

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of	)	
MICHIGAN PAY TELEPHONE ASSOCIATION	)	
et al. against AMERITECH MICHIGAN and	)	Case No. U-11756
VERIZON NORTH INC. , f/k/a GTE NORTH	)	
INCORPORATED.	)	
_____	)	

At the October 3, 2002 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER AND NOTICE OF HEARING

On March 8, 1999, the Commission issued an order resolving a complaint filed by the Michigan Pay Telephone Association (MPTA) against Ameritech Michigan and GTE North Incorporated, now known as Verizon North Inc. (Verizon). The MPTA appealed the order. On October 23, 2001, the Court of Appeals affirmed the Commission's order. Michigan Pay Telephone Ass'n v Michigan Public Service Comm, unpublished opinion per curiam of the Court of Appeals, decided October 23, 2001 (Docket No. 219950). The MPTA filed an application for leave to appeal. On June 24, 2002, the Michigan Supreme Court vacated the decision of the Court of Appeals and remanded the case to the Commission for reconsideration in light of the order of the Federal Communications Commission (FCC) in In the Matter of Wisconsin Public Service Commission; Order Directing Filings, CCB/CPD No. 00-01, Memorandum Opinion and Order,

FCC 02-05 (rel. January 31, 2002) (Wisconsin order). Michigan Pay Telephone Ass'n v Michigan Public Service Comm, 466 Mich 883; ___ NW2d ___ (2002).

To implement the remand, the Commission issued an order on July 10, 2002 setting a briefing schedule. On August 7, 2002, the MPTA, Ameritech Michigan, Verizon, AT&T Communications of Michigan, Inc. (AT&T), and MCI WorldCom Communications, Inc. (MCI WorldCom) filed briefs. On August 28, 2002, the same parties filed reply briefs.

The central disputed issue on remand is whether the prices that Ameritech Michigan and Verizon charge to payphone service providers comply with the FCC's new services test. The MPTA argues that Ameritech Michigan and Verizon have been out of compliance with the test since May 1997 and that the FCC has ruled that the Commission's determination to the contrary in the March 8, 1999 order is incorrect. It argues that the existing record provides a sufficient basis to set rates that do comply with the new services test and that the Commission should do so now and order refunds of excessive rates back to April 15, 1997.

Ameritech Michigan argues that the FCC substantially modified the new services test in the Wisconsin order and that the Commission must therefore conduct a new contested case proceeding to review cost studies and other materials needed to determine compliance with the reformulated new services test. As to the issue of refunds, Ameritech Michigan argues (1) that the Wisconsin order has been appealed and, because it may be reversed, is not yet ripe to be implemented in this docket, (2) that the FCC's decision has only prospective effect, (3) that there is no showing that the rates approved by the Commission are unreasonable, a prerequisite to a refund, and (4) that a refund would violate the prohibition against retroactive ratemaking and the filed rate doctrine.

Verizon argues that the FCC has now ruled that the new services test applies only to Bell operating companies and that, in any event, the record shows that its rates comply with the new services test.

The Commission concludes that the parties should be given the opportunity to supplement the record before the Commission decides how the FCC's Wisconsin order affects this case and whether any refunds are appropriate. First, contrary to the MPTA's repeated assertion, the FCC has not determined that the Commission's March 8, 1999 order does not comply with the new services test. The FCC's Common Carrier Bureau issued a decision on March 4, 2002 stating that the Commission's decision "appear[s] to be inconsistent with the Wisconsin Order," and directing the Commission to "re-evaluate" its decision "to ensure compliance with the Wisconsin Order." FCC CCB DA 02-516, Order addressing petitions for declaratory ruling, rel'd March 4, 2002, para. 3. Further development of the record will assist the Commission in making that re-evaluation.

Second, Ameritech Michigan argues that the FCC has changed the new services test and that it should have the opportunity to present evidence based on the FCC's reformulation of the test. The MPTA denies that the test has changed or that further development of the record is needed. Before the Commission considers a remedy as significant as the refunds that the MPTA demands, it should assure that it has provided due process to all parties rather than leave the final order open to challenge on that basis. In the reopened proceedings, the MPTA will have an opportunity to show that the test has not changed and that the existing record is sufficient.

Third, proper application of the new services test may yield different rates at various times since April 15, 1997. The reopened proceedings will provide an opportunity for the Commission to determine the proper rates that should be in effect prospectively, as well as permitting the

Commission to consider which rate or rates were in compliance with the test since April 15, 1997, which could affect the amount of any refunds.

Finally, the FCC's Wisconsin order is under appeal. The time required to conduct the reopened proceedings will also provide time for action on that appeal. In the circumstances of this case, the Commission is not inclined to consider immediate refunds that it might have to undo in a matter of months. Instead, while that appeal is pending, the parties can productively use the time to create a full record for the Commission's consideration.

In reopening the record, the Commission is not providing an opportunity for parties to raise new issues or to relitigate issues that have been resolved. For example, the Commission ruled in the March 8, 1999 order that Verizon is subject to the new services test. That issue is not before the Commission on remand, at least as the Commission understands the Michigan Supreme Court's remand. The parties should focus on creating a record to assist the Commission in resolving the issues raised by the remand. On the other hand, there is no requirement that any party provide additional evidence. The Commission is cognizant of the need to bring finality to this issue with a minimum of litigation, and is only providing an opportunity for the parties to provide any additional evidence that they believe is required for the Commission to address the issues remaining in this case after the remand by the Michigan Supreme Court.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The record should be reopened.

THEREFORE, IT IS ORDERED that:

A. The record is reopened.

B. A prehearing conference should be held on November 5, 2002 at 9:00 a.m. at the Commission's offices, 6545 Mercantile Way, Lansing, Michigan.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of October 3, 2002.

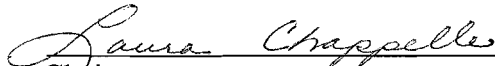
/s/ Dorothy Wideman
Its Executive Secretary

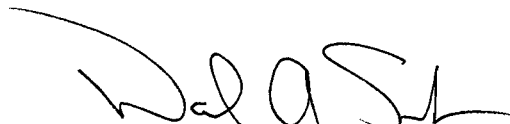
THEREFORE, IT IS ORDERED that:

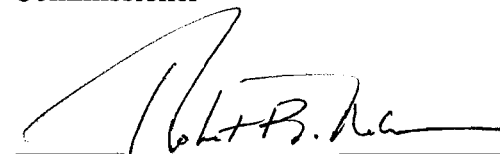
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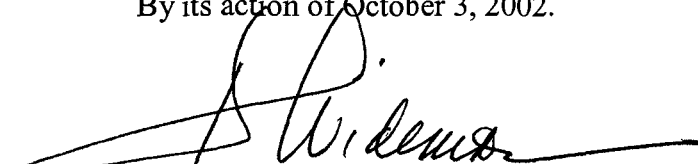
MICHIGAN PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

By its action of October 3, 2002.


Its Executive Secretary

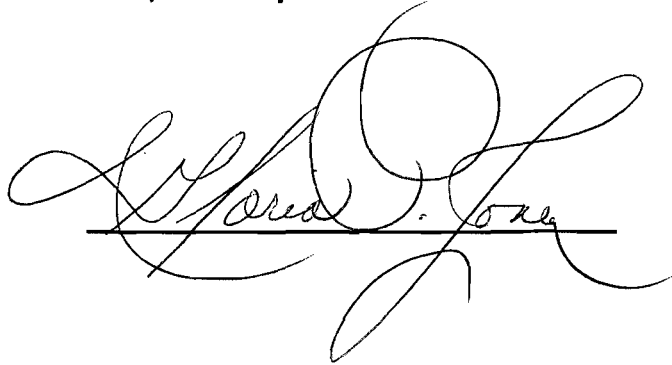
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STATE OF MICHIGAN)

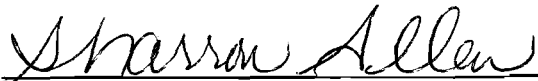
Case No. U-11756

County of Ingham)

Gloria P. Jones being duly sworn, deposes and says that on October 3, 2002, A.D. she served a copy of the attached Order by mailing copies thereof by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

A handwritten signature in cursive script, appearing to read "Gloria P. Jones", is written over a horizontal line.

Subscribed and sworn to before me
this 3rd day of October 2002

A handwritten signature in cursive script, appearing to read "Sharon Allen", is written over a horizontal line.

Notary Public, Ingham, County, Michigan
My Commission expires August 16, 2004

SERVICE LIST FOR DOCKET # U - 11756-
DATE OF PREPARATION: 10/04/2002

CASE #

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