

M ICHIGAN **T** ELECOMMUNICATIONS **R** EPORT™

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FEATURES

FEDERAL COURT UPHOLDS STATE'S SETTLEMENT OF AMERITECH'S CHALLENGE TO MTA ELIMINATION OF EUCL CHARGES

On December 13, 2002, Judge Paul D. Borman, of the United States District Court for the Eastern District of Michigan, issued an order rejecting the Michigan Attorney General's objections to the Court's entry of the proposed settlement entered into between the State of Michigan, the Michigan Public Service Commission, and Ameritech Michigan that allows Ameritech Michigan to continue to impose an intrastate end user common line charge ("EUCL").

In July 2000 the Michigan Legislature enacted several revisions to the Michigan Telecommunications Act ("MTA"). Section 310(7) of the MTA abolishes the EUCL charge imposed by Ameritech Michigan, Verizon, and other non-exempt local telephone service providers. Section 701 of the MTA imposed a rate freeze on providers. In separate lawsuits, Ameritech Michigan and Verizon North challenged these two provisions. Judge Borman had previously stayed enforcement of the rate freeze provision. The United States Court of Appeals for the Sixth Circuit had previously stayed the EUCL provision.

On August 26, 2002, Governor Engler announced that a settlement to the litigation had been reached with Ameritech Michigan (the settlement does not affect the Verizon North lawsuit). The settlement provides that Ameritech Michigan reduce its intrastate residential EUCL to \$2.78 per month and the business intrastate EUCL to \$1.03 per month until December 31, 2005. The settlement also provides for Ameritech Michigan to forego certain property tax credits and to support the legality of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (2002 PA 48), the Michigan Broadband Development Authority Act (2002 PA 49), and certain tax credits for broadband investments (2002 PA 50).

Later on August 26, 2002, the Michigan Attorney General filed a motion to intervene challenging the constitutionality of the Governor entering into a settlement agreement that agrees to a policy that is contrary to the terms of a state statute. The Attorney General reasoned that if the statute expressly forbids a EUCL charge, then the Governor cannot enter into a settlement that allows a EUCL charge because that is contrary to the express enactment by the Legislature. The Attorney General argued that the settlement violated the constitutional doctrine of the separation of powers between the Executive and Legislative branches of government, the Michigan constitutional requirement for the Governor to faithfully execute the laws, and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Judge Borman rejected all of the Attorney General's arguments. Judge Borman found the settlement not to be a violation of state law or the state constitution because such settlements are lawful where the settlement is "based on a good-faith constitutional challenge to the enforcement of the provision." The Judge also noted that the settlement will "allow the provision to be enforced, at least in part, while eliminating the need for the State to continue with protracted and expensive litigation." Judge Borman also rejected the equal protection challenge, finding the concerns expressed only a hypothetical injury (that if the Verizon North reached a different

result, different companies would be allowed to charge different rates on a different basis), and that no constitutional suspect classification was involved or violated.

The settlement was formally entered on December 17, 2002.

* * *

**STATE ADMINISTRATIVE BOARD APPROVES \$238 MILLION
CONTRACT WITH SBC AMERITECH MICHIGAN
TO PROVIDE TELECOM SERVICES TO STATE**

On December 30, 2002 the State Administrative Board approved a six-year \$238 million contract to SBC Ameritech Michigan to provide consolidated telecommunications services, including telephone, high-speed Internet, data and video services, to State of Michigan departments and agencies. The State Administrative Board has general supervisory control over the administrative activities of all state departments and agencies, including, but not limited to, the approval of contracts and leases, oversight of the state capitol outlay process and the settlement of small claims against the state. Members of the Board include the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Superintendent of Public Instruction and the Director of the Department of Transportation (or their representatives).

In addition to the entry from SBC, the State also received bids from EDS and Verizon. The three proposals were initially evaluated by the Departments of Information Technology and Management and Budget, who then made a recommendation to the Finance and Claims Committee of the State Administrative Board. According to the *MIRS Capitol Capsule* dated Monday, Dec. 30, 2002, the “Department of Management and Budget officials wouldn’t acknowledge [SBC’s] was the lowest bid because of the ‘complexity’ of the bid proposal, but determined it to be the best value to the state because it would result in \$48 million in savings to the state over the life of the contract.”

The contract is part of the LinkMichigan initiative launched in May 2001 as an effort to transform Michigan's telecommunications infrastructure into one of the most robust and advanced in the nation.

* * *

PUBLIC ACTS OF 2002

Public Act #	Effective Date	Description	Bill Number and Sponsor
PA 36	03/07/02	Businesses; nonprofit corporations; establishment and operation of registered distance learning corporations; authorize. Creates new act.	Enrolled HB 5482 of 2001 Allen R-104
PA 33	03/07/02	Businesses; nonprofit corporations; career development and distance learning; provide for in nonprofit corporation act. Amends sec. 124 of <u>1982 PA 162 (MCL 450.2124)</u> . TIE BAR WITH: <u>HB 5482'01</u>	Enrolled HB 5483 of 2001 Gilbert II R-82
PA 48	03/14/02	Public utilities; other; fee structures for use of public rights-of-way; provide for. Creates new act & repeals secs. 251, 252, 253 & 254 of <u>1991 PA 179 (MCL 484.2251 et seq.)</u> . TIE BAR WITH: <u>SB 0881'01 SB 0999'02</u>	Enrolled SB 880 of 2001 Schwarz R - District 24
PA 49	03/14/02	Communications; telecommunications; Michigan community communications development authority; create. Creates new act.	Enrolled SB 881 of 2001 Stille R-District 32
PA 50	03/14/02	Property tax; other; credit for the purchase and installation of certain telecommunications equipment; provide for. Amends <u>1905 PA 282 (MCL 207.1 - 207.21)</u> by adding sec. 13b. TIE BAR WITH: <u>SB 0880'01</u>	Enrolled SB 999 of 2002 Garcia R-District 26
PA 455	6/21/02	Use tax; collections; certain aggregated taxable and nontaxable telephone, telegraph, or leased wire communications; allow for department to tax only taxable communications if provider can identify and separate on its books. Amends sec. 3a of <u>1937 PA 94 (MCL 205.93a)</u> . TIE BAR WITH: <u>SB 0824'01 SB 1248'02</u>	Enrolled SB 477 of 2001 Garcia R-District 26
PA 456	6/21/02	Use tax; collections; tax on mobile telecommunications; provide for sourcing. Amends secs. 3, 4 & 4q of <u>1937 PA 94 (MCL 205.93 et seq.)</u> ; adds sec. 3b & repeals sec. 3b of <u>1937 PA 94 (MCL 205.93b)</u> . TIE BAR WITH: <u>SB 0477'01 SB 1248'02</u>	Enrolled SB 824 of 2001 Emmons R-District 23
PA 610	12/20/02	Property tax; other; assessment of telecommunications property; revise. Amends secs. 4, 5 & 9 of <u>1905 PA 282 (MCL 207.4 et seq.)</u> .	Enrolled SB 1238 Emmons R-District 23
PA 612		Consumer protection; home solicitation sales; do not call register; create. Amends <u>1971 PA 227 (MCL 445.111 - 445.117)</u> by adding sec. 13. TIE BAR WITH: <u>R00093'01</u>	Enrolled HB 4042 of 2001 Faunce R-29
PA 613	12/20/02	Consumer protection; home solicitation sales; violation of home solicitation sales statute in connection with home solicitation sale or telephone solicitation; prohibit as unfair practice under Michigan consumer protection act. Amends sec. 3 of <u>1976 PA 331 (MCL 445.903)</u> . TIE BAR WITH: <u>HB 4042'01</u>	Enrolled HB 4632 of 2001 Clark D-11

* * *

ORDERS

MPSC orders issued December 20, 2002.

Case No. U-12258

**Ameritech Mobile Communications, LLC and Ameritech Michigan
Application filed November 14, 2002 for approval of the first amendment
(incorporates rates and charges approved in Case No.U-11831) and
second amendment (wireless E911)**

Case No. U-13513

**Sage Telecom, Inc. and Ameritech Michigan
Application filed October 10, 2002 for approval of the second amendment
(UNE combination tariff amendment) and application filed October 22, 2002
for approval of the third amendment (directory assistance error correction)**

Case No. U-13587

**Delta Phones, Inc. and Ameritech Michigan
Application filed October 17, 2002 for approval of an interconnection agreement**

Case No. U-13588

**Choctaw Communications, Inc., d/b/a Smoke Signal Communications and
Ameritech Michigan
Application filed October 17, 2002 for approval of an interconnection agreement**

Case No. U-13649

**ICG Telecom Group, Inc. and CenturyTel
Application filed December 6, 2002 for approval of an interconnection agreement**

On December 20, 2002 the Michigan Public Service Commission approved the interconnection agreements and amendments listed above.

Case No. U-13540

**MCImetro Access Transmission Services LLC
(rate increases)**

On December 20, 2002 the Michigan Public Service Commission ("Commission") issued an order authorizing MCImetro Access Transmission Services LLC to increase certain rates pertaining to basic local exchange service for grandfathered residential calling plans RA, RB, RC, RD, and R6-Offering B calling plans as set forth below.

Rate	Current rate	Proposed rate	Monthly increase	Annual increase
RA	\$24.99	\$27.99	\$3.00	\$36.00
RB	\$30.99	\$33.99	\$3.00	\$36.00
RC	\$39.99	\$43.99	\$4.00	\$48.00
RD	\$39.99	\$43.99	\$4.00	\$48.00
R6-Offering B	\$21.99	\$23.99	\$2.00	\$24.00

Minute actions adopted by the MPSC on December 6, 2002.

Federal Universal Certification

Case No. U-13618

“Adopt and issue minute dated December 6, 2002 designating Thumb Cellular, LP, as an eligible telecommunications carrier for the purpose of receiving federal universal service funds to be expended in the year 2003 consistent with the Federal Communications Commission order in CC Docket No. 96-45, as set forth in 47 CFR 54.313 and 54.314. RSA10 is designated as a service area for this purpose. The certification granted in this minute is conditioned upon the Commission’s reservation of its right to audit all expenditures of these universal service funds.”

METRO Act Forms

2002 PA 48

“Adopt and issue minute dated December 6, 2002 approving the revised METRO Act Permit Unilateral Form, the revised METRO Act Permit Bilateral Form, and the revised METRO Act Permit Application Form as required by Section 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, attached to this minute.”

* * *

NOTICES OF HEARING

Case No. U-13613

**Daystarr LLC d/b/a DayStarr Communications
(license)**

The October 30, 2002 application of DayStarr LLC d/b/a DayStarr Communications for a license to provide telecommunications services in the Verizon and Ameritech Michigan exchange areas of Owosso, South Haven, Flushing, and Bath is set for an evidentiary hearing at 9:00 a.m. on January 14, 2003. Interventions are due on or before January 10, 2003.

* * *

PSC HEARINGS SCHEDULE

Note: Unless indicated otherwise, hearings are held in the offices of the Commission, 6545 Mercantile Way, Suite 7, Lansing.

Hearings Scheduled for Last Week (December 23-27, 2002)

Hearings Scheduled for Last Week (December 30, 2002 – January 3, 2003)

Future Hearings Scheduled

January 14, 2003, 9:00 a.m.
Case No. U-13613/evidentiary hearing
DayStarr, LLC, d/b/a DayStarr Communications (license)

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APPLICATIONS AND COMPLAINTS

Case No. U-13371 First Communications LLC and Ameritech Michigan (interconnection agreement)

On December 19, 2002 First Communications LLC and Ameritech Michigan jointly applied to the Michigan Public Service Commission (“Commission”) for approval of the Second Amendment to their Interconnection Agreement approved by the Commission on May 16, 2002. The Second Amendment fully executed as of December 16, 2002, among other things, extends the term date for one year to May 29, 2004.

Case No. U-13663 Comm South Companies Inc and Frontier Communications of Michigan Inc (interconnection agreement)

On December 17, 2002 Comm South Companies, Inc. and Frontier Communications of Michigan, Inc. jointly applied to the Michigan Public Service Commission for approval of their Interconnection Agreement executed as of October 17, 2002 (“Agreement”). The Agreement will continue in effect until September 9, 2003 and will automatically renew for ninety-day periods thereafter unless terminated by either of the parties.

Case No. U-13664
CMC Telecom Inc and Ameritech Michigan
(interconnection agreement)

On December 19, 2002 CMC Telecom, Inc. (“CMC”) and Ameritech Michigan jointly applied to the Michigan Public Service Commission (“Commission”) for approval of their Interconnection Agreement executed as of August 31, 2002 (“Agreement”). The Applicants state that CMC requested the sectional adoption of terms and conditions of the interconnection agreement between Coast to Coast Telecommunications, Inc. and Ameritech Michigan, approved by the Commission on October 24, 2000 in Case No. U-12382, including the Third (NDA) Amendment, but excluding the First (Mi2A) and Second (Reciprocal Compensation) Amendments. The Agreement also includes voluntary negotiated provisions including the Negotiated Appendix Reciprocal Compensation (after FCC Order No. 01-131) and associated pricing as specified in the Fourth Amendment, which is incorporated into the Agreement.

Case No. U-13666
OneStar Long Distance Inc
(amended license)

On December 18, 2002 OneStar Long Distance, Inc. filed an application with the Michigan Public Service Commission to amend the geographic service area of its license to provide basic local exchange service to include the zone and exchange areas of incumbent local exchange carrier Verizon North Incorporated.

Case No. U-13667
Lawrence G. Campbell v MCI WorldCom
(consumer complaint: slamming)

On December 19, 2002 Lawrence G. Campbell (“Complainant”), of Franklin, filed a formal complaint with the Michigan Public Service Commission alleging that MCI WorldCom switched his long distance telephone service without authorization. Complainant seeks reimbursement of out-of-pocket expenses, the imposition of fines and the entry of a cease and desist order against MCI WorldCom.

Case No. U-13668
IDT America Corp.
(license)

On December 23, 2002 IDT America, Corp. (“IDT”) filed an application with the Michigan Public Service Commission for a license to provide basic local exchange service, on both a reseller and facilities-based basis in the areas in which Ameritech Michigan, Verizon North Incorporated and Verizon North Systems are the incumbent local exchange carriers. IDT states that it is a Michigan corporation located in Newark, New Jersey, and that it has been providing unregulated telecommunications services, such as Internet access, since 1996.

Case No. U-13669
PhoneCo LP
(license)

On December 23, 2002 PhoneCo, L.P. (“PhoneCo”) applied to the Michigan Public Service Commission for a license to provide basic local exchange service on a resold as well as on a facilities-based and UNE-P type-basis in the exchange areas of Ameritech Michigan and Verizon (formerly GTE). PhoneCo states that it is a privately-held Texas Limited Partnership headquartered in Dallas, Texas.

Case No. U-13672
Mabel Communications Inc
(license)

On December 30, 2002 Mabel Communications, Inc. (“Mabel”) applied to the Michigan Public Service Commission for a license to provide basic local exchange service, on both a reseller and facilities-based basis, in the zone and exchange areas in which Ameritech Michigan, Verizon North Incorporated and Verizon North Systems are the incumbent local exchange carriers. Mabel states that it is a Michigan corporation located in Stockbridge, Michigan, and that it has been providing unregulated telecommunications services, such as Internet access, since 1996.

Case No. U-13673
Internet 2000 v WorldCom
(consumer complaint: unauthorized toll charges)

On December 30, 2002 Internet 2000 (“Complainant”), of Wyoming, Michigan, filed a formal complaint with the Michigan Public Service Commission alleging that WorldCom has improperly assessed toll rates for certain telephone calls that should have been included in its basic local service. Complainant states that the overcharges amount to \$11,944.86 over and above what its authorized service would have charged. Complainant seeks reimbursement for out-of-pocket expenses, the imposition of fines and the entry of a cease and desist order against WorldCom.

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PSC NOTICES OF OPPORTUNITY FOR COMMENT

Case No. U-13640
Gryphon Place
(2-1-1 call center designation)

On November 22, 2002 Gryphon Place filed an application with the Michigan Public Service Commission (“Commission”) requesting assignment of the abbreviated telephone digits 2-1-1 and designation as the community resource information and referral answering point for any telephone exchange located, in whole or in part, within Kalamazoo County, Michigan. Gryphon Place also filed clarifying information, concerning its application with the Commission on December 12, 2002. The Commission directs Gryphon Place to issue a notice of opportunity

to comment by January 2, 2003, and to mail a copy of the published notice to all human services agencies and organizations within Kalamazoo County, to all local exchange carriers providing service in Kalamazoo County, and to the Michigan Attorney General, within two days of newspaper publication. Written and electronic comments may be filed with the Commission no later than 5:00 p.m. on January 17, 2003.

Case No. U-13643
Island Telephone Company
(local calling and rate adjustment)

On November 27, 2002 Island Telephone Company filed an application with the Michigan Public Service Commission ("Commission") for authority to: 1) offer expanded local calling from the Beaver Island exchange to the Charlevoix exchange, and the Bois Blanc exchange to the Cheboygan exchange, and 2) implement a revenue-neutral adjustment in its basic local exchange rates related to the provision of such expanded local calling. The Commission directs Island Telephone Company to issue a notice of opportunity to comment in accordance with the Michigan Telecommunications Act, 1991 PA 179. Written and electronic comments must be filed with the Commission no later than 5:00 p.m. on January 30, 2003.

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SCHEDULED MPSC MEETINGS

No schedule has been issued		
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