

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
to consider revisions to the procedures designed)
to prohibit switching an end user of a telecommuni-)
cations provider to another provider without the)
authorization of the end user.)
_____)

Case No. U-11900

At the September 18, 2000 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

To better protect Michigan’s citizens from slamming,¹ the Legislature passed and the Governor signed into law Public Acts 259 and 260 of 1998 (Acts 259 and 260), which amended the Michigan Telecommunications Act, 1991 PA 179, as previously amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq. Those amendments expressly prohibited a telecommunications provider from switching a customer to another service provider without first verifying, through one or more approved methodologies, that the customer truly authorized the

¹“Slamming” refers to switching one or more of an end-use customer’s telecommunications services from one provider to another without that customer’s permission.

switch. In addition, the amendments granted the Commission broad authority to issue orders establishing and enforcing all procedures deemed necessary to eliminate slamming.

The Commission therefore issued an order on September 23, 1998 (in Case No. U-11757) in which it established the initial set of anti-slamming procedures to be followed by all service providers operating in Michigan. The adoption of those procedures was timed to correspond to the effective date of Public Acts 259 and 260. This occurred despite the recognition by all parties that the Federal Communications Commission (FCC) would shortly be revising its own anti-slamming procedures and that at least some of the changes eventually adopted by the FCC would have to be reflected in the Commission's procedures.

On December 17, 1998, the FCC issued an order in CC Docket No. 94-129 broadening the scope of its anti-slamming rules, imposing more stringent verification requirements regarding customers' requests to change service providers, and establishing penalty provisions designed to take the economic incentive out of slamming. In response to the FCC's order, the Commission initiated an investigation in the present case (Case No. U-11900) and invited interested parties to file proposals concerning, among other things, revisions to the Commission's initial anti-slamming procedures that they believed were necessitated by the FCC's new rules.

Following review of the parties' proposals and responses, the Commission issued an order on April 23, 1999 in Case No. U-11900 revising its anti-slamming procedures. Among other things, those revised procedures (1) tightened-up the verification requirements for customers' requests to change carriers, (2) imposed a registration requirement on all telecommunications service providers operating in Michigan, (3) required that customers be given explicit notice of any change in their service providers within 10 days after that change takes place, and (4) mandated that

carriers offer primary interexchange carrier (PIC) and local exchange carrier (LEC) protection programs to all customers.

In response to various requests for rehearing, reconsideration, and clarification, the Commission issued follow-up orders in this case on July 28 and September 28, 1999, as well as on January 10 and March 3, 2000. In the context of those follow-up orders, the Commission granted a request by Ameritech Michigan to delay the implementation of LEC protection programs. Specifically, the Commission gave incumbent LECs until the spring of 2000 to design and implement their respective systems for making LEC protection available to all customers that desire it. On May 1, 2000, Ameritech Michigan implemented its LEC protection program for customers located within the state of Michigan.²

On May 5, 2000, CoreComm Michigan, Inc., TOTALink of Michigan, L.L.C., MGC Communications, Inc., d/b/a Mpower Communications Corp., and Winstar Wireless, Inc., (collectively, CoreComm) filed a petition requesting that the Commission reopen the proceedings, receive additional evidence, and remove from its anti-slamming procedures all authorization to implement LEC protection programs. In the alternative, CoreComm asked that the Commission suspend implementation of Ameritech Michigan's LEC protection program in Michigan. Responses to CoreComm's petition were filed on May 26, 2000 by AT&T Communications of Michigan, Inc. (AT&T); MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., and MCImetro Access Transmission Services, Inc. (collectively, WorldCom); the Association of Communications Enterprises, f/k/a the Telecommunications Resellers Association (ASCENT);

²Although no filing was made with the Commission signaling the start of that program, information provided by the parties indicates that (1) Ameritech Michigan's parent company implemented LEC protection throughout its five-state region on May 1, 2000, and (2) the program was put on hold, effective May 2, 2000, in Illinois, Indiana, Ohio, and Wisconsin.

MediaOne Telecommunications of Michigan, Inc. (MediaOne); Sprint Communications Company, L.P. (Sprint); Long Distance of Michigan, Inc. (LDMI); BRE Communications, L.L.C., d/b/a McLeodUSA (McLeod); and Ameritech Michigan.³

II.

DISCUSSION

According to CoreComm, the relative lack of competition in the local access market makes LEC protection unnecessary and thus justifies removing from the Commission's anti-slamming procedures all language authorizing the implementation of LEC protection programs in Michigan. More importantly, CoreComm continues, the LEC protection program that Ameritech Michigan has recently initiated is severely flawed, excessively anti-competitive, and in direct conflict with several provisions set forth in the Commission's current anti-slamming procedures.

For example, CoreComm claims that Ameritech Michigan's program would make the suspension or termination of a customer's LEC protection more difficult and time-consuming than allowed by the Commission's procedures. Rather than merely requiring the submitting carrier to forward proof that the customer authorized the change in service providers, as envisioned by those procedures, Ameritech Michigan's program would require the carrier, its prospective customer, or both, to undertake several additional steps. Moreover, CoreComm continues, Ameritech Michigan has not specified a mechanism for removing LEC protection for competing carriers that intend to

³ Ameritech Michigan filed a reply to WorldCom's response on June 16, 2000 (in which it requested that the Commission reject several changes that WorldCom proposed to Ameritech Michigan's LEC protection program). On July 5, 2000, WorldCom filed an answer to that reply. The Commission's Rules of Practice and Procedure do not provide for a reply to a response to a petition for reopening, nor do they provide for answers to such a reply. Consequently, Ameritech Michigan's reply and WorldCom's answer to that reply will not be considered.

provide service through the use of unbundled network elements (UNEs) purchased from Ameritech Michigan. According to CoreComm, this conflicts with the Commission's requirement that LEC protection "shall be available under the same terms and conditions to all customers." CoreComm's petition for reopening, pp. 8-9 [citing Section 4(d) of the Commission's anti-slamming procedures]. Furthermore, it asserts that Ameritech Michigan's LEC protection program improperly allows the use of third party verification (TPV) to suspend that protection (despite the fact that both the FCC and the Commission prohibit the practice) and requires that Ameritech Michigan--rather than the submitting carrier--initiate any three-way calls designed to suspend customers' LEC protection (again, in conflict with the Commission's anti-slamming procedures). For these and other reasons, CoreComm claims that the Commission should either revise its anti-slamming procedures to outlaw LEC protection or, at a minimum, halt implementation of Ameritech Michigan's LEC protection program until it is "brought into compliance with this Commission's rules and the program is cleansed of any anti-competitive, or potentially anti-competitive, attributes." Id., p. 3.

AT&T, WorldCom, ASCENT, MediaOne, Sprint, LDMI, and McLeod all support CoreComm's petition. For example, AT&T and WorldCom assert that because little competition exists with regard to the provision of basic local exchange service, the Commission should grant the request to reopen the record and receive further information regarding whether all mention of LEC protection should be removed from the Commission's anti-slamming procedures. In the alternative, these two parties, along with ASCENT, MediaOne, Sprint, LDMI, and McLeod, agree that Ameritech Michigan should be ordered to suspend its current LEC protection program until a consensus can be reached regarding what constitutes reasonable terms for LEC protection. According to AT&T, attempting to reach a consensus on these issues would be better than

addressing each potential flaw in Ameritech Michigan's program on a complaint-by-complaint basis.

In contrast, Ameritech Michigan asserts that the Commission should reject all requests for relief set forth in CoreComm's May 5, 2000 petition. In support of that assertion, Ameritech Michigan notes that the Commission has consistently rejected those parties' claims that LEC protection is unnecessary and patently anti-competitive. Thus, it argues that for the reasons expressed in the Commission's prior orders, CoreComm's proposal to reconsider this issue and bar implementation of all LEC protection programs must be denied.

Turning to the parties' complaints regarding the structure of its recently-implemented LEC protection program, Ameritech Michigan contends that its program is wholly consistent with the Commission's orders and anti-slamming procedures. For example, Ameritech Michigan asserts that its use of written letters of agency (LOAs), three-way calls, and an electronic form of TPV--referred to as "Voice Log"--is specifically authorized in Section 4 of those procedures. Finally, Ameritech Michigan disputes arguments to the effect that its program must be rejected because it lacks a mechanism for handling LEC protection for customers taking UNE-based service. According to Ameritech Michigan, it is working toward a solution and will have UNE-specific LEC protection processes in place by October 2000. See, Exhibit 2 attached to Ameritech Michigan's response. In the meantime, Ameritech Michigan continues, the lack of those processes will result in little harm because few, if any, end users located in Michigan currently take basic local exchange service through the use of UNEs. For these and other reasons, Ameritech Michigan argues that no valid reason exists for suspending operation of its current LEC protection program.

The Commission agrees with Ameritech Michigan's first assertion and finds that it should reject CoreComm's request to remove from its anti-slamming procedures all language authorizing

LEC protection. In several of its previous orders in this case, the Commission specifically considered and denied parties' proposals to ban LEC protection in Michigan. For example, the Commission's July 28, 1999 order stated that:

Notwithstanding those parties' assertions to the contrary, the Commission finds that requiring all LEC's to make PIC and LEC protection available to their customers is both necessary and proper. Although it agrees with Ameritech Michigan that the procedures adopted in the April 23 order should make slamming a much less attractive endeavor, the Commission is not so naive as to believe that those procedures will immediately and completely end this unscrupulous practice. Moreover, simply because a customer lives in an area where competition for his or her various telecommunications services may be less intense than in a neighboring territory does not reduce the level of harm or frustration that would arise from being slammed.

July 28, 1999 order in Case No. U-11900, p. 14. Similarly, the Commission's September 28, 1999 order stated that:

[T]he Commission rejects MCI WorldCom's recommendation to abolish the LEC protection requirement in its entirety. Although it is true that incumbent LECs like Ameritech Michigan and GTE continue to control an exceedingly large segment of the market for basic local exchange service, areas exist in which one or more competitors are actively providing this service. Moreover, a large number of companies have recently obtained licenses to compete with the incumbent carriers in other locations. The Commission therefore remains convinced that access to LEC protection programs is essential to protect end-use customers from slamming.

September 28, 1999 order in Case No. U-11900, p. 20. For those same reasons, the Commission concludes that CoreComm's initial request for relief must be denied.

Nevertheless, the Commission agrees with the assertions by CoreComm and several other parties to the effect that Ameritech Michigan's current LEC protection program is flawed and should be suspended. For example, Ameritech Michigan's program would require taking steps beyond those envisioned by the Commission to suspend or revoke a customer's LEC protection. Specifically, Section 4(b) of the Commission's anti-slamming procedures provides, in pertinent part, that:

Adequate proof of a customer's authorization to change the customer's PIC or LEC despite the customer's enrollment in a PIC or LEC protection program shall be defined as receipt by the executing LEC [namely, Ameritech Michigan in this case] of proof of verification of the change order by way of either an LOA or a three-way call initiated by the customer's prospective service provider . . . , including an acknowledgment that the customer is waiving his or her PIC or LEC protection, if it is in effect.

This provision would allow a customer to suspend its LEC protection and authorize a change in service providers through a single contact with the submitting carrier. In contrast, Ameritech Michigan indicates that its LEC protection program would require the customer to first participate in a "pre-order process" (to suspend or revoke its LEC protection) before initiating and participating in "the order process" (through which its request to switch carriers would actually be submitted). Ameritech Michigan's response, p. 15. This requirement may inhibit the customer's ability to freely choose its LEC.

Moreover, a great deal of uncertainty exists among the parties regarding various aspects of Ameritech Michigan's program. Specifically, the parties express confusion regarding such issues as (1) whether the submitting carriers, as opposed to Ameritech Michigan, would be responsible for selecting TPV agents, (2) whether Ameritech Michigan could validly place a limit on how long a customer's LEC protection could remain suspended without being automatically reinstated, and (3) whether, and in what form, submitting carriers will obtain confirmation that a particular end-user's LEC protection had been lifted. This confusion appears to have arisen, in great part, from the fact that Ameritech Michigan has provided neither the Commission nor the parties to this case with a comprehensive, written description of its LEC protection program.

For these reasons, the Commission finds that Ameritech Michigan's current LEC protection program should be suspended. Moreover, it concludes that a process should be established for

resolving the parties' differences and implementing a program that better corresponds with both the letter and intent of the Commission's anti-slamming procedures.

As a first step in this process, Ameritech Michigan should prepare and file, by October 30, 2000, a detailed description of a proposed LEC protection program. That description shall address, among other things, the problems identified in this order concerning Ameritech Michigan's initial program. Following receipt and review of that filing, Ameritech Michigan, the Commission Staff (Staff), and all other interested parties should enter into discussions designed to resolve any problems they perceive with regard to the implementation of that LEC protection program. The Staff will serve as the facilitator for those discussions, beginning with its provision of notice to all interested parties and its determination of the dates and locations for those meetings.⁴ Upon the conclusion of those discussions, Ameritech Michigan should file (either individually or jointly with one or more interested parties) an updated version of a LEC protection program incorporating all agreed-upon changes arising from those discussions. The parties should then file comments and reply comments (in accordance with a schedule agreed to by the parties) expressing support for or opposition to that version of Ameritech Michigan's proposed LEC protection program. The Commission could then issue an order resolving any remaining disputes among the parties with regard to the adoption and operation of that program.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.;

MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101)

⁴Due to the likely number of disputed issues, the Commission recommends a minimum of two meetings.

et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. CoreComm's May 5, 2000 petition to reopen should be granted in part and denied in part.

c. Ameritech Michigan's current LEC protection program should be suspended pending further action by the Commission.

d. Ameritech Michigan should prepare and file, by October 30, 2000, a detailed description of a proposed LEC protection program that addresses all problems identified in this order.

e. The Staff should initiate and facilitate informal discussions among the interested parties designed to resolve any problems that they perceive with regard to that program.

f. Upon the conclusion of those discussions, Ameritech Michigan should file an updated version of a proposed LEC protection program incorporating all agreed-upon language arising from those discussions.

g. Interested parties should file with the Commission, in accordance with a schedule agreed to by the parties, comments and reply comments expressing support for or opposition to the updated version of Ameritech Michigan's LEC protection program.

THEREFORE, IT IS ORDERED that:

A. The petition to reopen filed on May 5, 2000 by CoreComm Michigan, Inc., TOTALink of Michigan, L.L.C., MGC Communications, Inc., d/b/a Mpower Communications Corp., and Winstar Wireless, Inc., is granted in part and denied in part.

B. Ameritech Michigan's current local exchange carrier protection program is suspended pending further action by the Commission.

C. Ameritech Michigan shall prepare and file, by October 30, 2000, a detailed description of a proposed local exchange carrier protection program that addresses all problems identified in this order.

D. The Commission Staff shall initiate and facilitate informal discussions among the interested parties designed to resolve any problems that they perceive with regard to that program.

E. Upon the conclusion of those discussions, Ameritech Michigan shall file an updated version of a proposed local exchange carrier protection program incorporating all agreed-upon language arising from those discussions.

F. Interested parties shall file with the Commission, in accordance with a schedule agreed to by the parties, comments and reply comments expressing support for or opposition to the updated version of Ameritech Michigan's local exchange carrier protection program.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ John G. Strand
Chairman

By its action of September 18, 2000.

/s/ David A. Svanda
Commissioner

/s/ Dorothy Wideman
Its Executive Secretary

/s/ Robert B. Nelson
Commissioner

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Case No. U-11900

Suggested Minute:

“Adopt and issue order dated September 18, 2000 granting in part and denying in part the motion to reopen filed by CoreComm Michigan, Inc., et al., and establishing a schedule for further proceedings, as set forth in the order.”