

# M ICHIGAN T ELECOMMUNICATIONS R EPORT™

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## FEATURES

### **SBC FILES APPLICATION TO BE ALLOWED TO ENTER LONG DISTANCE MARKET—WITH MPSC’S RECOMMENDATION**

Hoping that the third time is the charm, on January 16, 2003, SBC (formerly known as SBC Ameritech Michigan) filed an application with the Federal Communications Commission (“FCC”) for authorization under Section 271 of the Federal Telecommunications Act of 1996 (“FTA”) to provide in-region interLATA (“long distance”) services in the State of Michigan. SBC’s application was accompanied by the Michigan Public Service Commission’s (“Commission”) January 13, 2003, endorsement, in MPSC Case No. U-12320, concluding “that SBC has complied with Section 271(c) of the FTA and the rules and regulations promulgated by the FCC.”

Since the court ordered break-up of the AT&T telephone monopoly in 1983, Regional Bell Operating Companies (“RBOCs”) have been prohibited from offering long distance service in an individual state until it can prove that its network, in that state, is open to competition based on a 14 point checklist contained in Section 271 of the FTA. SBC (then known as Ameritech) first filed an application with the FCC to provide long distance services in Michigan in January 1997. Though that Application was also accompanied by a Commission endorsement, Ameritech had to withdraw the Application on February 11, 1997. On May 21, 1997, Ameritech filed a second Application with the FCC, this time with a qualified but short-circuited Commission endorsement. The FCC denied that Application on August 19, 1997.

SBC’s third attempt follows an extensive proceeding before the Commission. On February 9, 2000, after receiving notice from that it was preparing to file an Application with the FCC, the Commission commenced a proceeding, Case No. U-12320 to examine whether or not SBC was in compliance with the Section 271 checklist and to allow SBC “and other interested parties [to] file any documents that bear on [SBC’s] compliance or noncompliance with the Section 271 competitive checklist and on the status of competition in [SBC’s] Michigan’s service territory.” As part of that proceeding, the Commission engaged BearingPoint, Incorporated, f/k/a KPMG Consulting, (“BearingPoint”) to audit and test SBC’s Operation Support Systems (“OSS”), defined by the FCC as “the various systems, databases, and personnel used by incumbent LECs to provide service to their customers.” OSS Testing and the filing of comments have progressed over the past three years. During which time, the Commission has issued numerous orders in Case No. U-12320 requiring SBC to correct various competitive deficiencies. Noting various delays in the completion of the BearingPoint report, which “was, and remains, largely incomplete,” in September 2002, SBC filed its own report in support of the filed performance measure results, produced by SBC’s accountants, Ernst & Young, and asked the Commission to short-circuit the previously agreed upon testing program.

The Commission’s January 13, 2003, report, discusses comments filed and case proceedings held regarding each of the fourteen points on the checklist. The Commission concludes that SBC is in compliance with each of the items on the Section 271 checklist. In particular, the Commission noted that competitor’s “lines comprise 20% of SBC’s total wireline access lines in Michigan.” Commission Chairman Laura Chappelle noted that the “report represents a vital step in the development of a competitive telecommunications market in Michigan.”

The Commission's recommendation was, however, conditional. Wading into the ongoing debate in Washington regarding the future required availability of Unbundled Network Element Platform, the Commission noted "these conclusions, however, are based on our recognition of the fact that the Michigan competitive market is significantly dependent on the availability of the Unbundled Network Element Platform. Elimination or severe curtailment of UNE-P will, we believe, adversely impact our competitive market. Our recommendations assume the continuation of policies and rules that will allow competitors access to UNE-P for the foreseeable future and throughout an orderly transition to facilities-based competition." Commissioner Robert Nelson stated that this is part of the Commission's "commitment to continue to meet our responsibilities to promote and encourage competitive markets." Notwithstanding this "assumption" of continued availability of UNE-P, the Commission does not control what the FCC may do on this issue.

Though the report found SBC in compliance with the Section 271 Checklist, the Commission also found deficiencies in SBC's attempts to open its network to competition. Concurrently, with the report, the Commission issued an Order requiring SBC to file a compliance and improvement plan by February 13. "This plan must address issues that have been identified as needing further attention, as a result of the third-party testing. The order also convenes a collaborative session of interested parties to be held on March 4, 2003, to discuss these issues. SBC is required to file a modified compliance and improvement plan by March 13 to incorporate issues discussed in the collaborative." Commissioner David Svanda noted that "The Commission will remain vigilant in its oversight, however, to ensure that there will be no backsliding in the future." However, the Commission's authority to exercise this oversight is unclear at best, especially now that it has claimed SBC has met the 271 standards.

On January 16, 2002, the FCC's Wireline Competition Bureau issued an Initial Public Notice established the following calendar for comments and replies by interested third parties, the Commission and the United States Department of Justice on SBC's Application, WC Docket No. 03-16:

Ex Parte Meetings related to Comments:	February 4-5, 2003
Comments Due:	February 6, 2003
State Commission Comments Due:	February 6, 2003
U.S. Department of Justice Evaluation Due:	February 25, 2003
Ex Parte Meetings related to Reply Comments:	February 25-26, 2003
Reply Comments Due:	March 3, 2003

By statute, the FCC must issue its decision on whether or not to allow SBC to offer long distance service in Michigan within 90 days, or no later than Wednesday, April 16, 2003. SBC has indicated that, if the Application is granted, it may begin to offer interLATA long distance service as early as May.

\* \* \*

### **CRITICS CONTEND LOCAL EXCHANGE NOT TRULY OPEN**

The Michigan Public Service Commission's January 13, 2002, recommendation to the FCC, that SBC had met the requirements to offer long distance service in Michigan, was not met with universal praise. Michigan Competitive Local Exchange Carrier Association Board Chairman, Jerry Finefrock stated, "We are shocked and disappointed, that the Michigan Public

Service Commission had given its favorable recommendation to long distance authority for SBC Michigan, as SBC clearly has not passed the required tests to gain this approval.” “SBC has refused to invest in Michigan in the past, giving us poor repair times and making it difficult for customers to leave the SBC system for competitors,” said Greg Boyd, executive director of the Michigan Alliance for Competitive Telecommunications (MiACT). “By ignoring the proven failures of SBC’s existing systems and signing off on the company’s long distance request, the Michigan commission is giving up on getting Michigan’s telecommunications infrastructure up to the status of the rest of the nation.”

Commenting on the many remaining deficiencies remaining in SBC’s attempts at opening its network to competitors, Mr. Finefrock stated “At the most recent hearing on November 25, BearingPoint/KPMG, the official testing organization, testified that SBC had passed less than 61% of the required tests. This is a flunking score in anyone's book. In Virginia, the Bell company had to get a 99.4% score to get 271 approval, and in New Jersey, a 100% score. In both cases, the Bell company achieved the required level, and got 271 approval. SBC can do it too, if they want to make the effort to truly 'open' their OSS systems to competitors as Congress requires.” MiACT seconded Mr. Finefrock’s comments noting in its press release that “other state commissions have required their dominant phone company to meet at least 95 percent of tests showing its systems were open and customers could easily leave. The firm initially hired by SBC with approval of the Michigan commission and competitors found the company able to meet only 60 percent of those tests, showing substantial deficiencies in the SBC system.”

Mr. Finefrock also stated his fears for the future of telecommunications competition in Michigan, “After getting '271' approval in other states, SBC followed up by hiking local and long distance rates in Texas, Missouri, Oklahoma, and other states. With the additional market power from long distance, they felt no one could stand in their way of getting what they want.

Both CLECA and MiACT have called on Governor Jennifer Granholm and Michigan Attorney General Mike Cox to get involved in the process by filing comments with the FCC.

\* \* \*

**COURT OF APPEALS: MPSC CANNOT SANCTION PROVIDERS  
IN CREDIT REPORTING MATTERS OR REQUIRE  
PROCEDURES AGAINST IDENTITY THEFT**

On January 10, 2003, the Michigan Court of Appeals issued an opinion finding that the Michigan Public Service Commission (“Commission”) lacks the power to sanction telecommunications providers in credit reporting matters or to require providers to adopt procedures against identity theft and address complaints as to related credit reporting issues.

The case arose out of a complaint, Case No. U-12336, brought by Patricia Pelland against Ameritech Michigan alleging that Ameritech Michigan had opened an account without her authorization, presumably at the instigation of an acquaintance of her former husband. Ameritech Michigan had cancelled the account and never billed Ms. Pelland, but had apparently turned over the information of the unpaid account balance to a credit reporting service. When

Ms. Pelland complained, Ameritech Michigan indicated it would inform the credit reporting service, yet, several months later the information was still on her credit report. The Commission fined Ameritech Michigan and directed it to file for approval procedures to better protect its customers from identity theft and ensure the removal of negative credit information on credit reports. Ameritech filed such procedures, under protest, in Case No. U-12700, which were approved by the Commission.

The Court of Appeals reversed both rulings by the Commission. The Court reversed the findings of the complaint, finding that there was a lack of evidence that Ameritech Michigan had misrepresented its actions regarding the credit reports, and on an erroneous finding that Ms. Pelland's situation was covered under the Michigan Telecommunications Act since she was not a customer and not an end user. As to the order on procedures, the Court found that the Commission is barred by the Federal Fair Credit Reporting Act from dictating procedures regarding credit reports. The Court also found no independent authority under sections 202, 205, or 601 to require the credit reporting procedures. The Court found that verifying identity, referrals to collection agencies, record retention, credit reports, and response to complaints about fraud are not conditions affecting how telecommunications services are provided, and requiring such procedures to be in place is beyond the Commission's jurisdiction.

\* \* \*

### **LEGISLATIVE UPDATE: EUCL SB 1 Hearing**

On January 8, 2003 Senator Gerald Van Woerkom (R-Muskegon) and other GOP senators introduced Senate Bill 1 of 2003 which would make all end-user common line (EUCL) charges subject to Michigan Public Service Commission ("Commission") approval. Senate Majority Leader Ken Sikkema (R-Grandville) said he agrees that the MPSC has the expertise for reviewing the EUCL charge and should make such decisions. Senate Bill 1 was referred to the Senate Committee on Technology and Energy which is chaired by Senator Bruce Patterson. The Committee met on January 15, 2003, however no testimony was taken on the bill. Instead, the Committee members were briefed by Commissioners Chappelle and Nelson on the role and function of the Commission. A hearing on SB 1 is scheduled for January 22 at 3:00 p.m.

\* \* \*

### **PENDING LEGISLATION**

The following is a list of active telecommunications bills that have been introduced during the current legislative session. Copies of bills and public acts referred to in this column may be obtained by contacting your state senator or representative, on the Michigan Legislature Web site, <<http://www.michiganlegislature.org/>> or from the Legislative Service Bureau Document Room at (517) 373-0169.

Senate Bill # Senator	Date Introduced	Description	Status
SB 1 VanWoerkom R-91.	01/08/03	Communications; telecommunications; end-user line charge; clarify. Amends sec. 310 of 1991 PA 179 (MCL 484.2310).	To Senate Committee on Technology/Energy

## ORDERS

MPSC orders issued January 13, 2003.

**Case No. U-12320**  
**Commission's Own Motion**  
**(SBC, f/k/a Ameritech Michigan: Sec 271 checklist)**

By a minute action issued on January 13, 2003, the Michigan Public Service Commission ("Commission") approved its report on SBC's compliance with Section 271 of the federal Telecommunications Act of 1996 in anticipation of SBC's filing of an application with the Federal Communications Commission for authority to provide in-region interLATA service. However, in an order issued the same day, the Commission stated that "[n]otwithstanding that conclusion, there are aspects of SBC's current performance that could be improved." The Commission addressed those areas and directed SBC to file certain compliance and improvement plans by February 13, 2003. The Commission also scheduled a collaborative session for 9:00 a.m. on March 4, 2003 and ordered SBC to subsequently file, on March 13, 2003, the modified compliance and improvement plans that reflect the collaborative discussions. (See also **Features**, this issue, page 2).

**Case No. U-13441**  
**Telnet Worldwide Inc v Verizon North Inc and Contel of the South Inc, d/b/a**  
**Verizon North Systems**  
**(reciprocal compensation dispute)**

On January 13, 2003 the Michigan Public Service Commission issued an order dismissing with prejudice the complaint of Telnet Worldwide Inc against Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems regarding a dispute about payments for reciprocal compensation. On December 11, 2002 the complainant filed a request to withdraw the complaint.

**Case No. U-13583**  
**ICG Telecom Group Inc**  
**(amended license)**

On January 13, 2003 the Michigan Public Service Commission approved the request of ICG Telecom Group, Inc. to amend their license to provide basic local exchange service to include all of the exchanges served by incumbent local exchange carriers.

\* \* \*

## NOTICES OF HEARING

*No notices of hearing have been issued by the MPSC during the previous two-week period.*

\* \* \*

### 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 (January 6 – 10, 2003)**

January 9, 2003, 10:00 a.m.  
Case No. U-11756/motion hearing  
Michigan Pay Telephone Assn et al v Ameritech and Verizon  
North

#### **Hearings Scheduled for Last Week (January 13 - 17, 2003)**

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

January 14, 2003, 9:00 a.m.  
Case No. U-13641/prehearing  
Al Long Ford v Building Communications (quality of  
service)

January 15, 2003, 9:00a.m.  
Case No. U-13635/evidentiary hearing  
Lakeview Cleaning v Legent, d/b/a LD Services (slamming)

#### **Future Hearings Scheduled**

January 23, 2003, 9:00 a.m.  
Case No. U-13522/motion hearing  
Commission's Own Motion (Detroit Edison, Ameritech  
Michigan, Consumers Energy: pole attachments)

January 23, 2003, 9:00 a.m.  
Case No. U-13636/prehearing  
Sturt & Co v Small Business AM (slamming)

March 4, 2003, 9:00 a.m.  
Case No. U-12320/collaborative session of interested  
parties  
Commission's Own Motion (Ameritech: Sec. 271 checklist)

\* \* \*

### APPLICATIONS AND COMPLAINTS

#### **Case No. U-12535 American Fiber Network Inc and Ameritech Michigan (interconnection agreement)**

On January 6, 2003 American Fiber Network, Inc. ("American Fiber") and Ameritech Michigan jointly applied to the Michigan Public Service Commission ("Commission") for approval of the Fifth Amendment to their Interconnection Agreement approved by the

Commission on October 6, 2000 (“Agreement”). The Fifth Amendment executed as of December 20, 2002 extends the term of the Agreement for one year to May 16, 2004, amends Sections 1, 7, 8 and 9 regarding Mutual Compensation, Deposits, Billing and Payment, Nonpayment and Procedures for Disconnections, and replaces Section 20 Confidentiality and Section 21.1 Intervening Law of the General Terms and Conditions of the Agreement.

**Case No. U-13580**

**Sprint Communications Company LP and Ameritech Michigan  
(interconnection agreement)**

On January 6, 2003 Sprint Communications Company, L.P. 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 November 7, 2002 (“Agreement”). The Second Amendment fully executed as of December 17, 2002 corrects the typographical error in Section 14.4.1.2.3 of the UNE Appendix into the Agreement.

**Case No. U-13656**

**SBC Ameritech Michigan  
(notice of discontinuance : intrastate intraLATA toll service in Ace Telephone Co)**

On January 6, 2003 SBC Ameritech Michigan filed with the Michigan Public Service Commission (“Commission”) a notice of discontinuance of intrastate intraLATA toll service to the local exchanges of Ace Telephone Company of Michigan Inc. (“Ace”) SBC states that it will discontinue this service on March 1, 2003 to customers in the following Ace exchanges: Buckley, Copemish-Thompsonville, Hoxeyville, Mesick and South Boardman. Further, SBC states that pursuant to Section 313 of the Michigan Telecommunications Act, it can discontinue service if one or more alternative providers are providing intrastate intraLATA toll service in these exchanges, and that SBC currently provides intraLATA toll service to approximately 2,180 customers, while Ace serves a total of 6,101 access lines. SBC will publish on or about January 6, 2003 a notice of discontinuance in newspapers of general circulation in the affected Ace exchanges, and will send direct mail notification to the affected customers.

**Case No. U-13675**

**PageData and Ameritech Michigan  
(interconnection agreement)**

On January 6, 2003 PageData and Ameritech Michigan jointly applied to the Michigan Public Service Commission (“Commission”) for approval of their Wireless Interconnection Agreement (“Agreement”). The application states that PageData requested the sectional adoption of terms and conditions of the wireless interconnection agreement dated March 15, 2002 between Verizon Wireless and Ameritech Michigan that was approved by the Commission on April 16, 2002 in Case No. U-13227. The Agreement also includes voluntarily negotiated provisions including the addition of the Negotiated Appendix Reciprocal Compensation (after FCC Order No. 01-131) and the Attachment A Reciprocal Compensation Rates.

**Case No. U-13676**  
**WaveSent LLC and Ameritech Michigan**  
**(interconnection agreement)**

On January 9, 2003 WaveSent, LLC (“WaveSent”) and Ameritech Michigan jointly applied to the Michigan Public Service Commission (“Commission”) for approval of their Interconnection Agreement executed as of December 19, 2002 (“Agreement”). The application states that WaveSent requested the sectional adoption of terms and conditions of the Wireless Interconnection Agreement dated March 15, 2002 between Verizon Wireless and Ameritech Michigan that was by approved by the Commission on April 16, 2002 in Case No. U-13227. Certain voluntary provisions of the Agreement include, among other things, the addition of the Negotiated Appendix Reciprocal Compensation (after FCC Order No. 01-131) and the Attachment A Reciprocal Compensation rates into the Adopted Agreement.

**Case No. U-13677**  
**Line 1 Communications LLC, d/b/a Direct Line and Ameritech Michigan**  
**(interconnection agreement)**

On January 9, 2003 Line 1 Communications, LLC, d/b/a Direct Line, (“Direct Line”) and Ameritech Michigan jointly applied to the Michigan Public Service Commission (“Commission”) for approval of their Interconnection Agreement executed as of January 2, 2003 (“Agreement”). The application states that Direct Line requested the sectional adoption of terms and conditions of the Interconnection Agreement dated February 19, 2002 between AT&T Communications of Michigan, Inc. and Ameritech Michigan that was approved by the Commission on June 6, 2002 in Case No. U-13388.

**Case No. U-13678**  
**Teligent Services Inc and Ameritech Michigan**  
**(interconnection agreement)**

On January 9, 2003 Teligent Services, Inc. (“Teligent”) and Ameritech Michigan jointly applied to the Michigan Public Service Commission (“Commission”) for approval of their Interconnection Agreement executed as of January 2, 2003 (“Agreement”). The application states that Teligent requested the sectional adoption of terms and conditions of the Interconnection Agreement dated April 10, 2002 between WinStar Communications, LLC and Ameritech Michigan that was approved by the Commission on March 21, 2002 in Case No. U-12465. Certain voluntary provisions of the Agreement include, among other things, Reciprocal Compensation Appendix.”

**Case No. U-13680**  
**Verizon Wireless v SBC Ameritech Michigan**  
**(interconnection dispute)**

On January 15, 2003 Verizon Wireless filed a formal complaint and request for a declaratory judgment with the Michigan Public Service Commission (“Commission”) against SBC Ameritech Michigan for refusing to employ a bill and keep arrangement for the exchange of local ISUP SS7 Signaling Messages in breach of the terms and requirements of their Interconnection Agreement (“Agreement”). Verizon Wireless states that the Agreement provides for a bill and keep arrangement where the parties own substantially similar SS7

networks. Verizon Wireless claims, however, that since April 16, 2002, when the Agreement was approved, SBC has continued to invoice Verizon Wireless in conjunction with SBC's termination of local mobile-to-land telephone calls originating on Verizon Wireless's network, despite the fact that the parties' do own similar SS7 networks. Verizon Wireless seeks a Commission finding, among other things, that SBC has waived its ability to raise any new and novel interpretations of the language of the Agreement, the imposition of fines and the entry of a cease and desist order against SBC.

\* \* \*

**PSC NOTICES OF OPPORTUNITY FOR COMMENT**

**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.

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

On December 28, 2002 OneStar Long Distance, Inc. ("One Star") filed an application with the Michigan Public Service Commission ("Commission") to amend the geographic area of its existing license to provide basic local exchange service to include the zone and exchange areas of incumbent local exchange carrier Verizon North Incorporated. The Commission has directed OneStar to issue notice of its request by January 23, 2003. Written and electronic comments must be filed with the Commission no later than 5:00 p.m. on February 20, 2003.

**SCHEDULED MPSC MEETINGS**

<b>January 13, 2003</b>	<b>special meeting</b>	<b>4:00 pm</b>
<b>January 21, 2003</b>	<b>regular meeting</b>	<b>9:30 am</b>

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