be determined to be competitive. To the contrary, the requirement for a TSLRIC study makes no sense, since upon finding directory assistance to be competitive, the service is deregulated, and not subject to TSLRIC requirements for regulated services.

Respectfully submitted,

Craig A. Anderson (P28968)
AMERITECH MICHIGAN
444 Michigan Avenue, Room 1750
Detroit, Michigan 48226
(313) 223-8008

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: December 14, 2001

LANSING 34060-128 290257-2

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

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 December 14, 2001, she served upon the parties listed below a copy of ***Ameritech Michigan's Reply to Exceptions to Proposal For Decision*** 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 14th day of December, 2001.



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

LANSING 34060-128 284313