

CLARK HILL
PLC
ATTORNEYS AT LAW

Lansing, Michigan Office:
2455 Woodlake Circle
Okemos, Michigan 48864-5941
Tel. (517) 381-9193 ■ Fax (517) 381-0268
www.clarkhill.com

Leland R. Rosier
Phone: (517) 381-2143
E-Mail: lrosier@clarkhill.com

November 5, 2002

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-12320

Dear Ms. Wideman:

Enclosed for filing please find an original and 15 copies of the CLEC Association of Michigan's Comments Regarding SBC's Submittal of Ernst & Young Report in the above-captioned proceeding. Proof of Service upon the parties of record is also enclosed.

Best regards,

Clark Hill PLC



Leland R. Rosier

LRR:pgs
Enclosure

cc: Parties of Record

3165298v1
16839/078741

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to consider AMERITECH MICHIGAN's compliance)
with the competitive checklist in Section 271 of)
the Federal Telecommunications Act of 1996.)

Case No. U-12320

**THE CLEC ASSOCIATION OF MICHIGAN'S INITIAL COMMENTS REGARDING
SBC'S SUBMITTAL OF ERNST & YOUNG REPORT**

NOW Comes the Competitive Local Exchange Carriers Association of Michigan ("Association" or "CLECA") and for its Initial Comments Regarding SBC Ameritech Michigan's ("SBC" or "Ameritech") Submittal of the Ernst & Young Report to this Commission states as follows:

INTRODUCTION

On July 31, 2002, SBC provided notice that it intended to supplement the record on the performance measurement results with an "audit" being conducted by Ernst & Young, LLP, SBC's own regular financial auditors. On September 16, 2002, the Commission issued its order in this docket (the "September 16, 2002 Order") granting SBC's request to commence the final review process of the third-party OSS test managed by BearingPoint Inc. f/k/a KPMG. The order allowed SBC to file the Ernst & Young report, but stated:

However, in commencing the review now, the Commission does not express any view about the likely outcome of that review or the weight that will be accorded to the Ernst & Young report or even that the Ernst & Young report will be given any weight.¹

¹ September 16, 2002 Order, p 3.

The Ernst & Young Report, dated October 18, 2002, was filed on October 21, 2002. Under the Commission's schedule, initial comments on the report are due November 5, 2002. CLECA files these Initial Comments pursuant to that schedule.

THE COMMISSION SHOULD GIVE NO WEIGHT TO THE ERNST & YOUNG REPORT, AND, IF ANY WEIGHT IS GIVEN, IT IS CLEAR THAT THE REPORT DOES NOT SUPPORT 271 APPROVAL

When this proceeding began, the Commission, SBC, and the CLECs agreed to use BearingPoint to conduct rigorous, military-style tests to assure that SBC complied with the Business Rules and the Performance Measures, so that SBC could submit three months of data showing its compliance prior to obtaining Commission endorsement of its upcoming bid for 271 approval from the FCC. Due to disputes over methodology, SBC has now concluded that BearingPoint's approach is not fast enough generally, and that it is unlikely to obtain a passing grade from BearingPoint on several performance measures, in particular.

As a result, like the child that wants to change the rules halfway through a game when it looks like he is losing, SBC now seeks to change the rules partway through this process by bringing in a new umpire. Make no mistake, Ernst & Young has been brought in for only one reason: to end-run the BearingPoint report and speed its own attempt at 271 approval without the previously agreed to successful BearingPoint testing. The Association's position is clear. SBC should not be given a passing grade until it actually passes the agreed-to tests. SBC has not done so, and its failure should not be rewarded by allowing an end-run to another umpire that is not conducting military-style testing, is not contacting the CLECs that are the impacted customers, and is not placing actual orders to SBC. The entire concept of the Ernst & Young audit as support for 271 approval should be rejected by the Commission, and the report therefore should be given no weight on that basis alone.

That being said, the Association is well aware that the Commission has allowed, mistakenly we submit, the Ernst & Young report to be filed. The Association will thus address the report itself as well.

From the face of the report, the only logical result is for the Commission to either discount the report entirely or use it as a basis for rejecting 271 approval.

If the stakes were not so high, the report would actually be comical. The very nature of the report is farcical. The report actually states:

Our examination also disclosed certain instances of material noncompliance with the Business Rules during the Evaluation Period as described in Attachment A to this report.

In our opinion, considering the Company's interpretation of the Business Rules discussed in Attachment B and except for the material noncompliance described in Attachment A, the Company complied, in all material respects, with the Business Rules during the Evaluation Period.²

The report states that except for the noncompliance the Company complied, and further bases its entire evaluation on SBC's interpretation of the Business Rules. That is ridiculous on its face.

To illustrate the absurdity of the report, consider the following example that everyone would consider outrageous:

The defendant has asked for an opinion as to whether he has complied with criminal laws of this state during a specified period. Our review found that he committed two felonies in March, three misdemeanors in April, and a felony in May. Our opinion is that, except for the legal violations described above and based on the defendant's interpretation of the criminal laws, the defendant complied in all material respects with the criminal laws of this state during the relevant period.

² Report of Independent Accountants on the Company's Compliance With the Business Rules, October 18, 2002. [Emphasis added]

Clearly, nobody would consider such a report as even being serious, let alone as the basis for evaluating the defendant's compliance with criminal laws. While this is an extreme example and is used for illustrative purposes only, the logic of the Ernst & Report findings is the same, and should also be rejected.

Either SBC has complied materially with the Business Rules or it has not. Since Ernst & Young found "material noncompliance," SBC did not comply during the Evaluation Period. To exclude the findings of material noncompliance in order to find material compliance is circular logic of the worst kind and must be summarily rejected by the Commission. Clearly, the only finding that can be made from this report is that SBC is not in compliance.

The Commission stated in its September 16, 2002 order that it might "terminate this review at any time if it concludes on the information provided... that Ameritech Michigan is unlikely to be able to show successful operation of its OSS and compliance with the performance measurements."³ The Ernst & Young report found numerous instances of material noncompliance. Under such circumstances, the Commission should call a halt to these review proceedings, and send SBC back to the testing grounds to abide by the testing plan to which it agreed until SBC can get it right and stop wasting everyone's time and money.

Respectfully submitted,

CLARK HILL PLC



Roderick S. Coy (P12290)
Leland R. Rosier (P33827)
2455 Woodlake Circle
Okemos, MI 48864-5941
(517) 381-9193

Attorneys for CLEC Association of Michigan

Dated: November 5, 2002

³ September 16, 2002 Order, p 3.

SERVICE LIST
CASE NO. U-12320

Ameritech Michigan

Mr. John Dempsey
Dickinson Wright PLLC
215 S. Washington Square, Suite 200
Lansing, MI 48933-1816
Email: jdempsey@dickinson-wright.com

Mr. Craig A. Anderson
Ameritech Michigan
444 Michigan Avenue, Room 1750
Detroit, MI 48226
Email: craig.Anderson@ameritech.com

WorldCom

Covad Communications Co.

Mr. Albert Ernst
Mr. Leonard C. Wolfe
Dykema Gossett
800 Michigan National Tower
Lansing, MI 48933
Email: aernst@dykema.com
lwolfe@dykema.com
jbeachnau@dykema.com

Mr. James R. Denniston
WorldCom
205 North Michigan Avenue
Suite 3700
Chicago, IL 60601
Email: jdenniston@mcimail.com

Michigan Cable Telecommunications Association

Mr. David E.S. Marvin
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: dmarvin@ftdf.com

AT&T and TCG Detroit

Mr. Arthur J. Levasseur
Fischer, Franklin & Ford
3500 Guardian Building
Suite 3500
Detroit, MI 48226
Email: artlev@voyager.net

Mr. John J. Reidy, III
AT&T Communications, Inc.
222 W. Adams, Suite 1500
Chicago, IL 60606
Email: jreidy@att.com

Telecommunications Association of Michigan

Mr. Harvey J. Messing
Loomis, Ewert, Parsley, Davis
& Gotting, PC
232 S. Capitol S. Capitol Avenue, Suite 1000
Lansing, MI 48933
Email: hjmessing@loomislaw.com

Sprint Communications Co.

Mr. Roderick S. Coy
Mr. Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: rcoy@clarkhill.com
hrashes@clarkhill.com

Long Distance of Michigan

Mr. Roderick S. Coy
Mr. Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: rcoy@clarkhill.com
hrashes@clarkhill.com

**SERVICE LIST
CASE NO. U-12320**

Comcast

Mr. Roderick S. Coy
Mr. Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: rcoy@clarkhill.com
hrashes@clarkhill.com

Coast to Coast Telecommunications

Mr. Roderick S. Coy
Mr. Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: rcoy@clarkhill.com
hrashes@clarkhill.com

CLEC Association of Michigan

Mr. Roderick S. Coy
Mr. Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: rcoy@clarkhill.com
hrashes@clarkhill.com

Airtouch Cellular, Inc.

Mr. Roderick S. Coy
Mr. Haran C. Rashes
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: rcoy@clarkhill.com
hrashes@clarkhill.com

Corecomm Michigan, Inc.

Mr. Leland Rosier
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: lrosier@clarkhill.com

Michigan Pay Telephone Association

Mr. Leland Rosier
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: lrosier@clarkhill.com

McLeodUSA

Mr. Leland Rosier
Clark Hill PLC
2455 Woodlake Circle
Okemos, MI 48864-5941
Email: lrosier@clarkhill.com

Telecommunications Resellers Association

Mr. Andrew O. Isar
Telecommunications Resellers Association
3220 Uddenberg Lane, Suite 4
Gig Harbor, WA 98335
Email: aisar@harbor-group.com

Comcast Telecommunications of Michigan, Inc.

Mr. Timothy P. Collins
Comcast Telecommunications of Michigan
29777 Telegraph Road, Suite 4400B
Southfield, MI 48034
Email: tim_collins@cable.comcast.com

Horizon Telecommunications

Mr. William Koval
Horizon Telecommunications, Inc.
5910 Landerbrook Drive
Mayfield Heights, OH 44124
Email: william.koval@voyager.net

SERVICE LIST
CASE NO. U-12320

Nextlink Michigan, Inc.

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: mashton@ftdf.com

Talk America Inc.

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: mashton@ftdf.com

Z-Tel Communications, Inc.

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: mashton@ftdf.com

IP Communications

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: mashton@ftdf.com

Focal Communications Corp.

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: mashton@ftdf.com

XO Michigan, Inc.

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: mashton@ftdf.com

Building Communications, Inc.

Ms. Michelle E. Vocht
Mr. Lynn H. Shecter
Roy, Shecter & Vocht, P.C.
36700 Woodward Avenue, Suite 205
Bloomfield Hills, MI 48304
Email: vocht@rsmv.com
shecter@rsmv.com

Michigan Consumer Federation

Ms. Kathleen F. O'Reilly
414 A. Street, Southeast
Washington, DC 20003
Email: kforeilly@igc.com

MPSC Staff

Mr. Steven D. Hughey
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Email: hugheyd@ag.state.mi.us

Quest Communication Corp.

LCI International Telcom Corp.

Mr. Michael S. Ashton
Fraser, Trebilcock, Davis & Dunlap PC
1000 Michigan National Tower
Lansing, MI 48933
Email: mashton@ftdf.com