

Anticompetitive Effect of Bill Insert

Sprint, MCI, and AT&T argue that Ameritech's decision to send the bill insert in December 1995 was made with the intent of impeding intraLATA presubscription in Michigan. They note that internal Ameritech documents show the following: 1) In April 1986 and May 1993, Ameritech's policy was not to promote the PIC protection program, but to offer the service infrequently and only to customers who had repeated unauthorized PIC changes. Exhibits I-12 and I-13. In fact, it denied the requests of interexchange carriers to implement PIC protection for the accounts of their customers who had been slammed. Tr. 92, 95. 2) On or about November 20, 1995, a preliminary decision was made to mail the bill insert to Ameritech's 12 million residential and small business customers in a five-state region. Exhibit I-15, p. 6. 3) The plan to send the bill insert to 12 million customers was developed by Ameritech's Product Manager, IntraLATA Toll, whose responsibilities include retaining Ameritech's intraLATA market share, and the decision was made without adequate involvement of those with responsibility to process responses to the bill insert. Exhibit I-15, pp. 4-5; Tr. 397, 426-428. See also, Exhibit I-14, p. 3. 4) The bill insert is referred to in an Ameritech marketing document under the heading "IL/WI Presub[scription] Defense Plan". Exhibit I-16, p. 2. 5) Other internal documents draw an explicit connection between the decision to send the bill insert and the implementation of intraLATA dialing parity on January 1, 1996. Exhibit I-15, p. 6. 6) Still other internal documents refer to the bill insert as "minimiz[ing] . . . customer defection." Exhibit I-15, p. 4. 7) Although drafts of the bill insert contained language attempting to inform customers of a wide array of service options soon to be available and encouraging informed choices, that language was omitted from the bill insert mailed to customers. Exhibit I-40, p. 3. 8) Another internal document states:

**DON'T MENTION THAT WE CAN'T PROVIDE THIS INFORMATION BECAUSE OF COMPETITIVE REASONS UNDER ANY CIRCUMSTANCE.** We told AT&T that our true intention of these slamming inserts is to protect customer choice. If we state we can't give out the numbers because of competitive reasons, then AT&T will throw that back in our face. This can't be viewed as a competitive tactic on our part. [Emphasis is original.]

Exhibit I-43, p. 6.

9) Ameritech had underestimated the customer response, with resulting delays in processing the orders. An internal document responded: "Given the current competitive situation, especially in Illinois and Michigan, [several months to process the orders] is unacceptable. We need to find either an alternative or supplemental channel to process the customer requests." Exhibit I-17, p. 3.

They conclude that these documents show convincingly that Ameritech deliberately timed the bill insert to predate implementation of intraLATA presubscription in three states (Illinois, Michigan, and Wisconsin) and that Ameritech intentionally used language in the bill insert that would not fully inform customers of their choices or the consequence of returning the bill insert coupon. They assert that it is simply not believable that the bill insert was sent solely to prevent slamming.

Sprint, MCI, and AT&T also argue that even if Ameritech's intent had not been to impede competition in the intraLATA market, that was the effect. They argue that the effect of the bill insert was to interject confusion in the intraLATA presubscription process, to impede or delay customers' selection of a competing intraLATA carrier, and to hinder the interexchange carriers' ability to compete in the intraLATA market. They also note that Ameritech Michigan would be assured the last contact with the customer, which would provide it with an opportunity to engage in "win-back" marketing. They assert that the unavoidable result of any requirement that customers submit their PIC changes to Ameritech Michigan will be to give Ameritech Michigan an advantage

with the customers it currently serves. In contrast, they argue, competing interexchange carriers will be obligated to see that written or verbal authorization to serve those customers is delivered to Ameritech Michigan, the customer's current monopoly service provider and the interexchange carriers' competitor.

The ALJ found that the bill insert was timed to impede the intraLATA presubscription process. She found Ameritech Michigan's alternative explanation for the timing to be suspect. She said that the effect was to place additional burdens on customers desiring to change providers, making it less likely that they would carry through on their decision to change carriers and providing Ameritech Michigan the last chance to change their minds. She concluded that the effect of the bill insert was anticompetitive because it was designed to protect Ameritech Michigan's interests rather than to assure that customers made informed choices.

Ameritech Michigan excepts and denies that the bill insert had an anticompetitive effect. It also argues that the timing of the bill insert and the motivation for sending it have no bearing on whether it was misleading or a violation of the law. It denies that PIC protection imposes any burden on customers who choose that protection. In fact, it says, PIC protection is pro-competitive because it promotes customer choice of providers and services such as PIC protection. It also notes that, despite PIC protection, the interexchange carriers have been very successful in obtaining market share for intraLATA toll traffic where dialing parity has been implemented, which refutes the claim of an anticompetitive effect.

The Commission finds that the effect of the misleading bill insert is anticompetitive, in large part because of the timing, regardless of Ameritech Michigan's motivation. In reaching this conclusion, the Commission accepts Ameritech Michigan's view that the PIC protection program

is not a "freeze" of a customer's service providers. A customer is always free to authorize a change in providers. What the Commission does not accept is Ameritech Michigan's assertion that the program is competitively neutral, especially when the bill insert was mailed just before intraLATA dialing parity was offered. It is anticompetitive because it created new hurdles to the exercise of the customer's decision to change providers just as alternatives were becoming available.\*

Ameritech Michigan is simply wrong when it asserts that the PIC protection program does not force the customer to make any extra calls or to take any extra steps to change his or her service provider. Without the protection in place, the customer can call a new service provider and make arrangements to take service, and the new provider can work directly with Ameritech Michigan to implement the change. With the protection in place, the customer must contact not only the new service provider, but Ameritech Michigan as well. It is true that the contact can be by a transfer of the call at the conclusion of the contact with the new provider, if that contact occurs during Ameritech Michigan's business hours and the customer remembers that he or she has PIC protection, but even a contact by a transfer of the call involves staying on the telephone however long it takes Ameritech Michigan to respond. If the customer has forgotten requesting PIC protection or misunderstood the scope of the protection, Ameritech Michigan will reject the new provider's request to change the customer's intraLATA or local exchange service provider. The new provider must then contact the customer, who must in turn contact Ameritech Michigan. No matter how it is characterized, PIC protection makes it more cumbersome for the customer to change service

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\*In Illinois, where the Commerce Commission found the same insert to be misleading and anticompetitive, the bill insert was mailed before customers received notice of intraLATA presubscription. Exhibit I-2. In Michigan, the notice of presubscription arrived first. The Commission does not find that difference significant because it is unlikely that most customers remembered and fully appreciated the meaning of the presubscription notice in the context of the December 1995 bill insert.

providers. There may be nothing wrong with that, even from a competitive point of view, if the customer clearly understands in advance the scope of the protection, what will be required to change providers in the future, and how soon competitive alternatives may be available. None of that was communicated by the bill insert. Consequently, the Commission finds that the effect of the bill insert is anticompetitive.

The bill insert, and PIC protection, become even more anticompetitive if the interexchange carriers' fears are justified that Ameritech Michigan will delay requests from customers to change providers and that it will use the contact as an opportunity to try to dissuade the customer from leaving Ameritech Michigan's service. Ameritech Michigan denies any such intent, but that is no substitute for fully and fairly informing customers. Furthermore, as discussed above, there is ample evidence that Ameritech Michigan understood the bill insert to be anticompetitive and intended it to have that effect.

Furthermore, contrary to Ameritech's Michigan's argument, the fact that interexchange carriers have been able to market dial 1 + intraLATA service in those exchanges where that is permitted does not prove that the bill insert had no competitive effect. Without the bill insert, or PIC protection, they are likely to have won over even more customers or at least to have been able to solicit new customers without the costs and delays that PIC protection adds.

#### Burden of Proof

Ameritech Michigan excepts to portions of the ALJ's statement of the facts. The Commission finds the facts to be as set out in this order. To the extent that those facts are at odds with Ameritech Michigan's exception, the Commission finds the disagreement with the facts to be unsupported by the record or to relate to facts that are not relevant.

Ameritech Michigan also argues in its exceptions that the ALJ misallocated the burden of proof. It says that because the complaint alleges that the bill insert is misleading to customers and anticompetitive to competitors, it was Sprint's burden to submit evidence to prove those allegations. It says that Sprint failed to provide evidence that any customers were actually misled (or that any customers expressed a desire to have PIC protection placed on only their interLATA service) and failed to provide evidence that the bill insert had any effect on competition. It points out that no disinterested customers testified that they were misinformed as to the meaning of the bill insert and Sprint and the intervenors offered no survey data to support that claim. On the other hand, it says, it offered the results of a survey showing that customers correctly understood the bill insert and were not misled. Similarly, it says that Sprint and the intervenors offered no disinterested testimony to support the claim of anticompetitive effects. On the other hand, it says, it offered market evidence to show that interexchange carriers have had considerable success in obtaining intraLATA toll market share where dialing parity has been implemented.

The Commission rejects Ameritech Michigan's argument. To prove that the bill insert was misleading, Sprint and the intervenors did not need to offer testimony from customers, just as Ameritech Michigan need not offer testimony from customers to prove that a proposal is just and reasonable. To prove that the bill insert was anticompetitive, Sprint and the intervenors did not need to offer testimony from expert witnesses. The ultimate issues in this case--whether the bill insert was misleading and anticompetitive--are not unusually complex and can be answered without resort to customer or expert testimony. They can be resolved by the application of informed common sense to the language of the bill insert and a consideration of its likely effects. The

Commission therefore concludes that the ALJ did not shift the burden of proof, or, put otherwise, the complainants and intervenors satisfied the burden that was theirs.

The Commission disagrees with the conclusion in the dissent that the complaint must fail because Sprint, MCI, and AT&T were not misled. The Act protects the interests of both customers and competitors.

#### Violations of the Act and Orders

The ALJ concluded that the bill insert violated various provisions of the Act and, because it was timed to impede the intraLATA presubscription process, violated the Commission's orders in Case No. U-10138 mandating the implementation of intraLATA dialing parity.

Ameritech Michigan excepts and argues that Sprint did not allege any specific violations of the Act, but rather that MCI and AT&T added those allegations. It argues that it is improper to permit intervening parties to expand the scope of the complaint. Thus, it asserts that the only issue is whether the bill insert was misleading and anticompetitive. If the Commission goes beyond those allegations to consider violation of the Act, it asserts that the ALJ failed to explain how the alleged conduct violated the Act. It concedes that Section 101(2) states the purposes of the Act, but argues that it imposes no requirements on the PIC protection program or the manner in which it can be promoted. It concedes that Section 205(2) allows the Commission to require changes in how a service is provided if the conditions are adverse to the public interest, but argues that there is no evidence of effects that are adverse to the public interest and that the PIC protection program, which is optional, is not a condition of service. It argues that Section 305 applies to access and interconnection provided to other providers, which are not implicated by the PIC protection offered to end-user customers. It concedes that Section 312b requires dialing parity, but argues that PIC protection

does not block or impede the introduction of dialing parity. It concedes that Section 502(a) prohibits misleading statements regarding conditions of providing a service, but argues that the bill insert was not misleading and that PIC protection is not a service.

Ameritech Michigan also argues that the PIC protection program is not prohibited by any specific language in prior Commission orders. It says that it is entitled to be informed of the specific provisions of the Commission orders that the ALJ found it to have violated. As to the ALJ's concern that it offered the PIC protection program on the eve of implementing intraLATA dialing parity without specifically advising its customers of the impending changes, it says that it was not required to do so by any Commission order, but did provide notice of intraLATA presubscription as required by the Commission's orders.

The Commission finds that the ALJ did not permit the intervenors to expand the scope of the complaint. Sprint filed the complaint under the Act, alleging that the bill insert was misleading and anticompetitive. When it and the intervenors later specified which sections of the Act they thought the bill insert violated, they did not expand the scope of the complaint.

The Commission finds that the bill insert violates the Act and the Commission's orders requiring intraLATA dialing parity. Under Section 205(2), the Commission finds that the misleading bill insert created a condition under which regulated basic local exchange and toll services are offered that is adverse to the public interest. The Court of Appeals has rejected the narrow interpretation that Ameritech Michigan seeks to place on the language of the Act:

Although dialing patterns or arrangements are not specifically identified as part of the toll and access services regulated under the [the Act], there can be little dispute that dialing arrangements are at least "conditions for" such regulated services, if not actually part of the regulated services themselves, nor can it be denied that dialing arrangements affect how toll and access services are provided. Thus, upon the [Commission's] determination that the current dialing arrangements for intraLATA

long distance service are adverse to the public interest, the language of §205(2) is sufficient to authorize the [Commission] to require changes in the dialing arrangements, including the implementation of 1+ dialing parity.

While it is true that §205(2) does not specifically mention intraLATA 1+ dialing parity or dialing arrangements in general, we find the statute's reference to "conditions for regulated service" sufficiently specific. We do not believe the Legislature was obliged to attempt to specifically enumerate all of the conditions for regulated services possibly covered by the statute.

GTE North v PSC, 215 Mich App 137, 154-155; 544 NW2d 678 (1996).

That same analysis supports the Commission's conclusion that PIC protection is a condition for regulated services. The Commission also concludes that offering PIC protection in a misleading and anticompetitive manner is adverse to the public interest because it prevents informed choices and impedes the development of competition. Contrary to the view expressed in the dissent, the Commission finds PIC protection, not the bill insert, to be a condition for service within the meaning of the Act.

Likewise, the Commission finds that the bill insert violates Section 502(a) because it is "a statement or representation, including the omission of material information, regarding the . . . terms . . . or conditions of providing a telecommunication service that is false, misleading, or deceptive." As discussed above, the Commission finds the bill insert to be misleading and deceptive, and it relates to a term or condition, albeit voluntary, of basic local exchange and toll services.

In addition, the bill insert is inconsistent with the Commission's February 24, 1994, July 19, 1994, and March 10, 1995 orders in Case No. U-10138 requiring the implementation of intraLATA dialing parity, in violation of Sections 205(2) and 312b of Act 179. Those orders did not envision

and do not permit Ameritech Michigan to resort to the dissemination of misleading information to impede the development of a competitive intraLATA market through dialing parity.<sup>10</sup>

### Remedies

In its complaint, Sprint requested that the Commission (1) order that any PIC protection that resulted from the December bill insert not apply to a carrier selection in the intraLATA and local exchange markets, (2) require Ameritech Michigan, at its own expense, to conduct a campaign to educate customers about the right to choose alternative providers for intraLATA and local exchange services in the emerging competitive markets, and (3) prohibit Ameritech Michigan from mailing information concerning slamming and PIC protection without notice to competitors and prior Commission approval of the language.

In their brief, Sprint, MCI, and AT&T ask that the Commission (1) find that Ameritech Michigan violated the Michigan Telecommunications Act and order it to cease and desist from engaging in the complained of activities, (2) find that Ameritech Michigan violated the Michigan Consumer Protection Act and order it to cease and desist from doing so, (3) find that Ameritech Michigan has violated the Commission's orders on dialing parity and order it to comply immediately, (4) order that Ameritech Michigan not apply any PIC protection to intraLATA and local services pending further Commission review and, in any event, that it not protect intraLATA PICs until at least six months after the last Ameritech Michigan exchange has implemented intraLATA presubscription, that promotional materials be submitted to the Commission for

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<sup>10</sup>The bill insert is inconsistent with the competitive purposes of the Act as expressed in Section 101, although that section does not create rights or obligations. The Commission is not persuaded by the argument that the bill insert impairs the access services provided to interexchange carriers within the meaning of Sections 305(1) and 310(5).

approval, and that PIC changes be accomplished by three-way conference calls during which Ameritech Michigan may not engage in marketing, and (5) commence an investigation of Ameritech Michigan's presubscription practices.

The ALJ recommended that the Commission order Ameritech Michigan to cease and desist from the complained of practices. She recommended that Ameritech Michigan not be permitted to promote PIC protection for 90 days after the implementation of dialing parity and then only if it did so through a full and fair disclosure in materials reviewed and approved by the Staff. She also recommended that PIC changes be accomplished through conference calls and that Ameritech Michigan not be permitted to use those calls for marketing. She recommended that the Commission order Ameritech Michigan to implement dialing parity in a competitively neutral manner as required by the Commission's prior orders, but rejected the request for a further investigation into Ameritech Michigan's implementation of dialing parity. She also rejected the claim that the Commission has jurisdiction to take action under the Consumer Protection Act.

MCI excepts to the ALJ's recommendation that Ameritech Michigan be permitted to promote PIC protection 90 days after implementation of intraLATA presubscription. It argues that 90 days is not enough time for effective competition to take hold. It says that Ameritech Michigan will still be squarely in the middle of the customer's decision to change his or her intraLATA PIC. It requests that the Commission prohibit Ameritech Michigan from soliciting PIC protection in the intraLATA and local markets until those markets are effectively competitive. It also objects to the ALJ's recommendation that Ameritech Michigan use conference calls because that eliminates the verification options that are available under the FCC's rules.<sup>11</sup>

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<sup>11</sup>Independent third-party verification is one of the PIC verification options available under the FCC rules adopted by this Commission in the March 10, 1995 order in Case No. U-10138,

MCI also requests that the Commission clarify that PIC protection will not apply to local PICs. It says that all of the ALJ's findings apply as much to the local market as the intraLATA market, although all of her proposed remedies relate only to the intraLATA market. It notes that the verification procedures adopted in Case No. U-10138 apply only to intraLATA PIC changes and therefore requests that the appropriate method of verifying local PIC changes be deferred to a future proceeding.

Ameritech Michigan excepts and argues that its conduct is protected by the First Amendment to the U.S. Constitution and that the proposed review of promotional materials is anticompetitive because it would apply only to Ameritech Michigan. It argues that the ALJ's recommended measures constitute an unconstitutional regulation of commercial speech under Central Hudson Gas v Public Service Comm., 447 US 557; 100 S Ct 2343; 65 L Ed 2d 341 (1980), and 44 Liquormart v Rhode Island, \_\_ US \_\_; 116 S Ct 1495 \_\_ L Ed 2d \_\_ (1996). It also argues that the conference call procedure would be an improper and perhaps unconstitutional state-sponsored interference with its contractual relationship with its customers.

As discussed above, the Commission finds that the bill insert violates the Act and the Commission's orders. Section 601 of the Act directs the Commission to "order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation." MCL 484.2601; MSA 22.1469(601). Section 205(2) authorizes the Commission to require changes in how telecommunication services are provided. MCL 484.2205(2); MSA 22.1469(205)(2). Accordingly, the Commission orders Ameritech

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p. 36. A written letter of agency, electronic authorization by use of an 800 number, and return of a prepaid postcard verifying the order to change are the other methods. The PIC protection program excludes those options.

Michigan to cease and desist from violations of the Act. Furthermore, the Commission finds that additional remedies are required to protect the public and to undo, to the extent feasible, the harm caused by the bill insert.

First, Ameritech Michigan shall draft a corrective bill insert within 14 days and shall mail a copy to all of its existing customers no later than the September billing cycle. That bill insert shall inform customers of this order and shall in unmistakably clear language inform customers about the PIC protection program, the distinctions between the services that it covers, the advent of competition in the providing of those services, the meaning of intraLATA presubscription, and the steps that are required to change providers with PIC protection in place, including the potential for delay in obtaining the services and prices of the new provider. The Staff shall review and approve the bill insert before Ameritech Michigan mails it.<sup>12</sup> Second, the PIC protection requested beginning in December 1995 shall apply only to interLATA service. Third, PIC protection offered for six months after the corrective bill insert is mailed may not apply to intraLATA or local exchange service unless the customer has first affirmatively selected a provider for those services and then requested PIC protection.<sup>13</sup> The Commission agrees with MCI that a 90-day moratorium is not long enough. On the other hand, MCI has not offered a proposal for how to measure when

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<sup>12</sup>The Commission finds no merit in Ameritech Michigan's constitutional arguments because the Commission is not prohibiting the communication of accurate information about PIC protection. On the contrary, the Commission seeks to advance the state interest in promoting competition in telecommunication services by granting limited remedies that are narrowly tailored to undo the harm caused by Ameritech Michigan's distribution of misleading and deceptive information. Ameritech remains free to communicate accurate and complete information to its customers.

<sup>13</sup>This determination in this case is without prejudice to the Commission's consideration in an appropriate docket of other proposals for preventing slamming while promoting competition in the market for basic local exchange service.

competition has taken hold. Fourth, if a customer with PIC protection calls to change providers, Ameritech Michigan shall not use that contact to try to persuade the customer not to change providers. Fifth, Ameritech Michigan shall permit the verification of PIC changes by any procedure approved by the Commission's March 10, 1995 order in Case No. U-10138. Ameritech Michigan is not free to invalidate PIC change procedures that the FCC and this Commission have approved. In addition, it shall permit verification by the use of three-way conference calls with the consent of the customer.<sup>14</sup>

Furthermore, because Ameritech Michigan's conduct in sending the bill insert is relevant to the development of a competitive market, the Commission directs the Executive Secretary to place a copy of this order in the docket in Case No. U-11104, which the Commission opened on June 5, 1996 to consider Ameritech Michigan's compliance with the competitive checklist in the federal Telecommunications Act of 1996.

Finally, as the ALJ concluded, the Commission does not enforce the Michigan Consumer Protection Act. The Commission will transmit to Attorney General Frank J. Kelley a copy of the record and order in this case for his review and possible action, pursuant to Section 18 of the Consumer Protection Act, MCL 445.918; MSA 19.418(18).

In light of the above, the Commission does not find it necessary at this time to commence an investigation into Ameritech Michigan's presubscription practices.

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<sup>14</sup>Ameritech Michigan will need to find a way to verify the identity of the customer that does not require the disclosure of confidential information. If it must discuss confidential or proprietary information with the customer, it may do so in another telephone conversation.

### Motion to Reopen

On July 31, 1996, Ameritech Michigan filed a motion to reopen the record. It seeks to offer in evidence an MCI marketing letter that tells the customer to follow the "simple steps below" to change service to MCI and tells the customer to request that the local telephone company put a "switch freeze" on the customer's MCI service.<sup>15</sup> Ameritech Michigan says that the letter is inconsistent with MCI's position that PIC protection creates an onerous burden for customers seeking to switch intraLATA carriers and that the resulting frustration will prevent customers from making the change. It also argues that it shows that MCI views PIC protection as a lawful and reasonable option for customers.

The Commission denies the motion to reopen for two reasons. First, the Act requires the Commission to issue its final order no later than 180 days after the complaint was filed, or by August 12, 1996. MCL 484.2203(6); MSA 22.1469(203)(6). There is insufficient time to accommodate supplemental testimony and exhibits, a hearing, supplemental briefs and replies, a supplemental proposal for decision, and supplemental exceptions and replies. Second, the offered evidence would not affect the Commission's decision, which, as discussed above, does not depend on a finding that PIC protection creates an onerous burden to changing intraLATA carriers or that PIC protection is unreasonable or unlawful. Rather, the Commission has found that Ameritech Michigan promoted PIC protection in a misleading manner with anticompetitive effects just as some customers became eligible to participate in intraLATA presubscription.

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<sup>15</sup>The letter is apparently designed to be sent to customers who agreed to take MCI service without realizing that they had PIC protection on their account, which requires MCI to take the additional action of sending the letter and the customer to take the additional action of contacting the local phone company directly before the customer's choice can be effectuated: "At this time, we are unable to process your request for MCI service due to a restriction at your local phone company. Their records reflect a 'switch freeze' on your phone line and they require that you contact them directly in order to initiate MCI service."

**The Commission FINDS that:**

- a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, 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, 1992 AACRS, R 460.17101 et seq.
- b. Ameritech Michigan's December 1995 bill insert regarding slamming was misleading and deceptive and the effect was anticompetitive.

**THEREFORE, IT IS ORDERED that:**

- A. Ameritech Michigan shall cease and desist from violations of the Michigan Telecommunications Act, 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.
- B. Ameritech Michigan shall comply with the Commission's orders requiring the implementation of IntraLATA dialing parity.
- C. Ameritech Michigan shall mail to all of its customers a corrective bill insert no later than the September billing cycle in conformity with this order and shall provide notice to the Commission that it has done so.
- D. Ameritech Michigan shall apply PIC protection requests received beginning in December 1995 only to interLATA service. It shall not apply PIC protection requests to intraLATA and basic local exchange services until six months after mailing the corrective bill insert unless the customer has first affirmatively selected a provider for those services and then requests PIC protection.
- E. When a customer with PIC protection calls to request that Ameritech Michigan change his or her service providers, it shall not use that contact to try to persuade the customer not to change providers.

F. Ameritech Michigan shall permit the verification of PIC changes by any procedure approved by the Commission's March 10, 1995 order in Case No. U-10138 and shall also permit three-way conference calls with the consent of the customer.

G. The Executive Secretary shall place a copy of this order in the docket in Case No. U-11104.

H. The Executive Secretary shall provide a copy of the record and order in this case to Attorney General Frank J. Kelley for his review and possible action under the Michigan Consumer Protection Act, MCL 445.901 et seq.; MSA 19.418(1) et seq.

I. Ameritech Michigan's motion to reopen 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 E A L )

/s/ John G. Strand  
Chairman

I dissent, as discussed in my separate opinion.

/s/ John C. Shea  
Commissioner

/s/ David A. Svanda  
Commissioner

By its action of August 1, 1996.

/s/ Dorothy Wideman  
Its Executive Secretary



regulated services, if not actually part of the regulated services themselves [emphasis added]." *Id.*

The close connection specified by the Court between "dialing arrangements" and "regulated services" simply does not exist between a bill insert notifying customers of PIC protection and the provision of a regulated telecommunications service. As the GTE North court recognized, dialing arrangements, unlike the bill insert at issue, are manifestly necessary to the provision of telecommunications services, for, without dialing arrangements, one cannot even access the telecommunications network. The same cannot be said for the bill insert here. Thus, the majority has read into the law an interpretation which simply does not exist.<sup>1</sup>

Elsewhere, having concluded that the bill insert is "misleading," "anticompetitive" and "deceptive," Order at 17, the majority blithely concludes that the bill insert violates Section 502(a) of the Act which forbids statements and representations that are "false, misleading or deceptive." *Id.* The trouble with this argument is that there is simply no evidence that any party to this proceeding was misled or deceived. Even assuming for the sake of argument that Ameritech's competitors may have been competitively harmed by the bill insert, I do not understand them to have alleged in this proceeding that they

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<sup>1</sup>Even if the bill insert were interpreted as falling under the statutory meaning of "condition of service" and thus regulable as such, there has been no showing that the bill insert has violated any part of the Act and thus provides no occasion for regulatory relief.

were misled or deceived by the bill insert. This fact, coupled with the complete absence of any testimony from customers alleging deception, is fatal to the complaint.<sup>3</sup>

Finally, much of the responsibility for the ill-considered outcome in this proceeding should be ascribed to the Michigan Legislature which has seen fit to compress the time for proceedings such as this into a Procrustean schedule applicable to all complaint cases regardless of their complexity and regardless of their importance.

Based on the foregoing, I respectfully dissent from the accompanying order.

  
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John C. Shea, Commissioner

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<sup>3</sup>In my view, it is doubtful whether, under the Commission's prior orders, the complainants and intervenors would have standing to allege a violation of Section 502(a) against Ameritech.

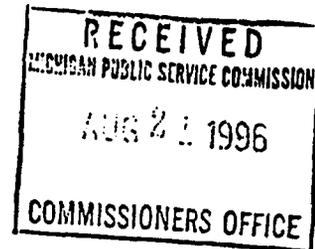
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August 20, 1996

VIA FACSIMILE

H. Edward Wynn, Esq.  
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Dear Ed:

On or about July 23, 1996, MCI received from Ameritech cost information for certain interconnection services and unbundled network elements. It is my understanding that the cost information Ameritech provided contains only the results of Ameritech's latest cost studies for these services and network elements, but does not include the studies themselves. Ameritech has not produced any of the back-up materials to support the cost information. We find your failure to produce the studies supporting these numbers, as well as other relevant cost studies to be contrary to the representations made to MCI during our July 12, 1996 mediation session and contrary to the understanding of the mediator, Matthew McLogan. By copy of this letter, we will notify each commission with whom we have requests for mediation pending of your failure to comply with your commitments made during mediation. We also believe that your failure to produce the requested cost studies to be evidence of Ameritech's lack of "good faith" negotiations.

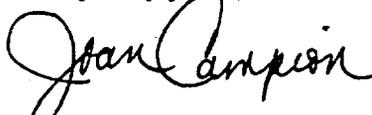
At the July 12th mediation session, and after Ameritech agreed to drop its insistence that MCI execute an overly broad nondisclosure agreement, Mr. Neil Cox stated that Ameritech would provide MCI with "every cost study Ameritech has ever produced." Hyperbole aside, this was a commitment by Ameritech to produce cost studies, not merely a summary of the results. Indeed, Mr. McLogan clearly had the same understanding as his July 15th memorandum to the Michigan Commissioners (see attached) states that "[f]ollowing the signing of the nondisclosure agreement, Ameritech will provide MCI with the cost studies and other data which MCI had requested." (Emphasis added). MCI believes that all relevant cost studies themselves are necessary in order for MCI to assess whether the cost results you have provided are appropriate.

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MCI's request for cost studies and their relevance to good faith negotiations was made clear on March 26, 1996 at the outset of negotiations. The Ohio and Wisconsin commissions subsequently confirmed the importance of cost studies to good faith negotiations. MCI's request is now fully supported by the Federal Communication Commission's ("FCC") First Report and Order issued in its local competition rulemaking on August 8, 1996. The FCC concluded that an "incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the negotiation process, because we conclude that such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent LEC are reasonable." Order, para. 155. In addition, Section 51.301(c)(8) of the FCC's rules provides that an incumbent LEC violates its duty to negotiate in good faith if it refuses "to furnish cost data that would be relevant to setting rates if the parties were in arbitration." As set forth by MCI in its petition for mediation, the FCC's conclusion on this issue is fully consistent with the conclusions reached by the Public Utilities Commission of Ohio and the staff of Wisconsin Public Service Commission.

Accordingly, and consistent with the FCC's Order, MCI requests once again that Ameritech furnish all cost studies for interconnection services and unbundled network elements that Ameritech has conducted within the past two years. Also, MCI requests that Ameritech furnish and identify any cost studies that Ameritech claims satisfy the FCC's total element long run incremental cost ("TELRIC") pricing methodology. Finally, although MCI has stated publicly its intention to file for arbitration against Ameritech, we fully intend to continue our efforts to reach a negotiated agreement.

Very truly yours,



Joan Campion

cc: Chairman John Strand  
Commissioner John Shea  
Commissioner David Svanda  
William Celio  
Matthew McLogan  
Chairman Dan Miller  
Commissioner Ruth K. Kretschmer  
Commissioner Karl A. McDermott  
Commissioner Richard E. Kohlhauser  
Commissioner Brent Bohlen

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cc: Charles Fisher  
Myra L. Karegianes  
Chairman Craig A. Glazer  
Commissioner Jolynn Barry Butler  
Commissioner Richard M. Fanelly  
Commissoner David W. Johnson  
Commissioner Ronda Hartman Fergus  
Christine Pirik  
Chairman Cheryl A. Parrino  
Commissioner Scott A. Neitzel  
Commissioner Daniel J. Eastman  
Nick Linden