

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to)
commence a collaborative proceeding to monitor and)
facilitate implementation of Accessible Letters issued)
by **SBC MICHIGAN** and **VERIZON**.)
_____)

Case No. U-14447

At the May 10, 2006 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER DENYING STAY

On March 29, 2005, the Commission issued an order in Case Nos. U-14303, U-14305, and U-14327 (March 29 order), addressing, among other things, the appropriate method to bring interconnection agreements into compliance with the Federal Communications Commission's (FCC's) Triennial Review Order¹ (*TRO*) and its Triennial Review Remand Order (*TRRO*).² The Commission referred the issues concerning adoption of an amendment to bring the interconnection

¹Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 16984 (2003), vacated in part, *United States Telecom Assn v FCC*, 359 F3d 554 (DC Cir 2004).

²In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel'd August 20, 2004).

agreements into compliance with federal law to the collaborative established in Case No. U-14447.

Pursuant to an agreed process, the parties created a list of disputed issues and offered contrasting contract language for the opposing views on each listed issue. On September 20, 2005, the Commission issued an order (the September 20 order) resolving the list of disputed issues, one of which was whether unbundled network elements provided pursuant to obligations of AT&T Michigan, f/k/a SBC Michigan, under 47 USC 271 (Section 271) may or should be included in interconnection agreements negotiated by the parties and approved by the Commission under the provisions of 47 USC 251 and 252. The Commission rejected the language proposed by both sides of this issue.

The Commission is persuaded that the disputed language proposed by both parties should not be included in the amendment. The *TRO* and *TRRO* did not affect SBC's Section 271 obligations. Those obligations may be argued and decided at a different time and in a more appropriate proceeding. Moreover, to grant the Joint CLECs' position would essentially require SBC to provide the UNE-P at TELRIC rates, which the Commission has already found would be inconsistent with the *TRO* and *TRRO*. However, to approve SBC's proposed language in its entirety would exclude provisions for obtaining facilities pursuant to SBC's obligations under Section 271 from inclusion in the interconnection agreement and avoid the approval process required under Section 252. The Commission is still convinced that obligations under Section 271 should be included in interconnection agreements approved pursuant to Section 252. However, the Joint CLECs must negotiate with SBC concerning terms and conditions, seeking Commission arbitration if necessary. If the CLECs experience problems with obtaining items available pursuant to Section 271, they may take appropriate enforcement action.

September 20 order, p. 16.

No petitions for rehearing were filed concerning this order.

On May 1, 2006, more than seven months after the September 20 order, AT&T Michigan filed a motion for stay of the September 20 order pending judicial or FCC review. The motion states that it is brought pursuant to the provisions of MCL 484.2203(16). In its motion, AT&T Michigan states that on April 28, 2006, it filed a petition for declaratory and injunctive relief in the United

States District Court for the Eastern District of Michigan, seeking review of, among other things, the portion of the Commission's September 20, 2005 order that concluded Section 271 obligations should be included in interconnection agreements negotiated and approved under 47 USC 251 and 252. AT&T Michigan argues that the Commission should issue a stay with regard to the negotiation and arbitration of Section 271 obligations until the federal court or the FCC rules on the issue.

On May 3, 2006, XO Communication Services, Inc., (XO) filed a response to AT&T Michigan's motion. In its response, XO argues that the Commission should deny AT&T Michigan's motion for three reasons: (1) There is no pending appeal of the September 20 order to invoke the provisions in MCL 484.2203(16); (2) The motion fails to cite legal authority to suggest that the Commission's September 20 order was in error; and (3) AT&T Michigan fails to support its motion with any specific statement of facts, affidavits, or other documentary evidence.

On May 9, 2006, the Commission Staff (Staff) filed its opposition to AT&T Michigan's motion. The Staff argues that AT&T Michigan's filing was not timely and that parties have a right to rely on the Commission's orders unless or until they are reversed on appeal or modified by the Commission. Moreover, the Staff states, competitive local exchange carriers have negotiated interconnection agreements with AT&T Michigan based on the Commission's September 20 order. It argues that public policy would not be served by granting a belated request for stay, particularly when the requesting party has failed to demonstrate any harm that will be inflicted if the request for stay is denied. Therefore, the Staff recommends that the Commission deny the motion for stay.

MCL 484.2203(16) provides:

Upon the filing of a motion for stay, the commission may, on terms as it considers just, stay the effect or enforcement of an order, except an order regarding rates or

cost studies. A motion for stay, including a request for setting the amount of any appeal bond, are governed by the provisions for obtaining a stay of a civil action set forth in R 7.209 of the Michigan court rules. The commission shall decide a motion for stay within 10 days from the date the motion is filed with the commission.

MCR 7.209(E)(1) provides that the Commission “may order a stay of proceedings, with or without bond, as justice requires.” A stay order must conform to any condition expressly required by the statute authorizing review. MCR 7.209(E)(3).

The Commission finds that justice does not require staying its September 20 order or any portion of it. AT&T Michigan did not seek rehearing or file an appeal within the applicable time period for doing so. The September 20 order is not the subject of a pending appeal, which could support the request for a stay pending appeal. Moreover, AT&T Michigan has not demonstrated any error in that order. The Commission therefore concludes that the motion for stay should be denied.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission’s Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The motion for stay should be denied.

THEREFORE, IT IS ORDERED that the motion for stay filed by AT&T Michigan on May 1, 2006 is denied.

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

Any party aggrieved by this order may file an action in the appropriate federal District Court pursuant to 47 USC 252(e)(6).

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of May 10, 2006.

/s/ Mary Jo Kunkle
Its Executive Secretary

Any party aggrieved by this order may file an action in the appropriate federal District Court pursuant to 47 USC 252(e)(6).

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of May 10, 2006.

Its Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-14447

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on May 10th 2006, A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Patricia Fronta

Subscribed and sworn to before me
this 10th day of May 2006

Notary Public, Eaton County, Michigan
Acting in Ingham, County, Michigan
My Commission expires June 5, 2007

SERVICE LIST FOR DOCKET # U – 14447 -
DATE OF PREPARATION: 12/21/2005

CASE #

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P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-14447

County of Ingham)

April M. Arman being duly sworn, deposes and says that on May 10, 2006 A.D. she served a copy of the attached Commission orders via E-Mail, to the persons as shown on the attached service list.

April M. Arman

Subscribed and sworn to before me
this 10th day of May 2006

Gloria Pearl Jones
Notary Public, Eaton County, MI
Acting in Ingham County, MI
My Commission Expires June 5, 2007

Telecommunications- Commission's Own Motion

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Metro Teleconnect Companies

Metro Teleconnect Companies

Metro Teleconnect Companies

Allendale Telephone Company

Baraga Telephone Company

Barry County Telephone Company

Carr Telephone Company

Chapin Telephone Company

Chippewa County Telephone

Company

Cinergy Communications Company

Climax Telephone Company

Climax Telephone Company

Cypress Communications Operating

Company, Inc.

Drenthe Telephone Company

Drenthe Telephone Company

Hiawatha Telephone Company

Kaleva Telephone Company

Kaleva Telephone Company

Lennon Telephone Company

Ogden Telephone Company

Ogden Telephone Company

Peninsula Telephone Company

Pigeon Telephone Company

Sand Creek Telephone Company

Springport Telephone Company

Springport Telephone Company

Sprint Communications Company

U.S. Signal Company, LLC

Upper Peninsula Telephone

Company

Waldron Telephone Company

Westphalia Telephone Company

Winn Telephone Company

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Tru Comm Corporation

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Superior Spectrum Telephone and

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OneStar Long Distance, Inc.

Deerfield Farmers' Telephone Co.

Lisa Felice

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Grid4 Communications Inc.

Grid4 Communications, Inc.

Campus Communications Group

Campus Communications Group

ICG Telecom Group, Inc.

Omniplex Communications Group

IG2, Inc.

Global Teledata II, LLC

Bilan Communications Inc.

Bulls Eye Telecom Inc.

Bulls Eye Telecom Inc.

CIMCO Communications Inc.

CoreComm Michigan Inc.

Intrado Communications Inc.

KMC Telecom II Inc.

Primus Telecommunications Inc.

Talk America Inc.

Talk America Inc.

Talk America Inc.

Universal Access Inc.

Verizon North Inc.

Verizon North Inc.

Computer Intelligence 2 Inc. (CI2)

CAT Communications International

Kathleen Kerr-Lawrence

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ClearTel Telecommunications
Cleartel Telecommunications, Inc.
Midwestern Telecommunications
Midwestern Telecommunications
Navigator Telecommunications
NorLight Telecommunications, Inc.
Waypoint Telecommunications, LLC
dPi Teleconnect, LLC
Chippewa County Telephone
New Rochelle Telephone
Quality Telephone, Inc.
Sand Creek Telephone
Buckeye Telesystem, Inc.
Accu Tel of Texas, Inc.
UCN, Inc.
McLeod USA
Coldwater Telecomm Utility
KMC Telecom V & KMC Data
Telnet Worldwide, Inc.

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* Total number of users subscribed to the list: 227
* Total number of local host users on the list: 0
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