

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application and complaint of)
MCI TELECOMMUNICATIONS CORPORATION)
against MICHIGAN BELL TELEPHONE COMPANY,))
d/b/a AMERITECH MICHIGAN, seeking (i) a 55%)
discount on intrastate switched access service where)
intraLATA dialing parity is not provided and (ii) an)
order requiring implementation of intraLATA dialing)
parity on an expedited basis now that July 1, 1997)
has passed.)
_____)

Case No. U-11743

At the January 19, 1999 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

OPINION AND ORDER

History of Proceedings

On July 23, 1998, MCI Telecommunications Corporation (MCI) filed an application and complaint, pursuant to provisions of the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq.; MSA 22.1469(101) et seq., requesting, among other things, that the Commission order Ameritech Michigan to implement intraLATA dialing parity on an expedited basis in all remaining exchanges and to provide a 55% discount on intrastate switched access service in those exchanges where Ameritech Michigan does not provide intraLATA dialing parity.

On August 11, 1998, Ameritech Michigan filed a motion to dismiss. On August 14, 1998, it filed an answer to the application and complaint.

On August 18, 1998, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) presided over a prehearing conference, and granted the petitions for leave to intervene filed by AT&T Communications of Michigan, Inc. (AT&T), Sprint Communications Company, L.P. (Sprint), LCI International Telecom Corporation (LCI), and the Attorney General. The Commission Staff (Staff) and Ameritech Michigan also participated in the case.

On August 28, 1998, MCI, AT&T, Sprint, the Attorney General, and the Staff filed responses to Ameritech Michigan's motion to dismiss. On September 3, 1998, the ALJ heard oral argument and denied the motion. On September 10, 1998, Ameritech Michigan filed an application for leave to appeal that ruling. On September 17, 1998, MCI, AT&T, LCI, the Attorney General, and the Staff filed responses to the appeal.

On September 10, 1998, Ameritech Michigan filed a motion to compel discovery. On September 15, 1998, AT&T filed a response. On September 16, 1998, the ALJ heard oral argument and denied the motion. On September 21, 1998, Ameritech Michigan filed an application for leave to appeal that ruling. On September 28, 1998, MCI, AT&T, LCI, and the Staff filed responses.

On October 16, 1998, Ameritech Michigan filed with the Michigan Court of Appeals a complaint for superintending control based on a claim that the Commission lacked authority to proceed in this case. On October 23, 1998, the Court of Appeals dismissed Ameritech Michigan's complaint. On November 13, 1998, Ameritech Michigan filed with the Michigan Supreme Court an application for leave to appeal that dismissal.

On October 27, 1998, the parties stipulated to brief the case on the basis of the testimony and exhibits that had been submitted. The parties withdrew their motions to strike and waived cross-examination. The testimony was bound into the record the following day. The record consists of 464 pages of transcript and 52 exhibits.

On November 10, 1998, MCI, Ameritech Michigan, the Staff, the Attorney General, AT&T, Sprint, and LCI filed briefs. On November 18, 1998, MCI, Ameritech Michigan, the Attorney General, and AT&T filed reply briefs. On December 2, 1998, Ameritech Michigan filed a motion to strike portions of MCI's reply brief. On December 10, 1998, MCI filed a reply.

The ALJ issued a Proposal for Decision (PFD) on December 11, 1998. On December 17, 1998, Ameritech Michigan, MCI, and AT&T filed exceptions. On December 23, 1998, Ameritech Michigan, the Staff, MCI, AT&T, the Attorney General, and LCI filed replies to exceptions. On that same date, Ameritech Michigan also filed a motion for stay. On January 4, 1999, MCI and AT&T filed a response to the motion.

Background

With dialing parity, Ameritech Michigan's basic local exchange customers can use the interexchange carrier (IXC) of their choice for intraLATA calls by dialing a single digit (1+ dialing) rather than by dialing the IXC's access code (dial around access) or having in place other arrangements to route the calls to the carrier of their choice. In the absence of dialing parity, Ameritech Michigan handles intraLATA calls initiated by dialing 1+. Ameritech Michigan provides intraLATA dialing parity in many, but not all, of its exchanges. Its position is that it need not offer intraLATA dialing parity in the remaining exchanges (approximately 30% of its access lines) until it obtains the right to provide interLATA service under the provisions of the Communications Act of

1934, as amended by the Telecommunications Act of 1996 (FTA), 47 USC 151 et seq., (interLATA relief).

Ameritech Michigan's affiliates in Illinois and Wisconsin have already implemented dialing parity. Its affiliate in Indiana will do so on February 8, 1999, and its affiliate in Ohio on February 9, 1999.

The Commission has issued numerous orders on intraLATA dialing parity: February 23, 1993, May 21, 1993, February 24, 1994, July 19, 1994, March 10, 1995, June 5, 1995, December 20, 1995, June 26, 1996, and October 7, 1996 orders in Case No. U-10138. Those orders have been the subject of various appeals.

In the February 24, 1994 order, the Commission concluded that intraLATA dialing parity is necessary for effective competition and is in the public interest. It therefore ordered Ameritech Michigan and GTE North Incorporated to implement dialing parity in all exchanges no later than January 1, 1996.¹ Upon review, the Court of Appeals upheld the Commission's authority to order dialing parity under Section 205(2) of the MTA, MCL 484.2205(2); MSA 22.1469(205)(2). GTE North Inc v Michigan Public Service Comm, 215 Mich App 137, 154-155; 544 NW2d 678 (1996).

In the March 10, 1995 order, the Commission concluded that a 55% discount on access charges was appropriate in exchanges where Ameritech Michigan did not meet the schedule for implementing dialing parity. The Commission stated that the discount reflected "different levels of service that warrant different pricing." March 10, 1995 order, p. 21. Upon review, the Court of Appeals upheld the Commission's authority to impose the 55% discount. Ameritech Michigan v

¹One commissioner dissented from the January 1, 1996 date. He would have tied the implementation of dialing parity to interLATA relief.

Michigan Public Service Comm, unpublished opinion per curiam of the Court of Appeals, decided February 7, 1997 (Docket Nos. 184718 and 186602), pp. 6-7.

The Legislature amended the MTA, effective November 30, 1995, by adding, among other provisions, Sections 312a and 312b, MCL 484.2312a and 312b; MSA 22.1469(312a) and (312b), which address dialing parity. The Legislature also provided that Section 312b would be repealed as of July 1, 1997. MCL 484.2604(2); MSA 22.1469(604)(2). In the June 26, 1996 order in Case No. U-10138, the Commission concluded that it was consistent with the provisions of Section 312b to require Ameritech Michigan to offer dialing parity in all exchanges according to the previously ordered schedule and that a 55% discount should be provided in exchanges where dialing parity was not implemented as scheduled. Ameritech Michigan filed a tariff to implement the 55% discount in July 1996. Upon review, the Court of Appeals, in a May 19, 1998 decision, reversed the Commission's order. In re MCI Telecommunications Complaint, 229 Mich App 664; 583 NW2d 458, *lv gtd* 459 Mich 878 (1998).

Jurisdiction

Section 205(2) authorizes the Commission to require changes in how telecommunication services are provided: "If the commission finds, after notice and hearing, that the quality, general availability, or conditions for the regulated service . . . is [sic] adverse to the public interest, the commission may require changes in how the telecommunication services are provided."

MCL 484.2205(2); MSA 22.1469(205)(2). Section 310 authorizes the Commission to set access rates in limited circumstances:

- (1) Except as provided by this act, the commission shall not review or set the rates for toll access services.

(2) A provider of toll access services shall set the rates for toll access services. Access service rates and charges set by a provider that exceed the rates allowed for the same interstate services by the federal government are not just and reasonable. Providers may agree to a rate that is less than the rate allowed by the federal government. If the providers cannot agree on a rate, a provider may apply to the commission under section 204.

MCL 484.2310(1) and (2); MSA 22.1469(310)(1) and (2). “If 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication issue between the parties, . . . then either telecommunication provider may file with the commission an application for resolution of the matter.” MCL 484.2204; MSA 22.1469(204).

The Commission has previously exercised its authority with respect to dialing parity. The Court of Appeals has upheld the Commission’s authority to order dialing parity under Section 205(2). GTE North Inc v Michigan Public Service Comm. The Court has also upheld the Commission’s authority to require a discount under Section 310 and the amount of the discount. Ameritech Michigan v Michigan Public Service Comm. The question is whether the MTA as it exists today (with Section 312a in effect and Section 312b repealed) has changed the Commission’s authority to order dialing parity and to require a discount where dialing parity is not offered.

Ameritech Michigan argues that the May 19, 1998 decision of the Court of Appeals holds that the Commission lacks authority under Section 312a (and Section 205) to require it to offer dialing parity or a discount until it obtains interLATA relief. It also asserts that Section 310 does not authorize the Commission to require a discount in access rates where dialing parity is not offered.

a. May 19, 1998 Decision

Citing the Michigan Court Rules, Ameritech Michigan argues that MCI's complaint must be dismissed because the May 19, 1998 published decision of the Court of Appeals resolved the issues and is binding precedent:

A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. The filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.

MCR 7.215(C)(2). Ameritech Michigan asserts that the May 19, 1998 decision of the Court of Appeals “expressly and unequivocally” determined that the Commission cannot require Ameritech Michigan to offer intraLATA dialing parity until it is permitted to offer interLATA service and that the Commission cannot require Ameritech Michigan to provide a discount where it does not offer dialing parity. Ameritech Michigan’s brief, p. 5.

In addition to relying on the doctrine of stare decisis, Ameritech Michigan also argues that because the same issues are before the Michigan Supreme Court in the appeal of the May 19, 1998 decision, the Commission is barred from acting by res judicata, collateral estoppel, and other preclusion doctrines.

MCI argues that the issues in this case, while similar to those before the Court of Appeals and now before the Michigan Supreme Court, are not identical, and thus there is no preclusion. MCI concedes that the May 19, 1998 decision of the Court of Appeals upheld Ameritech Michigan's position that the MTA created a linkage between intraLATA dialing parity and interLATA relief. However, MCI argues that the opinion of the Court of Appeals did not address the authority of the Commission to order dialing parity after the repeal of Section 312b on July 1, 1997. MCI argues that after that date the linkage between intraLATA dialing parity and interLATA relief was severed.

The ALJ concluded that the May 19, 1998 decision of the Court of Appeals did not hold that the Commission lacks authority to require dialing parity or to order a discount where dialing parity is not offered. He noted that the Commission’s orders that were on review had not addressed the

effect of Section 312a, but only Section 312b, and Section 312b has been repealed. He rejected the argument that the Court of Appeals reached its conclusions based on Section 312a alone.

Ameritech Michigan excepts and argues that because the factual and legal issues in this case are identical to those before the Court of Appeals, its finding of a linkage between dialing parity and interLATA relief is binding and controlling until and unless the Michigan Supreme Court alters it. In particular, it asserts that the Court of Appeals relied on Section 312a as a separate and distinct legal basis for its conclusion that requiring dialing parity or a 55% discount would be unlawful or unreasonable. It notes that the Court of Appeals rendered its decision after the repeal of Section 312b, and therefore argues that it necessarily considered the effect of Section 312a. It says that the Court examined extensively the language and legislative history of Section 312a and found a legislative policy decision linking intraLATA dialing parity for 90% of Ameritech Michigan's customers to interLATA relief. It says that if the Court had concluded that the prohibition on the Commission's authority to require dialing parity and to impose a discount expired on July 1, 1997 with the repeal of Section 312b, the Court would have said so. Instead, Ameritech Michigan says, the Court flatly reversed the Commission's 1996 implementation orders, even though those orders would have had effect after the repeal of Section 312b. It says that the Court did so because those orders continued to conflict with the legislative policy in Section 312a.

The Commission concludes that it has authority to act on MCI's application and complaint. The published decision of the Court of Appeals reversed the Commission's interpretation of Section 312b, which has now been repealed, and is binding precedent under the doctrine of stare decisis. But the Commission does not agree with Ameritech Michigan that the decision precludes the Commission from acting. The Court was not required to decide the general question of the Commission's authority to order dialing parity or to require a discount because those were not at

issue in the Commission's June 26, 1996 order. The Court was also not required to decide the effect of Section 312a, which has not been repealed, because it was not at issue in the Commission's order. See, June 26, 1996 order, Case No. U-10138, pp. 7, 14. While it is true, as Ameritech Michigan argues, that the Court discussed the effect of Section 312a and concluded that it establishes a legislative policy to link dialing parity and interLATA relief, the Court's discussion of that issue was not necessary to its decision on the Commission's interpretation of Section 312b.

Furthermore, Ameritech Michigan has read the Court's decision too broadly. A fair reading of the decision does not support a conclusion that the Court relied at any point on Section 312a alone. In fact, at one point, the Court said that the language of Section 312b(2) was "dispositive." 229 Mich App 687. In addition, the Court did not reverse all aspects of the Commission's prior orders on dialing parity. It found the 1996 orders to be unlawful or unreasonable, but declared the 1994 and March 1995 orders to be void only to the extent the implementation schedule in those orders conflicted with Sections 312a and 312b. 229 Mich App 701. The Court's action is consistent with the language and policy of Section 312b, which the Court was interpreting: "Except as otherwise provided by this section, this section does not alter or void any orders of the commission regarding 1+ intra-LATA toll dialing parity issued on or before June 1, 1995." MCL 484.2312b(4); MSA 22.1469(312b)(4) (repealed July 1, 1997).

Similarly, while it is true that the Court ruled that the 55% discount was unlawful or unreasonable, it did so in the context of voiding the Commission's implementation schedule. The Court concluded that the Commission could not require Ameritech Michigan to discount its access rates for failure to comply with the implementation schedule that the Court declared to be void. 229 Mich App 701-702. The Court was not required to address the general question of the Commission's authority to set access rates under Section 310.

For these reasons, Ameritech Michigan's argument that the Commission lacks jurisdiction to order dialing parity and a discount is based on dicta, which is not binding under the doctrine of stare decisis. Breckon v Franklin Fuel Co, 383 Mich 251, 266-270; 174 NW2d 836 (1970), overruled on another point by Smith v Detroit, 388 Mich 637, 651; 202 NW2d 300 (1972). See also, In re People v Jory, 443 Mich 403; 505 NW2d 228 (1993). Likewise, the Commission concludes that res judicata, collateral estoppel, and the various preclusion doctrines that Ameritech Michigan raises do not prevent the Commission from addressing issues that were not before the Court of Appeals, i.e., whether the MTA permits the Commission to order dialing parity after July 1, 1997 and whether the MTA permits the Commission to require a discount in access rates.

b. Section 312a

Although the Court of Appeals has not held that Section 312a alone creates an absolute link between dialing parity and interLATA relief, the Commission must consider the effect of Section 312a.

The Commission does not agree with Ameritech Michigan that the MTA reflects a policy of complete linkage between full dialing parity and interLATA relief. Section 312b did not reflect that policy because it provided a schedule for the partial phase-in of dialing parity. Ameritech Michigan reads Section 312a to bar any implementation of dialing parity in the absence of interLATA relief, but its reading of the section is too broad and conflicts with Section 312b, which provided for some dialing parity. The two sections can be read so as not to conflict, but that reading does not support Ameritech Michigan's argument for linkage. In the context of the legislative history, discussed by the Court of Appeals in the May 19, 1998 decision, Section 312a was likely to have been intended to apply only to situations in which Ameritech Michigan received a partial waiver of the federal restriction on its provision of interLATA service. Furthermore, Section 312a is more reasonably

read as directed at Ameritech Michigan and setting a date by which it must offer dialing parity, not as setting a date before which the Commission cannot act.

In any event, the Commission must implement the language of the statute. Section 312b, which the Court of Appeals has interpreted to prohibit any further action before Ameritech Michigan obtains interLATA relief, has been repealed. It does not follow that Section 312a must serve the same function of prohibiting Commission action. Certainly, the Legislature has been on notice that the Commission believes dialing parity should be implemented sooner rather than later.² With that knowledge, the Legislature enacted Section 312b, and provided for its repeal, and enacted Section 312a, which requires action by Ameritech Michigan but does not bar action by the Commission.

c. Section 310

Ameritech Michigan also excepts to the ALJ's conclusion that the Commission has jurisdiction to order a discount in access rates under Section 310. Ameritech Michigan asserts that Section 310(2) serves only to confer standing on a provider to bring a dispute to the Commission, but that jurisdiction to resolve the dispute must be found elsewhere in the MTA.

The Commission finds that Ameritech Michigan's argument renders meaningless the phrase that begins Section 310(1): "Except as provided by this act, the commission shall not review or set the rates for toll access services." Clearly the Legislature envisioned that there were situations in which the Commission could set toll access rates, such as under Section 310(2) when the providers are unable to agree on an access rate lower than that prescribed by the Federal Communications Commission (FCC). As the Commission concluded in the October 26, 1998 order in Case No.

²Twenty-four states have implemented dialing parity. Another eleven have ordered it to occur in February 1999.

U-11660 at pages 21-22, in such cases the Commission is empowered to set a just and reasonable rate, the standard under Section 310(2).

d. Conclusion

The Commission therefore concludes that it has jurisdiction to order dialing parity and a discount, as the Court of Appeals has previously held, and that those conclusions are not contrary to the MTA or the May 19, 1998 decision of the Court of Appeals. Furthermore, the Commission notes that its authority to set access rates under Section 310 and its authority to order dialing parity under Section 205 are independent of each other. Therefore, the Commission may exercise its authority to do one without doing the other.

Evidence

Scott C. Goering testified for Ameritech Michigan: "In serving IXCs and their customers, Ameritech Michigan uses the same switching facilities to complete its routing of the call regardless of whether the call placed by an IXC customer is intraLATA, interLATA, interstate, or international." 7 Tr. 383. He also testified that "other than dialing different digits (i.e., dialing 1+ or dialing an IXC's access code), end users do not notice any difference in the connection or routing of their calls because they are performed by the same exchange access facilities Thus, the quality of the two calls is the same." 7 Tr. 384. He testified that the need to dial extra digits does not result in a slower connection and that the IXCs are not billed for the time it takes to dial the additional digits. 7 Tr. 385. He also noted that customers can avoid the need to dial extra digits by using automatic dialing devices, WATS-type lines, and dedicated connections. 7 Tr. 386.

Urvi Shah testified for Ameritech Michigan that a competitive market already exists where dialing parity is not available:

IXC toll providers, including MCI, have been offering Michigan customers intraLATA toll service alternatives in *all* of Ameritech Michigan's territories since even before the introduction of 1+ dialing parity. This has been accomplished via dedicated facilities or by dialing access codes (also known as "dial around").

Dial around (10XXX, 10-1X-XXX, "alternative dialing arrangements" and "casual calling"), [sic] allows users to retain their PIC (primary interexchange carrier) for intraLATA and interLATA toll calling while using dial around to access other carriers. The IXCs, including MCI, have been using dial around throughout Michigan, and have achieved significant market penetration in the intraLATA toll market. . . . At least one independent expert report, published in April 1998 by Salomon Smith Barney, reveals that one third of MCI's \$5.7 billion residential revenues are derived from dial around revenue (e.g., 10-10-321 and 1-800-COLLECT). The report further states that it is "impossible for a Bell (e.g., Ameritech Michigan) to steal these revenues since they are generated on a call by call basis."

7 Tr. 399-400 (emphasis in original). She testified that the IXCs' marketing "materials recognize that dial around not only provides the same service quality as dial 1+, but also that dial around access is 'easy', 'simple' and actually saves time" and that the IXCs recognize dial around access as more convenient than changing carriers on a presubscribed basis. 7 Tr. 400-401. She testified that dial around usage has grown steadily both where dialing parity is and is not offered. 7 Tr. 401.

She also testified that offering dialing parity in the remaining exchanges would not create a more competitive market and, if permitted before Ameritech Michigan obtains interLATA relief, would create an anticompetitive market. 7 Tr. 402-403. She said that Ameritech Michigan would face "competitive disadvantages, not due to lower prices or better service, but simply because of a lack of competitive symmetry caused by the interLATA regulatory constraints placed on it.

Michigan consumers also will suffer from the fallout of such an anticompetitive marketplace."

7 Tr. 403.

She testified that the IXCs would be in a position to offer "one-stop shopping" for all services. 7 Tr. 403. Ms. Shah testified that more than 80% of MCI's long distance business revenues come

from customers requiring, if not demanding, one-stop shopping. 7 Tr. 404. She testified that Ameritech Michigan conducted a survey that showed many of its customers prefer to buy all of their services from one provider, but because it cannot provide interLATA service, those customers would be more likely to choose a toll provider other than it. 7 Tr. 404. She testified that the IXC's ability to provide one-stop shopping would also enable them to give larger volume discounts on all toll calls than it could offer on only intraLATA toll calls. 7 Tr. 405. She also testified that if dialing parity is extended to the remaining exchanges, those customers "will be subject to a flurry of marketing activities from other toll providers that can cause harm to some customers." 7 Tr. 406. Further, she testified that Ameritech Michigan "would be left to serve the highest cost, lowest revenue customers. This would require Ameritech Michigan to pursue other revenues from other services in order to remain whole, causing additional impact on Michigan customers." 7 Tr. 407. She predicted that if the Commission orders dialing parity in the remaining exchanges, where the most profitable customers are located, the IXCs will likely target that area and pull out of the less lucrative areas where dialing parity is already offered, potentially creating higher prices for them. 7 Tr. 414.

Finally, she testified that the company has lost significant market share where dialing parity is offered and that the loss in toll revenues will not be offset by increased access revenues. 7 Tr. 408-409. She calculated that Ameritech Michigan has 50% of the intraLATA toll market, not the 70% the Staff calculated. 7 Tr. 452. She also said that because the IXCs are not drastically undercutting Ameritech Michigan's rates, the lack of dialing parity does not have a detrimental effect on customers. 7 Tr. 412. She concluded that "there is no indication that customers want or need more choices than they currently have." 7 Tr. 416.

Dennis L. Ricca testified for MCI that a 55% discount was and is appropriate. 7 Tr. 232. In light of Ameritech Michigan's position that the discount can be terminated pursuant to the May 19, 1998 Court of Appeals decision, the companies tried to negotiate the issue and reached an impasse. 7 Tr. 232.

Mr. Ricca also testified that intraLATA switched access service without dialing parity is inferior and merits a lesser charge. 7 Tr. 232. He offered an Ameritech Michigan news release and letter stating its view that the need to dial extra digits is an "unnecessary burden," a "service deterioration," and will "significantly impact customers' perception of service." Exhibits C-14 and C-15. He also quoted an Ameritech Illinois billing insert promoting the advantages of simple dialing without the "need to memorize complicated access codes." 7 Tr. 246. He concluded that dialing access codes is not easier or simpler than having dialing parity. 7 Tr. 253-254.

He also testified that dialing parity is necessary for effective competition. 7 Tr. 235. He testified that even if the same facilities are used, dial around access is not as reliable as 1+ dialing parity from the perspective of the IXCs because customers tend not to use dial around to the same extent they use 1+ dialing. 7 Tr. 244-245. In fact, he testified that Ameritech Michigan's own data indicate that customers are more likely to use dial around access where dialing parity is available and that significantly more customers say they want to use an intraLATA carrier other than Ameritech Michigan than know how to implement that preference where there is no dialing parity. 7 Tr. 277-278.

Finally, Mr. Ricca testified that Ameritech Michigan's intraLATA toll rates have increased, while Ameritech Illinois' rates have decreased with the implementation of dialing parity. 7 Tr. 234. He testified that the needlessly higher rates in Michigan depress opportunities for economic development. 7 Tr. 234. He also pointed out that Ameritech's Chairman has estimated that it

would take at least \$200 million and more than a year to do what is needed to obtain interLATA relief and has said the company “isn’t pushing very hard.” 7 Tr. 251; Exhibit C-17. Rather, Ameritech has spent \$3.2 billion to obtain an interest in Tele Danmark, bringing its total international investments to approximately \$8 billion. 7 Tr. 252; Exhibit C-18.

AT&T presented the testimony of James D. Webber, who testified that effective competition requires dialing parity and that the absence of dialing parity on a statewide basis inhibits the ability of competitors to take advantage of statewide advertising and marketing programs that will reach a broad base of customers. 7 Tr. 299, 307. He testified that with the introduction of statewide dialing parity, competitive forces will drive down intraLATA toll rates, which occurred in Illinois. 7 Tr. 307, 309. He testified that where dialing parity is available in Michigan, competitive forces have resulted in Ameritech Michigan’s offering discounts to customers. 7 Tr. 310-313.

Mr. Webber also concurred with the assessment that the lack of dialing parity results in inferior service, and testified that the disadvantage to dialing access codes has been recognized within the industry for years as inferior service. 7 Tr. 313-315, 322. He supported a 55% discount to recognize the lesser value of the inferior service. 7 Tr. 318. Mr. Webber also testified that despite implementing dialing parity for 70% of its access lines in early 1997, Ameritech Michigan’s intraLATA toll revenues were down only 3.2% for the year and access revenues increased by almost enough to offset the loss. 7 Tr. 326-327.

The Attorney General presented the testimony of Bion C. Ostrander, who testified that Ameritech Michigan seeks to preserve its 1+ dialing advantage: "To expect competitors to pay equivalent access prices for inferior service is contrary to any reasonable application of discrimination standards." 7 Tr. 336-337. He testified that the public interest is adversely affected by Ameritech Michigan’s actions that give it a discriminatory and decided advantage over its competi-

tors and impede competition and the benefits associated with competition. 7 Tr. 336.

Mr. Ostrander also testified that Ameritech Michigan's view that the lack of dialing parity is a minor matter because customers can use automatic dialing devices is inconsistent with the requirement of the FTA that customers be able to automatically route calls without dialing an access code. 7 Tr. 351. He concluded that the public interest would be served by the full implementation of dialing parity. 7 Tr. 332.

The Staff presented the testimony of William J. Celio, Director of the Communications Division, who testified that the need to dial additional digits to complete an intraLATA toll call creates an inferior service. 7 Tr. 368. He also testified that "the 55% discount was and remains a pricing issue which recognizes the level or quality of service provided by Ameritech in its exchanges in Michigan." 7 Tr. 368. In his view, different prices are appropriate for different services. 7 Tr. 366.

Mr. Celio testified that Ameritech Michigan has the majority, 70%, of the intraLATA market. 7 Tr. 369; Exhibit S-32. He also testified that in 1992 Ameritech Michigan estimated a loss of 75% to 85% of its toll revenues with the introduction of statewide intraLATA dialing parity, but with dialing parity implemented for 70% of its access lines, the loss in toll revenues has been less than 10%. 7 Tr. 370. In addition, Mr. Celio testified that the loss in toll revenues is offset by gains in access revenues. 7 Tr. 370. He concluded that the introduction of dialing parity in the remaining exchanges would not threaten the financial viability of Ameritech Michigan. 7 Tr. 371.

Finally, Mr. Celio testified regarding pricing trends, which he said were characteristic of a noncompetitive market:

The most identifiable trend has been Ameritech's December 9, 1996 conversion to a flat 15¢ per minute charge for residential toll service and increases in that rate to 17¢ per minute on August 29, 1997 and 18¢ per minute effective March 1, 1998.

Business rates have also been increased recently by 10% or approximately 2-3¢ per minute depending on the distance and duration of the call.

Ameritech Michigan has introduced a number of toll discount plans, but those plans are difficult to completely analyze because they are targeted at various usage levels by various customers or customer groups.

7 Tr. 371.

55% Discount

MCI argues that in those areas where dialing parity is not offered, its customers must use access codes or dial extra digits to complete a call. MCI argues that this is a competitive disadvantage and creates an inferior service. MCI argues that the Commission has recognized that different levels of service warrant different prices, such as lower rates for interruptible electric service. MCI argues that dial around access is similarly a lesser or inferior service for which the Commission has authority to order a discount.

With respect to the amount of the discount, MCI cites several orders of the FCC adopting a 55% discount. MCI argues that the FCC arrived at a 55% discount by focusing on the opportunity cost of the premium access at issue and found that the technical superiority accounted for only 2% to 5% of the price differential. Furthermore, MCI argues that 55% is too small a discount in this case because Ameritech Michigan would rather provide the discount than provide dialing parity and lose the competitive advantage. MCI does not, however, propose a greater discount.

The Staff supports a 55% discount, and notes that the issue has already been addressed by the Commission in its March 10, 1995 order in Case No. U-10138. The Staff also notes that the Court of Appeals upheld the Commission's authority to impose the 55% discount. Ameritech Michigan v Michigan Public Service Comm. The Attorney General, AT&T, and Sprint also urge the Commission to grant a 55% discount.

Ameritech Michigan argues that prior Commission orders have concluded that the lack of dialing parity does not result in an inferior service. It argues that the Commission specifically found in the December 21, 1989 order in Case No. U-9004 and the February 23, 1993 order in Case No. U-10138 that dialing arrangements that require access codes do not constitute inferior, degraded, or slower access.

Ameritech Michigan argues that MCI has not offered any evidence to support its claim that a 55% discount is the proper and necessary amount. Ameritech Michigan argues that there is absolutely no evidence to support adopting the FCC's 55% discount from another case. Ameritech Michigan argues that the FCC discount was based on connections that were inferior and had nothing to do with the dialing of extra digits as constituting inferior service.

Ameritech Michigan also argues that the proposed discount is not in the public interest because the discount would not flow through to MCI's customers. Ameritech Michigan argues that the failure to flow through the discount to customer rebuts any argument that the 55% discount would result in lower rates.

The ALJ found that the focus should be on the service offered by Ameritech Michigan, not on how customers have responded by using automatic dialing devices, number memory, WATS, and dedicated facilities or how Ameritech Michigan's competitors have responded (or not responded) to the service offered by Ameritech Michigan through their marketing and rates. The ALJ concluded that the comparison should be between 1+ dialing and dialing an access code. The ALJ noted that all of the parties to the case except Ameritech Michigan perceive the alternative to be an inferior service. He also noted that in other contexts Ameritech Michigan itself has recognized that the need to dial extra digits is perceived by customers as an inferior service. The ALJ therefore concluded that the lack of dialing parity is a lesser service warranting a lesser charge.

The ALJ found that there was sufficient evidence to support a 55% discount. The ALJ rejected Ameritech Michigan's argument that the FCC discount was based solely on the quality of the connection. He found that the FCC had also considered the opportunity cost of the access. The ALJ found that the evidence supported MCI's assessment that a 55% discount is actually too low. Nevertheless, the ALJ recommended that the Commission grant MCI's request for a 55% discount.

Ameritech Michigan excepts to the conclusion that the requirement to dial an access code creates an inferior access service. It cites the two prior Commission orders that rejected the view that dial around access is inferior and the testimony that the access facilities are the same and the technical connection identical. As to the need to dial additional digits, it says that automatic dialing devices, WATS, and dedicated connections make that a minor issue for customers. Further, it argues that the IXCs do not view the lack of dialing parity as creating an inferior service because they do not offer a discount in exchanges where dialing parity is not offered, continue to offer dial around service in exchanges where dialing parity is offered, and market dial around access as easy and simple.

Ameritech Michigan also excepts to the conclusion that 55% is the proper discount, if a discount is lawful at all. It says that there is no evidence that 55% relates to any costs incurred by the parties because of a lack of dialing parity or that it reflects any harm to the IXCs or the customers who must deal with access codes. It says that something more than opinion testimony is needed, and evidence that the FCC has adopted a 55% discount in another context is not persuasive.

The Commission concludes that the parties have essentially relitigated an issue that the Commission has decided and the Court of Appeals has affirmed. Ameritech Michigan v Michigan Public Service Comm. The decision to implement a discount is within the ratemaking authority of the Commission, as is the amount. The record in this case establishes, as did the record in Case No.

U-10138, that a discount is appropriate to reflect the lesser service that is provided without dialing parity. Even conceding that the technical connection is the same, it cannot reasonably be argued that dial around service (or any of the other alternatives) is the same as dialing parity.³ The IXC's have to market it differently if only because customers have to know that they must dial additional digits or make other arrangements, and the IXC's must depend on customers taking affirmative steps that are more cumbersome or expensive than presubscribing to the intraLATA carrier of their choice. Customers perceive the service as different and less convenient or more expensive because customers must dial extra digits or invest in facilities that avoid the need to dial extra digits (e.g., dedicated facilities). Certainly, Ameritech Michigan itself does not believe that customers view the two services as the same. Because the service is inferior, a discount is appropriate. In the absence of an agreement among the providers, the Commission continues to find 55% to be a reasonable amount.

As to the argument about the burden of proof, Section 310(2) allows a provider to invoke the Commission's ratemaking authority by filing an application under Section 204, after which the Commission is authorized to set a just and reasonable rate based upon the evidence. The IXC's have carried the burden to show that it would be "unreasonably discriminatory" within the meaning of MCL 484.2102(y); MSA 22.1469(102)(y) to charge the same rate for an inferior service. The amount of the discount warranted for the inferior service is not susceptible to calculation through some mathematically precise formula, but requires an exercise of judgment. In the absence of

³It should be clear from the Commission's prior orders that it has rejected the view that dial around service is not inferior, but, to put the matter to rest, the Commission overrules all prior statements to the effect that dial around service is not an inferior service.

compelling evidence that another amount is more appropriate, the Commission will continue to use 55%.

Turning to a final issue on the discount, as discussed above the Commission concludes that the IXC's have established that the lack of dialing parity creates an inferior service and that a discount is appropriate to reflect the lesser value of the service. The Commission is not persuaded on this record that the IXC's are affected in a manner that merits compensation to them, although they are harmed in some unquantified fashion by the inability of some of their customers to select them as the dial 1+ carrier. The record does not provide a basis for concluding to what extent their market share has been impaired by the lack of dialing parity. The record does show that the connection to the network without dialing parity is the technical equivalent of the connection that is provided with dialing parity, and the IXC's have apparently successfully marketed dial around service. In fact, they are able to sell that service even where dialing parity is available.

On the other hand, the record also shows that the customers of the IXC's are directly affected by the lack of dialing parity, if only because they have to dial additional digits or make some other arrangement such as a dedicated connection. It also appears that, for reasons not disclosed on this record, some customers will choose to use an inferior service even without a discount. Whatever the reason, as a matter of ratemaking, the Commission finds no compelling reason on this record to order a discount in access rates if the IXC's choose to retain the discount rather than passing it along to their customers. Consequently, the Commission orders that Ameritech Michigan shall discount its intraLATA access rates by 55% for each IXC that passes along all of the discount to its customers by reducing its per minute charges for all calls initiated without dialing parity.

Dialing Parity

MCI says that, in the other Ameritech states, the company is either providing full dialing parity or has committed to do so by February 1999. It argues that the Commission has authority under Section 205(2) to order full dialing parity in Michigan and should do so to give customers in Michigan the same benefits as the customers in the other states.

The Attorney General argues that permitting Ameritech Michigan to retain the 1+ dialing advantage is adverse to the public interest within the meaning of Section 205(2) and that dialing parity is in the public interest. The Attorney General argues that Ameritech Michigan's focus is wrongly on itself as the potential provider of dialing parity rather than on the service. The Attorney General argues that under the conditions proposed by Ameritech Michigan, none of the benefits of competition envisioned by the MTA can be expected. The Attorney General argues that, in fact, Ameritech Michigan would take advantage of its preferred position and charge higher toll prices.

The Staff argues that the Commission should assess the need for dialing parity based on current market conditions, pricing trends, and the historical effect of intraLATA dialing parity. AT&T argues that the decision to order dialing parity should depend on whether statewide dialing parity serves the public interest and the policies embodied in the MTA.

Ameritech Michigan argues that MCI has not met its burden to show that statewide dialing parity is necessary for effective competition or is in the public interest. It argues that there is no evidence that the intraLATA toll market is not open to competition already or that dialing parity is necessary for effective competition. To the contrary, it says that even where dialing parity is not offered, the intraLATA toll market is competitive because customers can obtain the functional equivalent through speed dialing devices, dedicated connections, WATS service, and automatic routing.

Ameritech Michigan argues that dialing parity is not in the public interest because it would benefit the IXCs at the expense of the general public and Ameritech Michigan. Ameritech Michigan argues that dialing parity would give the IXCs an insurmountable competitive advantage over it due to convenience, not price. Ameritech Michigan argues that the advantage of one-stop shopping that is available to the IXCs, which can offer inter- and intraLATA services, precludes effective competition by Ameritech Michigan. It argues that many of the highest toll users are located in the areas where dialing parity is not available. Ameritech Michigan argues that the IXCs would use the advantages of one-stop shopping and volume discounts to target those customers and would be virtually assured of winning them over. Consequently, it argues that it would lose its most profitable routes, and its economic health and ability to offer service to all of its customers would be adversely affected.

Furthermore, it denies that the public would benefit from lower rates. It says that the IXCs' marketing advantages—large national budgets and the bundling of inter- and intraLATA services—have enabled them to divert traffic even without significantly undercutting Ameritech Michigan's base prices. It says that each of the IXCs charges the same rates to all of its customers, further confirmation that the market is competitive, and that the IXCs have not felt the need to reduce prices to compete for intraLATA traffic. It denies that there is any reason to conclude that intraLATA rates would decrease if dialing parity were implemented, and if anything, it says that the IXCs will increase their rates if dialing parity is implemented before Ameritech Michigan obtains interLATA relief. It says that the record demonstrates that only the IXCs would benefit.

Finally, Ameritech Michigan also argues that dialing parity is only part of the picture, which should include consideration of federal regulatory constraints. Ameritech Michigan argues that the Michigan Legislature, the Governor, and the Court of Appeals have specifically and unequivocally

determined that Ameritech Michigan is not required to provide dialing parity until it has been granted federal authority to provide interLATA service.

The ALJ found that dialing parity is in the public interest. The ALJ also found that competition is less rigorous in the areas where Ameritech Michigan does not offer dialing parity. He therefore concluded that the current lack of full dialing parity was adverse to the public interest.

Ameritech Michigan excepts and argues that MCI failed to meet its burden of proof because it failed to demonstrate that a delay in further implementation of dialing parity is adverse to the public interest or that dialing parity in the remaining exchanges is necessary for effective competition in the intraLATA toll market. It argues that customers have a wide array of toll service choices and that MCI failed to offer proof of customer dissatisfaction with the available choices or customer demand for dialing parity. It also asserts that MCI failed to account for the success of dial around service, to refute that its has not discounted dial around service, and to show anything other than dialing parity will benefit MCI.

The Commission concludes, as it has before, that dialing parity is necessary for effective competition. It therefore concludes that the lack of dialing parity is adverse to the public interest. The Commission has so found in prior orders, and those orders have been affirmed. GTE North Inc v Michigan Public Service Comm. The May 19, 1998 Court of Appeals decision did nothing to undercut the factual, policy, or legal basis for the Commission's prior conclusions on this issue.

Furthermore, the record in this case is consistent with and fully supports the Commission's prior findings on the reasons for requiring dialing parity. Even though the same facilities are used for all intraLATA calls, the lack of dialing parity results in an inferior service, for which the Commission has ordered a discount, and Ameritech Michigan has failed to offer any reasonable basis for continuing to impose that inferior service on a portion of the public or to permit Ameritech

Michigan to retain the competitive advantage. Even the February 23, 1993 order in Case No. U-10138, which Ameritech Michigan cites for the proposition that the Commission has found that the lack of dialing parity does not create an inferior service, characterized the decision not to implement dialing parity as permitting Ameritech Michigan “to retain the exclusive dial 1+ and dial 0+ advantage.” February 23, 1993 order, Case No. U-10138, p. 4.

Full implementation of dialing parity is consistent with the policies of the MTA, as expressed in Section 101(2)(b), MCL 484.2101(2)(b); MSA 22.1469(101)(2)(b), to “allow and encourage competition to determine the availability, prices, terms, and other conditions” of service and will be beneficial to customers. Ameritech Michigan has made no showing that dialing parity has harmed customers where it is offered in this state and elsewhere in the region, even though it has been offered for years in such areas. At most, some of its evidence and speculation suggest that competition may not be uniformly beneficial to all customers, but the Commission need not prevent full intraLATA competition because more customers will be subjected to marketing efforts and some customers may not qualify for the lowest possible rates.⁴

The Commission is not persuaded that the full implementation of dialing parity will harm Ameritech Michigan in any way that requires a further delay. From the beginning, Ameritech Michigan has claimed that dialing parity will wreak havoc on its financial condition. That has clearly not happened as a result of implementing dialing parity for 70% of its access lines in Michigan and has not happened in the other Ameritech states. With growth in demand and increased access revenues offsetting a decline in toll revenues, Ameritech Michigan is likely to see only a minor decline in revenues, if any decline at all. In any event, the MTA does not express a policy that

⁴Ameritech Michigan did not offer evidence showing that any customers were paying higher rates as a result of dialing parity having been implemented for them.

competition is to go forward only as long as the incumbents do not experience a reduction in revenues. It is true that full competition in the intraLATA market probably means a further erosion in Ameritech Michigan's market share, but even Ameritech Michigan acknowledges that there is already competition in the exchanges without dialing parity, so it has already lost some portion of the market share that it can expect to lose in those areas. The difference will be that all customers can have the benefits of dialing parity without the inconvenience or cost of working around the lack of dialing parity. Furthermore, Ameritech Michigan can compete by offering the services and prices that customers want. The Commission sees no reason to continue to allow the restriction on dialing parity, rather than service and price, to determine Ameritech Michigan's success in the intraLATA market. Finally, Ameritech Michigan's continuing inability to offer one-stop shopping reflects in part its decision not to invest the time and money in doing what is needed to obtain interLATA relief from the FCC and instead to invest in overseas ventures and pursue a merger at home. Its parent corporation's decision about interLATA service is not a reason to deprive the remaining customers in Michigan of full and open competition in the intraLATA market.⁵

In summary, the Commission's prior orders that delayed dialing parity expressed concern about the technical ability to implement the service, but the Ameritech companies have been able to implement dialing parity in other states and Ameritech Michigan has implemented dialing parity in much of this state. The earliest orders expressed concern about whether dialing parity should be implemented in advance of interLATA relief, but subsequently and repeatedly the Commission has rejected a policy linking the two. The orders have also expressed concern about the financial effects

⁵It is discouraging that Ameritech Michigan has chosen not to pursue interLATA relief from the FCC since its petition was denied in August 1997, with the FCC indicating what had to be done to receive approval from the FCC.

of implementing dialing parity, but with 70% of its access lines converted, Ameritech Michigan continues to be financially robust. Ameritech Michigan has failed to offer any good reason for further delay in the full implementation of dialing parity.⁶

Dialing Parity under the FTA

Ameritech Michigan argues that Section 271(e)(2)(B) of the FTA prohibits the Commission from requiring intraLATA dialing parity until the company has been granted authority to provide interLATA service unless Michigan falls within the exception for states that “have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity” 47 USC 271(e)(2)(B). Ameritech Michigan argues that the May 19, 1998 decision of the Court of Appeals determined that Sections 312a and 312b of the MTA constitute such an order, but only for 10% of its access lines. It also argues that because the Court of Appeals voided the Commission’s prior orders on dialing parity, those cannot satisfy the requirement of the exception. Ameritech Michigan therefore argues that federal law preempts the Commission from ordering any additional dialing parity.

Because the Commission had issued orders in Case No. U-10138 requiring dialing parity before December 19, 1995, the ALJ rejected Ameritech Michigan's argument that the exception in Section 271(e)(2)(B) does not apply.

MCI and AT&T except to the ALJ’s failure to conclude further that, irrespective of the Commission’s authority under state law, the FTA requires Ameritech Michigan to offer dialing parity no later than February 8, 1999.

⁶As noted in footnote 2, the implementation of dialing parity in other states continues.

The Commission concludes that the FTA does not prevent the Commission from requiring Ameritech Michigan to provide dialing parity in all exchanges. The prohibition in the FTA does not apply to Michigan because the Commission had issued orders requiring dialing parity before December 19, 1995. The Court of Appeals did not void those prior orders in their entirety. It voided only the implementation schedule that it found to be inconsistent with its interpretation of the MTA. Furthermore, even without the issuance of those orders, the prohibition in the FTA expires in a few days on February 8, 1999, three years after enactment of the FTA. 47 USC 271(e)(2)(B).

The Commission does not conclude that the FTA provides an independent basis for requiring Ameritech Michigan to implement dialing parity as of February 8, 1999. Section 271(e)(2)(A) of the FTA requires dialing parity no later than when Ameritech Michigan obtains interLATA relief. Section 271(e)(2)(B) does not require dialing parity on February 8, 1999. It merely removes the restriction on ordering dialing parity for those states that had not issued orders by December 19, 1995.

Backbilling

Citing the Michigan Court Rules, MCI argues that the May 19, 1998 decision of the Court of Appeal is not yet effective:

Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,

(a) the Court of Appeals judgment is effective after the expiration of the time for filing a timely application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court.

MCR 7.215(E)(1). Because the decision is not yet effective, MCI argues that any effort by Ameritech Michigan to collect the past discount is improper. It also argues that any attempt to

backbill is prohibited retroactive ratemaking. MCI asks the Commission to rule that Ameritech Michigan cannot retroactively eliminate the discount, must keep the discount in place until the Michigan Supreme Court rules on the pending appeal, and that if the Court rules against MCI's position, Ameritech Michigan may not eliminate the discount until the Court's decision is effective and Ameritech Michigan has filed tariffs to implement that decision.

The ALJ found that the provisions of MCR 7.215(E) control and that the Court of Appeals decision does not become effective until the Michigan Supreme Court disposes of the appeal. In addition, the ALJ thought that the Supreme Court might resolve these issues in its decision or provide some guidance. The ALJ therefore recommended that the Commission order Ameritech Michigan to suspend any further attempts to collect until the Supreme Court disposes of the appeal.

MCI excepts and argues that the ALJ should also have concluded that Ameritech Michigan's efforts to backbill constitute prohibited retroactive ratemaking. MCI says that the issue was not addressed in Case No. U-10138, was not raised before the Court of Appeals, was not addressed by the May 19, 1998 decision, and is not before the Michigan Supreme Court. MCI says that the courts should have the benefit of the Commission's analysis of this issue.

In its reply to exceptions, Ameritech Michigan says that from the beginning of this case, as reflected in paragraph 31 of its answer, it has taken the position that it will not seek to collect the access charge discount until the Michigan Supreme Court decides the appeal of the May 19, 1998 decision.

The Commission declines to address the issue. Ameritech Michigan has said that it will not pursue the backbilling at this time, and the Supreme Court decision may resolve the matter or provide guidance.

Motion for Stay

Ameritech Michigan argues that the Michigan Supreme Court's ruling on the appeal of the May 19, 1998 decision of the Court of Appeals will control the issues raised in this case. It therefore requests that if the Commission adopts the recommendations of the PFD, it stay the effectiveness of the order until the Supreme Court issues its decision. It asserts that the Commission clearly has authority to delay the implementation of its order and that a refusal to do so will cause irreparable harm to Ameritech Michigan. It says that (1) it is likely to prevail on the merits because of the May 19, 1998 decision of the Court of Appeals, (2) the public interest will not be harmed because the Court of Appeals has determined that the public interest is best served by delaying dialing parity until Ameritech Michigan obtains interLATA relief, and (3) the IXCs will not be harmed because it will not attempt to collect the past discount until the Supreme Court rules and any other harm can be remedied by monetary relief.

The Commission denies the motion for stay. As discussed fully above, the Commission does not agree that the May 19, 1998 decision of the Court of Appeals controls this case and, consequently, does not agree that Ameritech Michigan is likely to prevail upon appeal of this order. The Commission also does not accept Ameritech Michigan's claims of irreparable harm to itself, a lack of harm to the public, or the availability of monetary relief to remedy the harm to the IXCs and the public interest. Finally, as a matter of policy, the Commission doubts the wisdom of staying one of its orders. Ameritech Michigan must therefore rely on the legislative policy of finality for Commission orders, MCL 462.25; MSA 22.44, and the statutory process for obtaining an injunction against a Commission order, MCL 462.26; MSA 22.45.

Motion to Compel

Ameritech Michigan says that the complaint places at issue whether toll access service without dialing parity is an inferior service. To address that issue, it says that it served discovery questions on the IXCs to find out, for example, whether they had engaged in marketing techniques designed to promote an “inferior” service or had been forced to discount the “inferior” service in order to gain market share. It says that it is entitled to discover such information in order to support its own arguments that the lack of dialing parity does not create an inferior service and is not adverse to the public interest. It says that the IXCs’ responses were inadequate, and it therefore filed a motion to compel.

The ALJ found the information to be irrelevant to the issues in the case—Ameritech Michigan’s practices—and that Ameritech Michigan had not addressed the other objections raised by the IXCs. He therefore denied the motion. Ameritech Michigan filed an application for leave to appeal that ruling.

The Commission affirms the ALJ’s ruling for two reasons. First, it seems unlikely that the discovery would have yielded information that would affect the decision in this case, which involves Ameritech Michigan’s access services, not the IXCs’ toll services and marketing efforts. Second, and more important, Ameritech Michigan has not provided an adequate answer to the objections that go beyond the relevance of the information it sought to discover, such as objections that it already has some of the information in its possession and that the requests are overly broad and unduly burdensome.

Motion to Strike

On December 2, 1998, Ameritech Michigan filed a motion to strike portions of MCI's reply brief. It argues that neither the letter from Governor John Engler dated September 28, 1995 nor its Form 10-Q were admitted into evidence. On December 10, 1998, MCI filed a response. The ALJ granted the motion to strike.

MCI excepts and argues that Ameritech Michigan's brief contained a statement of fact for which Ameritech Michigan had not provided a foundation, a claim that the Governor had "specifically and unequivocally determined" that Ameritech Michigan is not required to further implement dialing parity until it obtains interLATA relief. Ameritech Michigan's brief, p. 2. MCI says that it merely sought to respond in its reply brief. It also says that it is now apparent that Ameritech Michigan was relying upon the fact that the Governor signed the bill that added Section 312a. It also excepts to the striking of the reference to the Form 10-Q materials.

The Commission will not reverse either ruling. MCI was entitled to respond to Ameritech Michigan's argument, but the Governor's letter is not needed to answer the absurd proposition that the Governor's signature, or any legislator's vote, on a bill means that he "specifically and unequivocally" supported any party's interpretation of a single provision in a lengthy bill. As to the Form Q-10 material, the issue it raises is tangential at best and does not merit reopening the record.

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

b. The lack of dialing parity is adverse to the public interest and creates an inferior service.

c. Ameritech Michigan should immediately offer intraLATA dialing parity to all customers in all exchanges.

d. A 55% discount in switched access rates is just and reasonable where Ameritech Michigan does not offer dialing parity.

e. The motion for stay should be denied.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan shall immediately offer dialing parity in all exchanges to all customers.

B. Ameritech Michigan shall discount its intraLATA switched access rates by 55% for each interexchange carrier that passes along all of the discount to its customers by reducing its per minute charges for all calls initiated without dialing parity.

C. Ameritech Michigan shall pay the reasonable attorney fees and costs of the prevailing parties.

D. Ameritech Michigan's motion for stay is denied.

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/ John G. Strand

Chairman

(S E A L)

/s/ David A. Svanda

Commissioner

By its action of January 19, 1999.

/s/ Dorothy Wideman

Its Executive Secretary

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

Chairman

Commissioner

By its action of January 19, 1999.

Its Executive Secretary

In the matter of the application and complaint of)
MCI TELECOMMUNICATIONS CORPORATION)
against **MICHIGAN BELL TELEPHONE COMPANY,**)
d/b/a **AMERITECH MICHIGAN,** seeking (i) a 55%)
discount on intrastate switched access service where)
intraLATA dialing parity is not provided and (ii) an)
order requiring implementation of intraLATA dialing)
parity on an expedited basis now that July 1, 1997)
has passed.)
_____)

Case No. U-11743

Suggested Minute:

“Adopt and issue order dated January 19, 1999 requiring Ameritech Michigan to offer intraLATA dialing parity in all exchanges immediately, to provide a 55% discount in switched access rates in those exchanges where it does not offer dialing parity to the extent that the interexchange carriers pass along the discount, and denying Ameritech Michigan’s motion for stay, as set forth in the order.”