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OFFICE OF THE SECRETARY

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Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: Coalition for Affordable Local and Long Distance Services
CC Docket Nos. 96-262; 94-1; 99-249; and 96-45

Dear Ms. Salas:

The undersigned, representing One Call Communications, Inc. ("One Call"), met today with Debra Weiner, Assistant General Counsel, to discuss issues relating to the application to payphone lines of the revised access charge proposal submitted by the Coalition for Affordable Local and Long Distance Services ("Coalition"). The discussion focused on One Call's request that, in the event that the Coalition's revised access charge proposal is adopted by the Commission, payphone lines be treated as single line business subscriber lines for purposes of assessing the presubscribed interexchange carrier charge ("PICC") and that the PICC now assessed for those lines accordingly be folded into the subscriber line charge assessed thereon.

The points addressed were those raised in the One Call comments previously submitted in the above-referenced dockets. In addition, the attached outlines were provided. In particular, it was noted that the mandate in Section 276 of the Communications Act to encourage the widespread deployment of payphone services militates strongly in favor of treating payphones as single line business lines in the event that the CALLS proposal is adopted and should be determinative, given the absence of any reference in Section 69.153 of the Commission's Rules to public telephones or other

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payphones. The discussion also addressed the point that such treatment would also end the current discriminatory and anticompetitive practice of assessing the PICC on the "0+" PIC at local exchange carrier payphones and on the "1+" PIC at private payphones.

Pursuant to the Commission's Rules, an original and seven copies of this letter and attachments are being submitted for filing in the above-referenced dockets. Please direct any questions or concerns to the undersigned.

Respectfully submitted,

Frank W. Krogh

Frank W. Krogh

Counsel for One Call Communications, Inc.

cc: Debra Weiner

ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM

OPERATOR COMMUNICATIONS, INC.
d/b/a ONCOR COMMUNICATIONS, INC.

CC DOCKET NO. 96-262

UNDER MODIFIED CALLS PROPOSAL, PAY TELEPHONE ACCESS LINES SHOULD BE TREATED AS SINGLE LINE BUSINESS LINES FOR PICC PURPOSES

- Issue of treatment of payphone lines for PICC purposes has been before FCC since 1998 when LECs filed tariffs treating payphone lines as multiline business lines (nothing in Access Reform Orders or Part 69 access charge rules authorizes such treatment).

- 0+ Carriers serving payphones are not able to recover PICC costs from customers:
  -- No ongoing relationship with callers who use payphones or with payphone providers.
  -- Few – if any – 0+ calls are made from most payphones. Reasons include a) prepaid calling cards; b) dial around calling; c) cellular/PCS services.

- Undermines universal service (availability of payphone services) to consumers since PICC charges on payphones will cause carriers not to serve those locations (often urban poor and rural locations) and reduce availability of payphones.

- Payphone services are relied on most heavily by low income and transient users who often do not have their own 1+ service, credit cards or cellular phones.

- LECs impose PICC in a discriminatory manner:
  -- Charged to 0+ PIC at LEC payphones.
  -- Charged to 1+ PIC at private payphones.
  -- Anticompetitive impact because 1+ PIC can pass on PICC to payphone provider, while 0+ PIC cannot.
  -- Michigan PSC found anticompetitive impact from similar discriminatory application of intrastate PICC.

- Payphone lines are more like single line business lines than multiline business lines
  -- separate ANIs,
  -- rarely used to conduct business
  -- located in non-business settings
  [note: Michigan PSC has determined that payphone lines are single line business lines for PICC purposes]

- Imposition of PICC charges on payphone providers through a combined SLC/PICC charge is consistent with FCC policy of assessing charges based on cost causation.

- Impact on ILECs would be minimal (less than 0.33% of access revenues)

PAYPHONE ACCESS CHARGES

Subscriber Line Charge (SLC)

- Under Modified CALLS proposal, nominal cap on single line business (SLB) SLC would go to $4.35 on July 1, 2000 and increase each year until it reaches $6.50 on July 1, 2003.

- Section 69.152(c) explicitly imposes multiline business (MLB) SLC on "public telephones." Continues under Modified CALLS proposal - averaged MLB SLC would go to lesser of $9.20 or amount set by formula in Modified CALLS proposal on July 1, 2000.

- SLC paid by payphone provider (LEC or private payphone owner).

Presubscribed Interexchange Carrier Charge (PICC)

- SLB PICC would be consolidated with SLB SLC and disappear as a separate charge under Modified CALLS proposal.

- MLB PICC would be capped at $4.31 on July 1, 2000 under Modified CALLS proposal (unless SLC cap reductions result in higher MLB PICC cap).

- Section 69.153 silent on assessment of PICC on payphone PICs, but LECs have imposed MLB PICC on them.

Discriminatory Application of PICC

- Most LEC payphones served by "0+" and a "1+" PIC.

    - 0+ calls are made by dialing operator and number to be called. Includes collect calls and calls billed to calling cards and credit cards.

    - 1+ calls are made by dialing 1 and number to be called. Typically paid by dropping coins into phone.

- LECs impose the MLB PICC on the 0+ PIC at LEC payphones and the 1+ PIC at private payphones. Where payphone chooses "no-PIC," PICC imposed directly on payphone provider.

Opticom/OCI Approach

- Opticom/OCI not requesting change in SLC imposed on payphones, just that PICC be folded into the SLC, as CALLS proposes for single line businesses.

- Could be implemented by treating all payphones same as "no-PIC" lines.

6TH CASE of Level 1 printed in FULL format.

In the matter of the application and complaint of AT&T COMMUNICATIONS OF MICHIGAN, INC., against AMERITECH MICHIGAN seeking resolution of a dispute concerning toll access rates

Case No. U-11660

MICHIGAN PUBLIC SERVICE COMMISSION

1998 Mich. PSC LEXIS 279

October 26, 1998

PANEL:
[*1] PRESENT: Hon. John G. Strand, Chairman; Hon. David A. Svanda, Commissioner

OPINION:
At the October 26, 1998 meeting of the Michigan Public Service Commission in Lansing, Michigan.

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On March 31, 1998, AT&T Communications of Michigan, Inc., (AT&T) filed an application and complaint (complaint) against Ameritech Michigan, with prefiled testimony and exhibits, pursuant to Sections 204 and 310 of the Michigan Telecommunications Act (the Act), MCL 484.2204; MSA 22.1469(204) and MCL 484.2310; MSA 22.1469(310). AT&T's complaint requested, among other things, that Ameritech Michigan's primary interexchange carrier charge (PICC) for intrastate toll access be reduced to 14 [cents] per line per month n1 and that the new PICC be allocated on a 50/50 basis to the inter- and intraLATA service providers for each end use customer in Ameritech Michigan's service territory. A principal theory behind AT&T's request was that the existing PICC rates imposed by Ameritech Michigan are excessive and unreasonably discriminatory, particularly when compared to the charges imposed for intrastate toll access by other Ameritech Corporation subsidiaries in Illinois, [*2] Indiana, Ohio, and Wisconsin. n2

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n1 According to the complaint, Ameritech Michigan's current monthly PICC ranges from 53 [cents] per line for primary residential customers to $ 2.40 per line for multiple business line customers.

n2 Ameritech is the parent company of Ameritech Michigan, Ameritech Illinois, Ameritech Indiana, Ameritech Ohio, and Ameritech Wisconsin.

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Pursuant to due notice, a prehearing conference was conducted on April 22, 1998 before Administrative Law Judge James N. Rigas (ALJ). In the course of the proceedings, the ALJ granted leave to intervene to MCI Telecommunications Corporation (MCI), Sprint Communications Company L.P. (Sprint), the Telecommunications Resellers Association (TRA), Long Distance of Michigan, Inc. (LDMI), the Michigan Pay Telephone Association (MPTA), the Small Business Association of Michigan (SBAM), and Attorney General Frank J. Kelley (Attorney General). The Commission Staff (Staff) also participated.

On April 29, 1998, Ameritech Michigan filed a motion to dismiss AT&T's complaint. [*3] As grounds for dismissal, Ameritech Michigan argued that the relief requested in the complaint would interfere with its discretion under Section 304a of the Act, MCL 484.2304a; MSA 22.1469(304a), to control the pace of its intrastate rate restructuring and to coordinate that restructuring with ongoing efforts by the Federal Communications Commission (FCC) to reform access rates at the interstate level. Ameritech Michigan also argued that AT&T's complaint is inconsistent with the Commission's determinations in dismissing a similar request to revise Ameritech's access charges in the July 31, 1997 order in Case No. U-11366. On May 7, 1998, AT&T, MCI, Sprint, the Attorney General, and the Staff filed responses opposing dismissal.

At the conclusion of a motion hearing on May 11, 1998, the ALJ issued an oral Proposal for Decision (PFD) recommending that summary disposition be granted to Ameritech Michigan. In so doing, the ALJ agreed with Ameritech Michigan that prior Commission orders, particularly the order in Case No. U-11366, established that Section 304a permits Ameritech Michigan to control the restructuring of its intrastate toll access rates prior to January 1, 2000. AT&T, MCI, [*4] Sprint, the TRA, the Attorney General, and the Staff filed exceptions to the PFD, and Ameritech Michigan filed replies to exceptions.

On June 2, 1998, the Commission issued an order finding that this case should not be disposed of by summary disposition. The Commission's order stated that "although there continue to be similarities" between this case and the situation addressed in Case No. U-11366, "there have also been notable changes in circumstances, and some matters thought to be uncertain in Case No. U-11366 have since become more clear." June 2, 1998 order in Case No. U-11660, p. 9. In light of that reduced uncertainty, the Commission continued, allowing Ameritech Michigan to indefinitely postpone reducing its PICC rates "could potentially impede the emergence of competition and harm the consumers that might ultimately benefit from access charge reductions." Id., p. 10. The Commission therefore remanded this case to the ALJ for further proceedings.

In addition to numerous motion hearings, evidentiary hearings were conducted on August 19 and 20, 1998. The record consists of 1,230 pages of transcript and 118 exhibits, 99 of which were admitted into evidence. The parties filed [*5] briefs and reply briefs on August 28 and September 8, 1998, respectively.

On September 25, 1998, the ALJ issued an updated PFD in this case (second PFD) in which he recommended granting, in significant part, the relief requested in AT&T's complaint. On October 2, 1998, AT&T, MCI, and Ameritech Michigan filed exceptions to the second PFD. Replies to exceptions were filed on October 9, 1998 by AT&T, MCI, Sprint, the TRA, the MPTA, the Attorney General, and Ameritech Michigan.

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II.
HISTORY OF THE PICC AND POSITIONS OF THE PARTIES

The PICC is a relatively new per-line access charge imposed on interexchange carriers (IXCs) by federal price cap-regulated LECs like Ameritech's five operating subsidiaries. At the interstate level, it was established by the FCC in CC Docket 96-262 as part of a multi-step plan to restructure access rates and to adjust the manner in which they are collected. Effective January 1, 1998, interstate PICC rates were capped at the following levels:

Primary Residential Line:	$ 0.53 per month
Additional Residential Line:	$ 1.50 per month
Single-Line Business:	$ 0.53 per month
Multi-Line Business:	$ 2.75 per month

Pursuant to the FCC's directive, [*6] Ameritech Michigan filed a federal tariff setting forth the PICC rates to be imposed on the primary interexchange carriers (PICs) that provide interstate telecommunications services to customers for which Ameritech Michigan serves as the LEC. In addition to those interstate access charges, Ameritech Michigan filed tariffs with the Commission establishing an intrastate PICC rate element. Ameritech Michigan's intrastate PICC rates closely track its interstate rates and form the basis of the dispute in this case.

AT&T

In support of its claim that Ameritech Michigan's intrastate PICC rates are excessive, AT&T pointed out that they are the highest imposed by any of Ameritech's five operating subsidiaries. Specifically, it noted that the monthly PICC rates being charged by the Ameritech subsidiary in each of these states were as follows:

	MI	IL	IN n3	OH	WI
				$ 0.15	
Primary Residential Line	$ 0.53	$ 0.39	$ 0.265/$ 0.265	$ 0.16	
Additional Residential Line	$ 1.50	$ 0.39	$ 0.75/$ 0.75	$ 0.15	$ 0.16
Single-Line Business	$ 0.53	$ 0.39	$ 0.265/$ 0.265	$ 0.15	$ 0.16
Multi-Line Business	$ 2.40	$ 0.39	$ 1.375/$ 1.375	$ 0.15	$ 0.16

Exhibit A-6. AT&T went [*7] on to note that the price differential depicted above results in a situation in which Michigan's end users provide over 52% of Ameritech's total regional PICC access revenue despite accounting for only 26% of Ameritech's access lines. See, Exhibit A-8. This evidence, AT&T concluded, indicates that Ameritech Michigan's PICC rates place an undue burden on Michigan's consumers and should be reduced.

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n3 The Indiana Commission ordered Ameritech Indiana to split the PICC for each type of end user into two equal components and to concurrently assess them against the end user's intraLATA and interLATA PICs, respectively.

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AT&T went on to contend that the manner in which Ameritech Michigan has chosen to assess its intrastate PICC unjustly favors Ameritech Michigan and unjustly discriminates against presubscribed interLATA carriers like AT&T. According to AT&T, this alleged anticompetitive implementation has taken two forms. First, where an end user does not have a presubscribed interLATA carrier, Ameritech Michigan has elected [*8] not to assess an intrastate PICC. Second, where an end user has a presubscribed interLATA carrier, Ameritech Michigan has chosen to impose the entire PICC on that carrier and none on the end user's presubscribed intraLATA carrier. Under this structure, AT&T noted, the PICC would never be assessed against an end user's presubscribed intraLATA carrier (which, in most cases, is Ameritech Michigan). AT&T therefore concluded that, in order to stop Ameritech Michigan from shifting a disproportionate share of the intrastate PICC to interLATA IXC's, the Commission should order that the PICC be assigned to each end user's inter- and intraLATA toll service providers.

AT&T further asserted that Ameritech Michigan's per-line intrastate PICC should be reduced to 14 [cents] per month for each of the four classes of end users. In reaching this figure, AT&T claimed that, individually, the PICC and the carrier common line charge (CCLC) imposed in any state within Ameritech's five-state region should recover approximately 10% of the parent company's regional common line revenues. 6 Tr. 293. According to AT&T, setting the PICC at 14 [cents] would accomplish this. AT&T further noted that when applied [*9] in conjunction with Ameritech Michigan's existing CCLC, these two charges would produce access revenues equal to 33% of Ameritech's regional total. Because that figure "still exceeds the Michigan 26% access line ratio," AT&T argued, adoption of its proposed 14 [cents] PICC rate would be more than fair to Ameritech Michigan. 6 Tr. 294.

Based on its earlier request to recover the PICC from a customer's primary inter- and intraLATA carriers alike, AT&T initially proposed splitting its proposed 14 [cents] figure into two equal parts. Specifically, it asked the Commission to order Ameritech Michigan to impose a PICC of 7 [cents] per line per month upon each customer's primary intraLATA and interLATA carriers. This request was subsequently modified to provide for an allocation based on minutes of use (MOU). Under this proposal, AT&T asserted that a larger share--namely, 10 [cents] --of the PICC rate should be assigned to each customer's primary intraLATA toll carrier to reflect the fact that a majority of all intrastate toll calls made in Michigan are made on an intraLATA, as opposed to an interLATA, basis. This would leave 4 [cents] to be assigned to each customer's primary interLATA toll [*10] carrier.

Finally, AT&T noted that Ameritech Michigan's average annual revenue per line, $ 636.72, ranges from $ 36.86 to $ 84.71 higher than that received by Ameritech's operating subsidiaries in Illinois, Indiana, Ohio, and Wisconsin. 6 Tr. 298. Moreover, AT&T continued, Ameritech Michigan's average annual revenue per line has increased by over $ 41 since the Act was amended in 1995. Id. AT&T therefore argued that its proposed changes to the intrastate PICC rates and method of application pose no significant financial risk to either Ameritech Michigan or its parent company and that the Commission should immediately grant the relief requested in the complaint. n4

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n4 AT&T further noted that limiting the multi-state comparison to revenue received for local and long distance calls only, and thus eliminating any variations caused by differences in how local calling areas are defined in each state, produced a similar result. As shown on Exhibit A-60, this narrower analysis indicated that annual per line revenues obtained in Michigan were still between $ 48.86 and $ 72.12 more than those obtained in the rest of Ameritech's five-state region.

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[*11]

MCI

MCI asserted that no underlying cost basis exists for Ameritech Michigan's intrastate PICC and its CCLC. As such, it contended that the Commission should immediately prohibit the continued collection of either charge. Should the Commission elect not to eliminate these charges in their entirety, MCI continued, it should, at a minimum, substantially reduce the PICC rate. Options offered by MCI included (1) capping the PICC at the level charged by one of the other operating subsidiaries in Ameritech's five-state region, or (2) phasing out the PICC over a reasonably short period.

MCI agreed with AT&T that any intrastate PICC imposed by Ameritech Michigan should be apportioned between each customer's inter- and intraLATA service providers. To do otherwise, MCI asserted, would allow Ameritech Michigan to discriminate against interLATA carriers (like itself and AT&T) by continuing to create an artificial price difference between the interLATA and intraLATA access charges. Likewise, MCI agreed with AT&T's most recent position regarding allocation of the intrastate PICC, and supported splitting that charge on the basis of MOU. However, MCI went on to argue that incumbent LECs (like [*12] Ameritech Michigan) should be required to collect the PICC from their customers instead of forcing IXCs to serve as the "tax collector" for Ameritech's operating subsidiaries. MCI's initial brief, p. 24.

Finally, in response to a proposal made by the Staff, MCI asserted that IXCs cannot legally be required to provide a line-item credit to their customers in an amount equal to any PICC rate reduction approved in this case. Specifically, MCI argued that because the Act only allows the Commission to order the direct pass-through of an access rate reduction in the context of a restructuring proceeding, and because this case does not constitute such a proceeding, Sections 304a and 310(6) of the Act, MCL 484.2304a; MSA 22.1469(304a) and MCL 484.2310(6); MSA 22.1469(310)(6), prohibit adoption of that proposal.

Sprint

Sprint took the position that, pursuant to Section 310(5) of the Act, LECs are prohibited from charging discriminatory access rates. Nevertheless, Sprint continued, Ameritech Michigan violated that prohibition by discriminating against interLATA toll providers in Michigan. Under Ameritech Michigan's tariff, Sprint noted, 100% of the LEC's intrastate PICC falls on interLATA [*13] carriers, while intraLATA carriers (such as Ameritech Michigan itself) are assigned no portion of the PICC. This, Sprint asserted, is patently discriminatory and creates an artificial price difference between intraLATA and interLATA access charges. To correct this problem, Sprint proposed requiring

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Ameritech Michigan to allocate its PICC between these two groups based on their respective shares of actual and imputed access minutes on Ameritech Michigan's system.

Like MCI, Sprint went on to argue that any savings provided to interLATA carriers by adopting its proposed allocation methodology need not be credited directly to end users. According to Sprint, market forces should work to reduce the rates charged by interLATA service providers, and any attempt to mandate a one-size-fits-all reduction would constitute an unnecessary attempt to regulate the rates charged by IXCs.

The TRA and LDMI

The TRA and LDMI n5 agreed with the preceding parties that Ameritech Michigan's intrastate PICC rates are both excessive and unreasonably discriminatory. However, these two went on to assert that the manner in which Ameritech Michigan chose to implement its PICC (e.g., shifting a significant [*14] share of its own PICC charges to interLATA service providers) has been particularly harmful to smaller telecommunications providers such as themselves.

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n5 The TRA and LDMI jointly offered a single witness, Jerry W. Finefrock. Nevertheless, they submitted separate, albeit consistent, briefs throughout the proceedings.

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In support of this assertion, they pointed out that members of the TRA, such as LDMI, historically have derived a large proportion of their revenue from within Michigan. n6 Thus, they continued, they lack the ability of larger, multi-state IXCs to absorb Ameritech Michigan's excessive charges and still remain in business. Accordingly, the TRA and LDMI argued that they have been placed at a competitive disadvantage even though they are providing the same service as larger carriers with national customer bases.

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n6 In LDMI's case, this exceeded 80%. 6 Tr. 402.

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[*15]

The TRA and LDMI jointly requested eliminating Ameritech Michigan's intrastate PICC in its entirety. Nevertheless, they went on to state that if this LEC's intrastate PICC continues to exist, the Commission should adopt AT&T's recent proposal to reduce the rate to 14 [cents] and to allocate it to all inter- and intraLATA service providers on a 4 [cents] to 10 [cents] basis, respectively.

The MPTA

The MPTA asserted that, as customers to whom these intrastate PICCs are passed on in the form of monthly per-line charges, its members were being forced

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to bear the burden of Ameritech Michigan's improper actions. It therefore fully supported AT&T's proposal to cap intrastate PICC rates at 10% of Ameritech's five-state total of such revenue and to prorate the PICC charge between the inter- and intraLATA carriers serving each line. However, the MPTA went on to claim that Ameritech Michigan has taken two other steps in implementing its intrastate PICC that were designed to make it more difficult for independent payphone providers (IPPs) to compete with the payphone unit of Ameritech Michigan's parent, Ameritech Pay Phone Services (APPS).

First, the MPTA noted that although Ameritech Michigan [*16] assesses its intrastate PICC on the 0+ carrier that is presubscribed to APPS, when it comes to its competitors' payphones, the intrastate PICC is imposed on the line's 1+ carrier. According to the MPTA, this has given APPS a competitive advantage by allowing it to escape paying the intrastate PICC in many cases.

Second, the MPTA asserted that Ameritech Michigan has further discriminated against IPPs by incorrectly classifying payphones at the more expensive, multi-line business rate for purposes of the intrastate PICC. As a result, the MPTA continued, each IXC that is presubscribed to a payphone must pay an intrastate PICC of $ 2.40 month, instead of the 53 [cents] single-line business rate. The MPTA claimed that this has been occurring despite the fact that, according to its consultant, Gary L. Pace, "payphone lines are much closer in description to a single business line than to multi-line business." 6 Tr. 685. The MPTA concluded by noting that, as long as APPS continues to be insulated from paying this intrastate PICC, unreasonable discrimination will continue to exist.

SBAM

Through the testimony of Barry S. Cargill, its Vice President of Government Relations, SBAM argued [*17] that Ameritech Michigan's intrastate PICC has placed an unconscionable burden on Michigan customers. Based on the significantly lower PICC rates imposed by Ameritech's operating subsidiaries in Illinois, Indiana, Ohio, and Wisconsin, Mr. Cargill argued that Michigan customers, especially small business customers, were being forced to pay more than their fair share. This was particularly true, he insisted, with regard to the rate for the multi-line business class. Mr. Cargill went on to assert that the excessive intrastate PICC rates imposed by Ameritech Michigan will only serve to constitute "a deterrent to business expansion and attraction efforts here in Michigan." 7 Tr. 828.

According to the SBAM, Ameritech Michigan took advantage of a loophole in the Act and assessed unreasonable and discriminatory intrastate PICC rates without obtaining prior approval from the Commission. 7 Tr. 829. This was particularly egregious in light of the fact that Ameritech Michigan continues to control over 95% of the state's local access lines. As a result, the SBAM recommended that until Ameritech Michigan's "share of the local access market is substantially reduced, the Commission should retain regulatory [*18] control over intrastate PICC fees." Id. The SBAM went on to conclude that a good first step would be to determine the appropriateness of the PICC rates, adjust them accordingly, and consider how refunds could best be provided to Michigan's end users.

Attorney General

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The Attorney General argued that Ameritech Michigan's intrastate PICC rates are discriminatory and anticompetitive, and that their application has been especially harmful to interLATA service providers and residential customers. He therefore proposed two alternative outcomes for this case.

First, the Attorney General recommended (1) suspending Ameritech Michigan's existing intrastate PICC rates, (2) deferring approval of any new rates until after the Commission has examined and ruled upon Ameritech Michigan's biennial cost study, and (3) either immediately refunding or holding for future refund, pending the outcome of that cost study, all intrastate PICC revenue collected thus far. In the alternative, he recommended adopting a new intrastate PICC rate not to exceed 14 [cents] per month, to be allocated equally to each access line's inter- and intraLATA service provider. In arriving at this second alternative, [*19] the Attorney General specifically recommended against splitting the new PICC rate between the inter- and intraLATA provider on a MOU basis. He did so because nontraffic sensitive (NTS) costs n7 recovered by the PICC were restructured in a way that allows recovery on a per access line basis. Thus, he concluded, "it would be inconsistent to now use MOU for allocating PICC recovery." Attorney General's brief, p. 21.

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n7 NTS costs generally refer to the costs of building, maintaining, and operating a local telephone loop that do not vary with the amount of usage that the loop receives. These costs are intended to be recovered through an LEC's local exchange rates, PICC, CCLC, its residual or transitional charge, and its end user common line charge, among other things.

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The Staff

The Staff noted that AT&T and the intervenors attempted to prove that Ameritech Michigan's intrastate PICC rates should be reduced. This was despite the fact that, at Ameritech Michigan's request, the ALJ struck all testimony designed to raise [*20] cost as an issue in this case. Based on its belief that appropriate PICC rates cannot be set in isolation, but rather would require an evaluation of all underlying costs and the degree of NTS cost recovery already being achieved through other means, the Staff concluded that Ameritech Michigan's PICC rates should not be revised in this case. Instead, the Staff recommended ordering Ameritech Michigan to provide, as part of the LEC's January 1999 biennial cost study, all information necessary for a reasoned analysis of what intrastate PICC rates should be imposed in the future.

Nevertheless, the Staff continued, the Commission should order Ameritech Michigan to cease applying the intrastate PICC in a discriminatory and anticompetitive manner. At a minimum, the Staff argued, Ameritech Michigan should be required to assign its intrastate PICC to each end user's inter- and intraLATA toll service providers. This should be done, the Staff pointed out, regardless of whether the end user had specifically undertaken presubscription of those services. In support of its position, the Staff asserted that because all IXCs or other toll providers (like Ameritech Michigan) use the local loop to originate [*21] and complete calls, they should contribute to the local loop's cost recovery.

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Turning to the issue of allocating the PICC between a customer's inter- and intraLATA carriers, the Staff stated a preference for a 50/50 split. This was due to the fact that it would be easier to apply than a MOU-based assignment and that whatever allocation percentage is adopted would only serve on an interim basis (meaning, it would remain in effect only until new rates are established following the 1999 biennial cost study).

The Staff concluded by recommending that if Ameritech Michigan's intrastate PICC rates are reduced in this case, all cost savings should be passed through directly to end users on a per line basis and the flow-through should be documented. The Staff argued that this is necessary to ensure compliance with Section 310(6) of the Act.

Ameritech Michigan

Ameritech Michigan asserted that AT&T's complaint fails to state a claim upon which relief can be granted. Specifically, Ameritech Michigan argued, the complaint asserts that discrimination is occurring because access customers in the rest of Ameritech's five-state region are paying different intrastate PICC rates than those imposed [*22] in Michigan. However, Ameritech Michigan continued, "it is self-evident that Ameritech Michigan does not charge access customers in other states; those charges are assessed by a different Ameritech entity." Ameritech Michigan's brief, p. 13. Thus, it asserted, the only way that AT&T's complaint makes sense is if Ameritech Michigan is lumped together with Ameritech's other four operating subsidiaries and held jointly liable for treating some access customers (those in Michigan) differently than others (those in the other four states) without justification. Ameritech Michigan concluded that this would be improper because it necessitates ignoring the separate corporate identities of Ameritech's five operating subsidiaries. Moreover, Ameritech Michigan argued, the Commission has no authority to act as a "super Commission" by using other states' access rates as a basis for setting new intrastate PICC rates in Michigan. Id., p. 15.

In the alternative, Ameritech Michigan argued that its actions in establishing the intrastate PICC for customers in Michigan were identical to those undertaken by the other four Ameritech operating subsidiaries. Specifically, each LEC imposed an intrastate [*23] PICC structure that, when all access revenues were considered, produced a revenue neutral result. In its case, Ameritech Michigan claimed, the PICC was designed to recover the same revenues for switched access during 1998 as had been collected during 1997, assuming no change in demand. Moreover, Ameritech Michigan continued, charging higher intrastate PICC rates in Michigan than in the rest of Ameritech's five-state region was necessary to offset Ameritech Michigan's relatively low basic local exchange rates. It therefore asserted that all claims of discrimination among and between these five states must be rejected.

Ameritech Michigan went on to assert that no support exists for claims that its intrastate PICC should be divided between a customer's inter- and intraLATA service providers or that any portion of the PICC should be assigned to lines where the end user has not presubscribed its 1+ service. Those proposals to split or reassign the PICC were based on allegations of discrimination, Ameritech Michigan noted. Thus, it argued, previous assertions regarding the absence of discrimination likewise serve to undercut the need to reallocate

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Ameritech Michigan's intrastate PICC.

Next, [*24] Ameritech Michigan challenged AT&T's recommendation to essentially cap the total PICC and CCLC revenue collected from Michigan customers at 20% of Ameritech's regional PICC/CCLC revenue. According to Ameritech Michigan, AT&T's proposal was arbitrary and unreasonable. This was due to the fact that "AT&T's simple formula ignores legitimate differences among Ameritech's five states, such as the historic and regulatory reasons" for eliminating the CCLC in three of those states. Id., p. 23.

Ameritech Michigan went on to argue that, contrary to the MPTA's assertions, there has been no unjust discrimination against IPPs with regard to the imposition of the intrastate PICC. The LEC conceded that, in most situations, its intrastate PICC is assessed differently to IPPs than to APPS. However, Ameritech Michigan continued, this is necessitated by differences in the type of lines leased by these groups, and not by their corporate affiliations. n8 As for the MPTA's claim that it is discriminatory to impose the multi-line business PICC to IPPs, instead of assessing the single-line PICC rate, Ameritech Michigan noted that (1) this comports with FCC precedent and (2) the multi-line business rate [*25] is being applied to payphones leased by both APPS and IPPs.

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n8 According to Ameritech Michigan, APPS generally lease what is referred to as a "coin line" or a "smart line," on which decisions regarding rates, call routing, and the collection of coins are controlled by the central office switch. In contrast, the MPTA's members generally use an "IPP line" or a "dumb line," on which those decisions are made by a "smart phone" instead of at the LEC's switch.

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Finally, Ameritech Michigan apparently agreed with Staff that if its intrastate PICC rates are reduced in this case, the Commission should order these savings passed through directly to end users. According to Ameritech Michigan, the record indicates that at least some IXCs chose not to pass through previous rate decreases. See, i.e., 6 Tr. 444. Moreover, Ameritech Michigan cautioned, although AT&T and MCI assert that the competitive marketplace will necessitate equivalent reductions in long distance rates, neither of these carriers is willing to commit to a pass-through [*26] on a dollar-for-dollar basis.

III.

THE SECOND PFD

In the second PFD, the ALJ agreed with AT&T and others that, pursuant to Sections 204 and 310 of the Act, this is the proper forum to address concerns about the reasonableness of Ameritech Michigan's intrastate PICC rates. In doing so, he continued, it would be appropriate to consider evidence presented in this case regarding the rates established by Ameritech elsewhere in its five-state region, as well as the revenues generated by those rates. According to the ALJ, this evidence clearly indicated that Ameritech is generating a disproportionately high level of access revenue in Michigan, on both a total and a per line basis.

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The ALJ went on to reject Ameritech Michigan's argument that the relatively high intrastate PICC rates assessed in Michigan were necessary to offset its lower basic local exchange rates. According to the ALJ, that argument ignored the fact that all or nearly all subsidies involving this LEC's local service have already been eliminated through restructuring. In support of this conclusion, he cited Ameritech Michigan's repeated assertions that all but two of its basic local exchange rates have been reestablished [*27] at levels exceeding total service long run incremental cost (TSLRIC). See, i.e., Exhibit A-17. He further noted that neither of the two exceptions (Centrex service provided in access area C and "Call Plan 400" service provided in access area C1) involved a significant number of lines or a substantial amount of revenue. For these reasons, the ALJ concluded that Ameritech Michigan's intrastate PICC rates should be declared excessive and unreasonable.

The ALJ went on to agree with AT&T and others that Ameritech Michigan's monthly intrastate PICC should be reduced to 14 [cents] per line. He based this conclusion on the grounds that, because there are 10 rate elements available for use by Ameritech to recover its common line costs (one PICC and one CCLC in each of the five states), "no single Ameritech intrastate rate should be set at a level which results in more than a 10% contribution to total regional common line revenue." Second PFD, p. 27. Until the Commission can review and respond to Ameritech Michigan's upcoming biennial cost study, he continued, this "20% revenue cap for each state" should prevent an unreasonable financial burden from being placed on any one customer group. [*28] Id.

Turning to the question of whether Ameritech Michigan implemented its intrastate PICC in a discriminatory manner, the ALJ agreed with numerous parties that it was improper to assign 100% of these charges to a line's presubscribed interLATA carrier. Ameritech Michigan's election to do so, he noted, ignored the fact that both inter- and intraLATA carriers use the LEC's access service to originate and terminate calls. Moreover, the ALJ concluded, assigning the intrastate PICC exclusively to the presubscribed interLATA carrier unfairly insulates Ameritech Michigan's intraLATA service from bearing its share of the related costs. He likewise agreed with the MPTA that Ameritech Michigan's actions regarding payphone lines (i.e., assessing the intrastate PICC on the 0+ carrier for APPS's lines and on the 1+ carrier for each IPP's lines) served to favor Ameritech's payphone subsidiary. On a related issue, the ALJ concluded that "the more appropriate classification for payphones is the single business line rate" for the reason that payphone lines are more like a single business line than a multi-line business connection. Second PFD, p. 29.

With regard to how the intrastate PICC should [*29] be apportioned between an end user's inter- and intraLATA service providers, the ALJ held that the Staff's proposal to allocate the PICC on a 50/50 basis made the most sense. In support of this conclusion, the ALJ noted that the Staff's methodology was much easier to apply than the MOU-based procedures suggested by several other parties. This was particularly important, the ALJ indicated, because whatever allocation is established in this case will be reviewed, and likely replaced with a more precise methodology, after examining the progress of Ameritech Michigan's NTS cost recovery in the context of its 1999 biennial cost study. Finally, the ALJ rejected the Staff's claim that all PICC rate reductions arising from this order must be directly credited to end users on a per line basis. According to him, the record indicates that "market forces will ensure

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that any access cost savings will be enjoyed by the ultimate end-users of the services." Second PFD, p. 31. Should competitive pressures fail to produce this result, the ALJ continued, the Commission "can revisit this issue to determine if it is then necessary to impose such a requirement." Id., at 32.

The ALJ therefore recommended [*30] that the Commission (1) require Ameritech Michigan to establish monthly intrastate PICC rates of no more than 14 [cents] per line for each of its four customer classes, (2) order Ameritech Michigan to modify the manner in which it administers its intrastate PICC so that all inter- and intraLATA carriers pay their proportionate share, (3) find that the PICC should be assessed against the 1+ carrier for all payphone lines, (4) conclude that the single-line business class is the most appropriate rate class for Ameritech Michigan to use when applying its intrastate PICC to payphones, (5) adopt the 50/50 allocation methodology proposed by the Staff, and (6) reject, at least for now, the proposal to mandate the direct pass-through of all intrastate PICC rate reductions arising from this order.

IV.

DISCUSSION

Jurisdiction

In its exceptions, Ameritech Michigan argues that the ALJ's recommendations are based on a significant misinterpretation of Sections 204 and 310 of the Act.

According to Ameritech Michigan, these provisions neither authorize the Commission to rule on the appropriateness of its intrastate PICC rates nor permit it to dictate how the PICC should be administered. [*31] Rather, Ameritech Michigan contends, Section 310(2) "mandates that 'A provider of toll access services' -- i.e., not the Commission -- 'shall set the rates for toll access services'." Ameritech Michigan's exceptions, p. 15; quoting MCL 484.2310(2); MSA 22.1469(310)(2). Ameritech Michigan further contends that only three limitations are imposed on the access provider's authority to set its own rates, namely: (1) the rates must not exceed the cap established by the FCC for similar interstate services; (2) the access services must be priced in a nondiscriminatory manner as between access customers; and (3) all restructuring of the provider's access rates must be completed prior to January 1, 2000. Because its intrastate PICC rates do not exceed its interstate PICC rates, all similarly situated customers are assessed the same rate, and the restructuring deadline is over 14 months away, Ameritech Michigan asserts, Section 310 provides no basis for the Commission to adopt the ALJ's recommendations.

Ameritech Michigan notes that Section 310(2) allows providers to agree to an intrastate PICC rate that is less than the interstate PICC rate established by the FCC. It further notes that [*32] where the providers cannot agree on a rate, they "may apply to the Commission under Section 204." Id. Nevertheless, Ameritech Michigan argues, Section 204 says nothing about granting the Commission authority to review and revise access rates (like the PICC) where the provider has adhered to each of the three limitations set forth above. All Sections 204 and 310(2) do, it contends, is grant a provider with standing to come before the Commission. Ameritech Michigan therefore concludes that the ALJ's recommendations exceed the Commission's jurisdiction and must be rejected.

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AT&T, Sprint, and the TRA disagree with that conclusion. They argue that, according to Ameritech Michigan's analysis, the LEC "would never be required to justify its rates as just and reasonable so long as they remained under the federal cap." TRA's replies to exceptions, p. 4. According to these parties, Ameritech Michigan's "tortured interpretation" conflicts with the clear intent of the Act, and should not be adopted. Id., p. 5.

The Commission agrees with these parties and concludes that it possesses the jurisdiction both to rule on the reasonableness of the intrastate PICC and to order that it be implemented [*33] in a non-discriminatory manner. This conclusion is based in large part on Section 310 of the Act, which states, in pertinent part:

(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. n9

* * *

(5) A provider of toll access service, whether under tariff or contract, shall offer the services under the same rates, terms and conditions, without unreasonable discrimination, to all providers. . . .

MCL 484.2310; MSA 22.1469(310).

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n9 Section 204 provides that "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). On page 25 of the second PFD, the ALJ concluded that the conditions set forth in Section 204 were established on the record. No exceptions were offered with regard to that conclusion.

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As can be seen from the language quoted above, Section 310(2) sets a cap on each access provider's intrastate PICC rates. In Ameritech Michigan's case, they may not exceed the rates in effect for its interstate PICC. Nevertheless, it is equally clear that the rates set at the federal level are not automatically deemed appropriate for use at the intrastate level. Pursuant to Section 310(2), the rates must be "just and reasonable" as well. Moreover, the Act defines a "just and reasonable" rate as one "that is not inadequate, excessive, or unreasonably discriminatory." MCL 484.2102(y); MSA 22.1469(102)(y). Thus, an intrastate PICC rate that is equal to or less than its corresponding interstate PICC rate may nevertheless violate the Act if it is found by the Commission to be excessive or unreasonably discriminatory.

As noted by the TRA, Ameritech Michigan "takes the position that this

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Commission's inquiry must start and end with a determination that the intrastate PICC is set at or below [its] interstate PICC rate." TRA's replies to exceptions, p. 4. The Commission finds this position untenable. Merely because the Act deems an access rate in excess of its corresponding federal rate to [*35] be per se unjust and unreasonable does not mean that any lesser rate is automatically acceptable. Had the Legislature intended such an interpretation, no need would exist for including the phrase "just and reasonable" in Section 310(2). Rather, the Legislature could have stated simply that intrastate toll access rates shall not exceed the federal rate. By rejecting this simpler statement in favor of Section 310(2)'s actual language, the Legislature intentionally granted the Commission the authority to regulate access rates set below federal levels in cases (like the present) where a dispute arises between providers. The Commission therefore concludes that Ameritech Michigan's exception must be rejected.

Excessive and Unreasonably Discriminatory Rates

As discussed earlier, the ALJ found Ameritech Michigan's intrastate PICC rates to be "excessive and unreasonable." Second PFD, p. 27. His conclusion was based on evidence that (1) Ameritech Michigan's end users provide a disproportionate share of the total PICC revenue collected from within Ameritech's five-state region, (2) those end users provide Ameritech Michigan an average of over $ 70 more per line in annual local and [*36] toll revenue than do their counterparts in Illinois, and (3) Ameritech Michigan's professed need to subsidize basic local exchange service through the application of higher access rates, like the PICC, has been eliminated due to restructuring. The ALJ went on to recommend that, of Ameritech's total combined PICC/CCLC revenue, no more than 20% should be recovered from the customers of any one state in its five-state region. Based on this 20% cap and relying on computations provided by AT&T's witness, Cathleen M. Conway, the ALJ concluded by recommending that the Commission set Ameritech Michigan's per-line intrastate PICC at 14 [cents] per month for each class of end users.

Ameritech Michigan excepts to those recommendations for the following three reasons. First, the LEC reasserts its argument that it was improper for the ALJ to rely on a comparison of Ameritech Michigan's intrastate PICC rates to those charged by other Ameritech operating subsidiaries. According to Ameritech Michigan, unreasonable discrimination pursuant to the Act "has always meant treating similarly situated parties in the state differently without justification." Ameritech Michigan's exceptions, p. 17. Nevertheless, [*37] Ameritech Michigan continues, it has always charged the same PICC rate to each member of its four customer classes. Furthermore, Ameritech Michigan contends, it has never assessed a PICC against end users in the states served by Ameritech's other operating subsidiaries. Ameritech therefore contends that any conclusion to the effect that it discriminated against Michigan end users by applying lower PICC rates in adjoining states "ignores the distinct corporate identities" of the five Ameritech operating subsidiaries, and must be rejected.

Second, Ameritech Michigan argues that even if the Commission considers the five-state region as a whole, there is no evidence of unreasonable discrimination against end users located in Michigan. Due to corresponding adjustments to other rates, Ameritech Michigan contends, Michigan's contribution to Ameritech's overall intrastate access revenue remained essentially the same before and after the implementation of the PICC. According to one of its

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witnesses, Stephen M. Oswald, Ameritech Michigan's share of total access revenue for the five-state region merely rose from 37.7% to 38.5% with the advent of the intrastate PICC. 7 Tr. 1038. Moreover, Mr. [*38] Oswald indicated, that rise was necessary to offset Ameritech Michigan's relatively low basic local exchange rates. Id. In further support of its claim, Ameritech Michigan argued that the average revenue obtained from each Michigan customer for all local services provided by Ameritech Michigan (including revenue obtained through the PICC) was lower than for most other customers in Ameritech's five-state region.

Third and finally, Ameritech Michigan contends that no cost basis was provided in support of the ALJ's recommendation to reduce the PICC to 14 [cents] per line and to cap the LEC's combined PICC/CCLC revenues at 20% of the regional total. According to Ameritech Michigan, the second PFD essentially admits that a cost study is necessary "because it recommends the PICC reductions only as an interim solution until such a study is performed next year." Ameritech Michigan's exceptions, p. 39. Moreover, it argues, imposing the 20% cap is clearly arbitrary and would have the unintended effect of requiring Ameritech Michigan to adjust its intrastate PICC or CCLC rates whenever one of Ameritech's other four operating subsidiaries alters its rates. Ameritech Michigan therefore asserts [*39] that because neither the 14 [cents] rate nor the 20% revenue cap is supported by cost data, their accuracy is in question and their proposed use must be rejected.

MCI also excepts to the ALJ's recommendations. However, in contrast to Ameritech Michigan (which proposed retaining the current rates), MCI claims that the ALJ should have gone further. Specifically, MCI contends that the absence of a cost basis for the PICC and CCLC justifies eliminating these access charges altogether. n10

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n10 In a related argument, MCI contends that the ALJ erred in striking evidence intended to prove that no cost basis has ever existed for the PICC and that the PICC's implementation has merely provided Ameritech Michigan with a source of windfall profits. This evidentiary issue is addressed later in the order.

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The Commission disagrees, in large part, with these exceptions. Notwithstanding Ameritech Michigan's arguments to the contrary, the Commission finds that comparing this LEC's intrastate PICC rates to those assessed by Ameritech operating [*40] subsidiaries in four surrounding states was proper in deciding whether the rates charged in Michigan are excessive and, as such, discriminate against IXCs and end users alike. Generally, two ways exist for determining whether a provider's rates are excessive and unreasonably discriminatory. The first is to compare them to the cost of providing the service in question. The second is to compare them to the corresponding rates imposed by similarly situated providers. In the present case, little or no cost data was received into evidence. The ALJ therefore turned to the other frequently used method of determining reasonableness, namely comparing the rates at issue to those charged by similarly situated providers. The Commission finds that doing so was proper in this case, particularly because the lack of cost data arose primarily from Ameritech Michigan's successful attempts to have the

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ALJ strike all such information from the parties' proposed testimony.

Moreover, the Commission agrees with the ALJ and concludes that Ameritech Michigan's PICC rates are excessive. The record supports this conclusion in the following three ways. First, evidence shows that although end users in Michigan [*41] account for only 26% of the access lines in Ameritech's five-state region, they and their IXCs provide over 52% of the region's intrastate PICC revenue. Exhibit A-8. Second, Ameritech Michigan's average annual revenue per line from end users in Michigan ranges from approximately $ 37 to $ 85 higher than that received by Ameritech's operating subsidiaries in Illinois, Indiana, Ohio, and Wisconsin. Exhibit A-18; 6 Tr. 305. Even if those figures are adjusted to eliminate variations in how local calling areas are defined in each state, information set forth on Exhibit A-60 shows that Michigan customers are being required to pay Ameritech Michigan as much as $ 72 more per line for annual local and toll service than customers located elsewhere in Ameritech's five-state region. Third, notwithstanding Ameritech Michigan's claims to the contrary, the LEC's relatively high PICC rates cannot be justified on the grounds that they are necessary to subsidize lower-than-normal basic local exchange rates. As confirmed by Exhibit A-17, Ameritech Michigan's previous restructuring has resulted in nearly all of its basic local exchange rates being set at or above TSLRIC. Thus, little or no need exists [*42] for the alleged subsidization.

Having found Ameritech Michigan's PICC rates to be excessive, the Commission turns to the more difficult question of what rates should be charged instead. In Michigan, the first step in resolving questions of this nature is to determine whether, and to what extent, existing rates exceed the provider's cost of service. Unfortunately, as noted by the Staff and others, Ameritech Michigan has not yet submitted a TSLRIC study (or any similar cost analysis) covering services like those at issue in this case. Without that information, the Commission concludes that it cannot accurately establish more appropriate PICC rates for use by Ameritech Michigan. n11 For that reason, the Commission finds that it must reject the ALJ's recommendations to reduce immediately the intrastate PICC to 14 [cents] per line and to impose a 20% cap on Ameritech Michigan's combined PICC/CCLC revenue.

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n11 Several parties believe that the dramatic difference between Ameritech Michigan's PICC rates and those imposed in several nearby states provides adequate justification for reducing the LEC's rates despite the absence of cost data. However, this ignores the possibility that, in total, the rates charged elsewhere in Ameritech's five-state region may be compensatory.

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This places the Commission in an uncomfortable position. On the one hand, the record convincingly shows that, compared to other Ameritech states, Ameritech Michigan's PICC rates are excessive. On the other, it lacks the cost data necessary to determine whether these and other rates imposed by Ameritech Michigan are, in combination, just and reasonable for use in recovering NTS costs of the local loop. The Commission therefore finds that it should adopt the Staff's proposal to require Ameritech Michigan to include, as part of its

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January 1999 biennial cost study, data necessary to establish, at a minimum, the TSLRIC of the LEC's access, toll, and local exchange services. Following receipt of that data and its examination by the Staff and other interested parties, the Commission should be in a position to determine whether Ameritech Michigan's PICC rates, when applied in conjunction with other cost recovery mechanisms, recover the NTS costs of Ameritech Michigan's local loop without producing a windfall or otherwise maintaining excessive rates for the LEC and its parent company. Moreover, to avoid a situation in which excessive PICC rates are charged indefinitely, the Commission finds [*44] that the parties should complete their examination of the cost data as expeditiously as possible, thus allowing the Commission to establish updated TSLRIC levels.

Improper Application of the Intrastate PICC

In addition to holding that Ameritech Michigan's intrastate PICC was excessive, the ALJ found that it was being applied in a discriminatory manner. This led to his recommendation that Ameritech Michigan be ordered to assign the intrastate PICC, on a 50/50 basis, to the inter- and intraLATA carriers serving each line. According to the ALJ, this assignment should occur regardless of whether the line is presubscribed. As for payphone lines, he recommended ordering Ameritech Michigan to assess the PICC against the 1+ carrier (instead of the 0+ carrier) for all lines and to begin applying the single-line (as opposed to the multi-line) business rate.

Ameritech Michigan excepts to these recommendations on several grounds. First, it argues that no support can be found for the conclusion that assigning the entire intrastate PICC to a line's interLATA carrier is discriminatory. Instead, Ameritech Michigan asserts, this type of exclusive assignment is consistent with the FCC's treatment [*45] of its interstate PICC. Second, it contends that the 50/50 split proposed by the Staff and recommended by the ALJ imposes too much of the PICC on intraLATA carriers like itself. According to Ameritech Michigan, the appropriate allocation should be computed on a MOU-basis and should exclude Ameritech Michigan's intraLATA toll usage. See, Ameritech Michigan's exceptions, pp. 48-49. Third, the LEC argues that it would be inappropriate for the Commission to rule on any issues regarding the application of Ameritech Michigan's intrastate PICC to payphone lines. Ameritech Michigan bases this argument on the fact that (1) AT&T's application made no mention of payphone lines, and (2) the FCC is currently conducting an investigation regarding how payphone lines should be treated for purposes of PICC recovery.

AT&T and MCI also except to the ALJ's recommendation to adopt the Staff's 50/50 PICC split. They, like Ameritech Michigan, contend that any allocation should be done on a MOU-basis. However, in contrast to Ameritech Michigan's proposed methodology, which would assign 64% of total PICC charges to a line's interLATA carrier, these IXCs advocated adopting a methodology that would assign [*46] approximately 70% of those charges to the intraLATA carrier.

The Commission finds that each of these parties' exceptions should be rejected. It reaches this conclusion for the following reasons.

First, regardless of what Ameritech Michigan might infer regarding the FCC's approved treatment of the interstate PICC, Section 310(5) of the Act specifically prohibits the provision of intrastate access service in an unreasonably discriminatory manner. At the federal level, AT&T witness Conway

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testified, assigning the PICC exclusively to interLATA carriers might not give rise to discrimination because virtually all interstate traffic is also interLATA in nature. 6 Tr. 312. The opposite is generally true, Ms. Conway noted, with regard to intrastate toll traffic. Id. Moreover, Ameritech Michigan continues to carry a large percentage of the intraLATA traffic within its service territory. Thus, by assigning the entire intrastate PICC to each line's interLATA service provider, Ameritech Michigan has been able to avoid contributing anything toward the recovery of access costs by way of the intrastate PICC.

All IXCs and toll providers (including LECs that provide intraLATA toll service) use [*47] the local loop to originate and complete calls. Thus, as noted by Rodney P. Gregg, an Access Charge Specialist in the Commission's Communications Division, they all "should be required to contribute to this local loop cost recovery." 7 Tr. 1209. Ameritech Michigan's failure to apply its PICC to inter-and intraLATA customers alike forces interLATA carriers to subsidize the LEC's intraLATA traffic. This discriminatory and anticompetitive effect is accentuated by Ameritech Michigan's decision not to assess the intrastate PICC on the lines of end users who, instead of presubscribing to another toll service provider, continue taking toll service from Ameritech Michigan. The Commission therefore finds that Ameritech Michigan's method of assigning its intrastate PICC exclusively to interLATA carriers directly violates Section 310(5) of the Act, the ALJ's recommendation on this issue should be adopted, and Ameritech Michigan should be ordered to assign its intrastate PICC to inter- and intraLATA service providers alike. It further finds that this shared assignment should be applied regardless of whether the line in question has been presubscribed.

Second, the Commission finds that should reject [*48] the parties' exceptions and adopt the ALJ's recommendation to allocate the intrastate PICC between each line's inter- and intraLATA service providers on a 50/50 basis. As pointed out by Mr. Gregg, a majority of the costs recovered by Ameritech Michigan's intrastate PICC relate to NTS plant. See, 7 Tr. 1210. Thus, because "the amount of use does not necessarily determine its cost," it makes sense to assign these costs equally to a line's inter- and intraLATA carriers. Id. Furthermore, the 50/50 split is much easier to implement than a MOU-based methodology. This is because there is no need to resolve disputes regarding (1) which minutes to use, (2) what time frame to base the split on, and (3) how often the split should be recalculated. The Commission therefore concludes that it should adopt the ALJ's recommendation and allocate Ameritech Michigan's intrastate PICC equally among each line's inter- and intraLATA service providers.

Third, the Commission finds unpersuasive all of Ameritech Michigan's exceptions regarding the application of its intrastate PICC to payphone lines. Notwithstanding Ameritech Michigan's claims to the contrary, the payphone issues raised by the MPTA [*49] fall within the scope of this proceeding. The essence of AT&T's complaint is that Ameritech Michigan has been discriminating against its competitors and potential competitors with regard to both its intrastate PICC rates and the manner in which they are being assessed. The MPTA's claims of discrimination against IPPs and in favor of APPS (Ameritech's payphone unit) fall within those parameters. Furthermore, little reason exists for postponing the resolution of the MPTA's concerns until after the FCC completes its review of interstate payphone issues. The record contains no

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indication of when the FCC is expected to complete its analysis. Moreover, because the FCC's order will be limited to interstate issues, it remains unclear how much guidance it will provide with regard to the intrastate issues raised in this case.

In contrast, the record clearly indicates that Ameritech Michigan's method of applying its intrastate PICC to payphone lines results in unreasonable discrimination and, as such, constitutes yet another violation of Section 310(5) of the Act. Due to the existence of a contractual relationship between IPPs and the 1+ carriers that serve their payphones, Ameritech Michigan's [*50] intrastate PICC is eventually passed through to the IPPs as a cost of doing business. 6 Tr. 679-680. This is entirely proper. Nevertheless, a much different result arises from Ameritech Michigan's decision to apply the intrastate PICC against the 0+ carriers that serve APPS's payphones. As MPTA witness Pace noted, the lack of a contractual relationship between APPS and these 0+ carriers generally prevents the 0+ carriers from "passing [the PICC charges] back to the Ameritech payphone unit." 6 Tr. 678. Because it can be used to insulate APPS from competitive market pressures, Ameritech Michigan's practice of assessing the intrastate PICC against APPS's 0+ carriers must stop. The Commission therefore adopts the ALJ's recommendation to require Ameritech Michigan to assess the PICC against the 1+ carrier (instead of the 0+ carrier) for all payphone lines.

Finally, the Commission concludes that payphones should be assessed at the less expensive single-line business rate, rather than the multi-line business rate. This conclusion is supported by the fact that, among other things, each payphone (1) has a separate phone number, (2) constitutes a stand-alone installation designed to serve a [*51] single, specific site, (3) is assigned a unique automatic number identification code for billing purposes, and (4) may have a different billing cycle than other payphones operated by the same entity. The Commission therefore adopts the ALJ's recommendation to order Ameritech Michigan to cease applying the multi-line business PICC rate to payphones within its service territory and to begin charging the single-line business rate instead.

Direct Pass-Through of Reductions

As noted earlier, the Staff proposed (and Ameritech Michigan agreed) that if the amount paid by toll service providers pursuant to Ameritech Michigan's intrastate PICC is reduced in this case, the Commission should order the direct pass-through of all cost savings to the IXCs' end users on a per line basis. According to the Staff, this was necessary to ensure compliance with Section 310(6) of the Act.

The ALJ recommended rejecting that proposal. According to the ALJ, he was persuaded by the record that "market forces will ensure that any access cost savings will be enjoyed by the ultimate end users of the services." Second PFD, p. 31. "Should experience prove the contrary to be true," he continued, "the Commission [*52] can revisit the issue to determine if it is then necessary to impose such a requirement." Id., at 31-32.

None of the parties except, and the Commission therefore finds that the ALJ's recommendation should be adopted. Today's action reduces the IXCs' expenses associated with Ameritech Michigan's intrastate PICC by requiring a more

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equitable allocation of those costs. The Commission invites intrastate toll providers to provide information to the Commission that quantifies the end user impact in Michigan of the cost reductions produced by this order. Further, the Commission puts all providers of intrastate toll service on notice that it intends to closely monitor this situation and may take further action if necessary.

Miscellaneous Issues

In addition to those discussed above, three additional issues have been raised by the parties. Two of these issues address evidentiary questions, while the third involves yet another request for relief.

First, MCI argues that the ALJ erroneously struck a portion of the testimony offered by its witness, Dennis L. Ricca. According to MCI, the stricken testimony was intended to show that, among other things, (1) no cost basis exists for Ameritech [*53] Michigan's PICC and CCLC, (2) both of those charges should be eliminated in their entirety, and (3) because Ameritech Michigan's rates exceed the TSLRIC of local service throughout much of the state, its earnings would be more than adequate without any PICC and CCLC revenue. Despite noting that the ALJ struck similar cost data offered by other parties and that the Commission previously rejected its emergency application for leave to appeal the ALJ's ruling regarding Mr. Ricca's testimony, n12 MCI asserts that the Commission should consider the stricken testimony when issuing its final order in this case.

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n12 See, the Commission's September 11, 1998 order in this case.

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The Commission finds that MCI's assertion should be rejected. In response to various motions brought by Ameritech Michigan, AT&T asserted early on that it was not its intent to treat this proceeding as a general rate case. Rather than conducting a detailed examination of each and every cost incurred by Ameritech Michigan, and then using that data to [*54] determine the TSLRIC for all access services provided by the LEC, AT&T envisioned a much more limited examination. See, 2 Tr. 66-67. Specifically, it asked only that the Commission review Ameritech Michigan's intrastate PICC, find that its rates were excessive compared to those charged in surrounding states, and require Ameritech Michigan to begin charging more reasonable rates and to implement its PICC in a less discriminatory manner. Due to the limited scope of this proceeding, the Commission concludes that the ALJ reached the right conclusion in striking the disputed portion of Mr. Ricca's testimony.

Second, Ameritech Michigan claims that it was improper for the ALJ to conclude that, when setting the new PICC rate, "consideration should be given to the extent to which subsidies from local service have already been eliminated through restructuring." Second PFD, p. 27. According to Ameritech Michigan, the ALJ's consideration mistakenly included cost data that, as discussed above, had already been found to be beyond the scope of this case. It therefore argues that his reliance on that excluded testimony violated Ameritech Michigan's due process rights and should be rejected.

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The [*55] Commission finds this argument unpersuasive. As noted by AT&T, Ameritech Michigan "is simply confusing two distinct bodies of evidence." AT&T's replies to exceptions, p. 3. The first, involving evidence offered to demonstrate that Ameritech Michigan's existing PICC rates greatly exceed its TSLRIC for access service, was consistently stricken by the ALJ at Ameritech Michigan's request. The second, involving information submitted in response to the LEC's claim that revenue from its intrastate PICC is needed to subsidize the cost of its local network, remains a part of the record. Thus, the ALJ's reliance on testimony regarding Ameritech Michigan's basic local exchange rates and the degree to which they have been restructured was proper.

Third and finally, MCI asserts that Ameritech Michigan should be ordered to impose its intrastate PICC directly on all end users in its service territory. According to MCI, this would be much more efficient than having the IXCs collect those charges from their respective customers and then forward payment to Ameritech Michigan, as currently occurs.

The Commission concludes that MCI's request should be rejected. The intrastate PICC is intended to recover [*56] the cost of allowing toll service providers like AT&T, MCI, Sprint, and even Ameritech Michigan (in situations where it provides intraLATA toll service) to use the LEC's local loops to initiate or conclude their customers' inter- or intraLATA calls. The intrastate PICC therefore constitutes a cost of doing business as a toll service provider. Thus, the Commission finds that it makes sense for each of those providers to collect the charge from their respective customers, rather than placing the entire burden on Ameritech Michigan.

Additional Remedies

As discussed earlier, the Commission concludes that the manner in which Ameritech Michigan chose to assess its intrastate PICC is unreasonably discriminatory in violation of Section 310(5) of the Act, MCL 484.2310(5); MSA 22.1469(310)(5). Thus, in addition to ordering Ameritech Michigan to assess those charges in a more equitable manner, two steps should be taken to make whole the affected parties as required by Section 601 of the Act, MCL 484.2601; MSA 22.1469(601). First, Ameritech Michigan should be ordered to refund to the appropriate interLATA carriers (or, in the case of payphone lines, the 1+ carriers that serve the IPPs) [*57] all payments in excess of those that would have been required if its intrastate PICC had been assigned, on a 50/50 basis, to the inter- and intraLATA carriers serving each line. This refund should apply to all payments for access service provided on and after January 1, 1998 and to which the intrastate PICC was applied. Second, Ameritech Michigan should pay the complainant's and intervenors' reasonable expenses, including attorney fees, incurred in connection with this case.

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. Ameritech Michigan, by discriminating against interLATA service providers

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and IPPs in the application of its intrastate PICC, violated Section 310(5) of the Act.

c. Ameritech Michigan should include, as part of its January 1999 biennial cost study, all data necessary to establish the TSLRIC for each of its access, toll, and local exchange services.

d. Ameritech Michigan should assign its intrastate PICC, on a 50/50 basis, [*58] to the inter- and intraLATA carriers serving each line regardless of whether the line is presubscribed.

e. Ameritech Michigan's single-line business PICC rate should be applied to all payphone lines and assessed to the 1+ carrier (as opposed to the 0+ carrier) for each line.

f. Ameritech Michigan should make whole the affected parties as required by Section 601 of the Act, MCL 484.2601; MSA 22.1469(601).

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan shall include, as part of its January 1999 biennial cost study, all data necessary to establish the total service long run incremental cost for each of, at a minimum, its access, toll, and local exchange services.

B. Ameritech Michigan shall assign its primary interexchange carrier charge for intrastate toll access, on a 50/50 basis, to the inter- and intraLATA carriers serving each line regardless of whether the line is presubscribed. This 50/50 allocation shall remain in effect unless specifically altered by the Commission.

C. With regard to payphone lines, the appropriate primary interexchange carrier charge for intrastate toll access shall be the single-line business rate. This rate shall be applied to all payphone lines and [*59] assessed to the 1+ carrier (as opposed to the 0+ carrier) for each line.

D. Ameritech Michigan shall refund to the appropriate interLATA carriers (or, in the case of payphone lines, the 1+ carriers that serve independent payphone providers) all payments in excess of those that would have been required if its primary interexchange carrier charge for intrastate toll access had been assigned, on a 50/50 basis, to the inter- and intraLATA carriers serving each line.

E. Ameritech Michigan shall pay the complainant's and intervenors' reasonable expenses, including attorney fees, incurred in connection with this case.

F. Ameritech Michigan shall file with the Commission, within 30 days of this order's issuance, all revised tariff sheets necessary to conform to this order.

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.

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MICHIGAN PUBLIC SERVICE COMMISSION

By its action of October 26, 1998.

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