STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the request for Commission approval)
of interconnection agreements between **GTE NORTH**)
INCORPORATED and incumbent local exchange) Case No. U-11580
carriers.)
)

At the July 13, 1998 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

Section 252 of the federal Telecommunications Act of 1996, 47 USC 252, requires that all agreements for interconnection be submitted to the state commission for approval. To implement that provision, the Commission's October 15, 1997 order in Case No. U-11444 required GTE North Incorporated (GTE) to file the interconnection agreements between itself and the incumbent local exchange carriers (ILECs) other than Ameritech Michigan. (In Case No. U-11444, the Commission approved the agreements between GTE and Ameritech Michigan.) GTE filed some of the agreements on October 31, 1997, and filed additional agreements on January 23, 1998. Among the agreements were a number of extended area service (EAS) agreements that, according to GTE, have been canceled but nevertheless continue to be the basis for EAS compensation with the ILECs.

After reviewing the agreements, the Commission issued an order on March 20, 1998 approving the agreements, with the exception of the EAS agreements, as consistent with federal and state law and in the public interest. The Commission concluded that the EAS agreements were not in compliance with the Michigan Telecommunications Act (the MTA), MCL 484.2101 et seq.; MSA 22.1469(101) et seq., and Commission orders regarding compensation for local traffic. See MCL 484.2352; MSA 22.1469(352), MCL 484.2359; MSA 22.1469(359), and the June 5, 1996 and September 12, 1996 orders in Case No. U-10860. The Commission directed GTE to show cause, no later than April 24, 1998, why its treatment of EAS traffic was not in violation of state law and Commission orders. In addition, GTE was to show cause why local call termination charges, if any, that it assessed on competitive local exchange carriers (CLECs), absent the imposition of those charges on ILECs, should not be refunded to the affected CLECs with interest.

On April 24, 1998, GTE filed its response. GTE notes that it had attempted to cancel the EAS agreements in anticipation of negotiations for new agreements in which compensation would be based on terminating local EAS traffic. Until the new agreements are negotiated, GTE says that its intention is to handle compensation as it has under the existing agreements, which provide for bill-and-keep (i.e., neither company bills or pays the other for the termination of EAS traffic). GTE says that the February 23, 1995 order in Case No. U-10647 determined that a five percent imbalance was a reasonable threshold that must be reached before billing of terminating local traffic is required. It also notes that the June 5, 1996 order in Case No. U-10860 held that the quiet zone is a part of the rate and as such must remain in effect, pursuant to MCL 484.2352(2); MSA 22.1469(352)(2), until the cost studies contemplated by that section have been completed. It thus concludes that it is not required to charge for terminating EAS traffic when the ratio of terminating to originating traffic falls within the quiet zone.

GTE states that, based on traffic studies conducted during the fourth quarter of 1996 for eight EAS routes and studies conducted between mid-March and mid-April 1998 for two other routes, the EAS traffic for those ten routes falls within the quiet zone. For that reason, it concludes that no compensation is due or required. GTE acknowledges that the EAS traffic for the remaining two EAS routes falls outside the quiet zone, and calculates that if the rates established in Case No. U-10647 were applied, it would receive net payments of approximately $3,500 per month and $1,275 per month. GTE says that given the limited number of routes affected and that the providers were awaiting Commission approval of total service long run incremental cost (TSLRIC) studies, it was reasonable for the parties to continue the existing arrangements, thus avoiding the need to renegotiate the contracts twice in a short time. GTE says that when new agreements are negotiated, it expects that there will be a true-up retroactive to January 1, 1997. In the meantime, it says that the parties have agreed to different compensation arrangements, as permitted by Section 352 of the MTA and the June 5, 1996 order in Case No. U-10860.

As to the exchange of EAS traffic with the CLECs, GTE says that it is aware of only two such exchanges. It has not conducted any studies to determine whether the traffic falls within the quiet zone, but has also not imposed any charges for the exchange of EAS traffic. Because it has not imposed any charges, GTE concludes that it cannot have discriminated against a CLEC by having imposed charges that were not also imposed on the ILECs.

Section 352(2) of the MTA requires that the "rates for . . . the termination of local traffic shall be at the rates established under commission case U-10647 and shall remain in effect until new total service long run incremental cost studies for such services have been approved by the commission." MCL 484.2352(2); MSA 22.1469(352)(2). In the February 23, 1995 order in Case No. U-10647, the Commission concluded that, as a transition from bill-and-keep arrangements, the parties to that

case should compensate each other for local calls originating on one provider's network and terminating on another provider's network at the rate of $0.015 per minute and that compensation should not be required unless the traffic imbalance exceeded 5%. If the imbalance exceeded that threshold, compensation would be required for all calls, not just the traffic exceeding the threshold. February 23, 1995 order, Case No. U-10647, p. 29. The 1995 amendments to the MTA imposed those rates on GTE as well. In the June 5, 1996 order in Case No. U-10860, the Commission affirmed the continuing applicability of the rate (including the quiet zone) approved in Case No. U-10647 until the Commission approved TSLRIC studies. June 5, 1996 order, Case No. U-10860, p. 11. The order also clarified that EAS traffic is local traffic under the MTA and is subject to local call termination charges unless the parties agree otherwise. June 5, 1996 order, Case No. U-10860, p. 14. In the September 12, 1996 order in Case No. U-10860, the Commission acknowledged the difficulties in implementing termination charges for EAS traffic with ILECs, and therefore allowed GTE some flexibility, but clearly directed that GTE must cease bill-and-keep compensation for EAS traffic by January 1, 1997. September 12, 1996 order, Case No. U-10860, p. 20. Finally, in the February 25, 1998 order in Case No. U-11281, the Commission approved TSLRIC studies for GTE and required the company to file conforming tariffs within 14 days.

GTE's current treatment of EAS traffic is in violation of these requirements of the MTA and the Commission's prior orders in at least six respects. First, for ten EAS routes with ILECs, GTE has used a 10% quiet zone, rather than a 5% traffic imbalance. The order in Case No. U-10647 could perhaps be more clear on this point, but it is not a fair reading of the order to conclude that it approved a 10% quiet zone. Second, for two EAS routes with ILECs, GTE has simply decided not to bill any compensation despite the traffic imbalance. Third, for EAS traffic with a CLEC, GTE has simply decided not to measure the traffic or to bill any compensation. Fourth, the order in Case

No. U-10647 requires that EAS traffic be measured and the costs and revenues be recorded using generally accepted accounting practices. It is not enough that GTE sample the traffic for a limited period. Fifth, bill-and-keep arrangements outside of the quiet zone do not comply with cost recovery obligations under the MTA. See MCL 484.2321; MSA 22.1469(321). Sixth, GTE has not implemented the rates required by the order in Case No. U-11281, which Section 352(2) explicitly provides shall replace the rates approved in Case No. U-10647. The February 25, 1998 order in Case No. U-11281 directed that tariffs for terminating local calls, among other items, be filed no later than March 11, 1998 based on the determinations in that proceeding. Billing of all LECs in accordance with the order in that case should now be occurring.[1]

GTE suggests that to the extent it may appear to be out of compliance with Section 352, it has nevertheless complied with the MTA because Section 359(2) permits providers to enter into agreements "for the exchange of traffic on other terms and conditions." MCL 484.2359(2); MSA 22.1469(359)(2). GTE has not complied with that provision of Section 359 because it does not currently have agreements or tariffs that provide "other terms and conditions." It canceled the bill-and-keep agreements with the ILECs and proposed to bill only the CLECs, and has apparently never entered into agreements with any of the ILECs or the CLECs for nondiscriminatory recovery of costs associated with local call termination. The informal manner in which it still implements bill-and-keep arrangements does not satisfy the requirements of the MTA or the federal act that there be approved tariffs, interconnection agreements, or both. Furthermore, any rate established for local call termination must also comply with all of Section 359(2): "Any compensation arrangements agreed to between providers under this subsection shall be available to other providers with the

[1]There does not appear to be a basis for GTE to impose interconnection charges retroactively.

same terms and conditions on a nondiscriminatory basis." MCL 484.2359(2); MSA 22.1469(359)(2). Finally, pursuant to Section 321 of the MTA, a provider "shall not charge a rate for the service that is less than the total service long run incremental cost of providing the service." MCL 484.2321; MSA 22.1469(321). Thus, all local call termination (including EAS), whether with an ILEC or a CLEC, must permit recovery of associated costs and be available on a nondiscriminatory basis.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. GTE's treatment of EAS traffic is not in compliance with the MTA and the Commission's prior orders.

THEREFORE, IT IS ORDERED that GTE North Incorporated shall bring its treatment of termination charges for extended area service into compliance with the Michigan Telecommunications Act and the Commission's prior orders within 45 days. Any agreements that it enters into as a result shall be filed promptly for Commission review and approval.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(SEAL)

/s/ John C. Shea
Commissioner

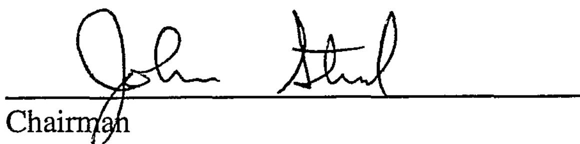
/s/ David A. Svanda
Commissioner

By its action of July 13, 1998.

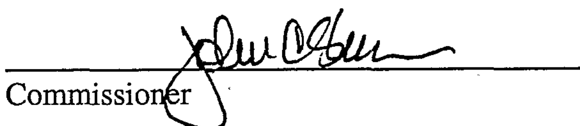
/s/ Dorothy Wideman
Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

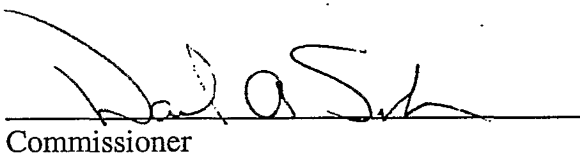
MICHIGAN PUBLIC SERVICE COMMISSION



Chairman

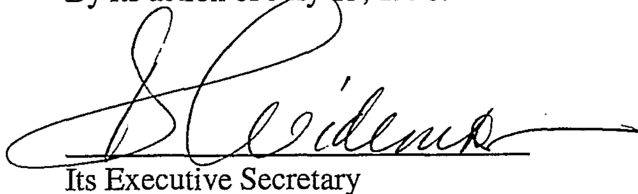


Commissioner



Commissioner

By its action of July 13, 1998.



Its Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)
)
County of Ingham)

Case No. U-11580

Marcia Hoskins, being duly sworn, deposes and says that on July 13, 1998, 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.

Marcia Hoskins

Subscribed and sworn to before me
this 13th day of July, A.D., 1998.

Sharon Higgins Allen
Notary Public, Ingham County, Michigan
My Commission expires August 16, 2000

SERVICE LIST FOR DOCKET # U - 11580- CASE #
DATE OF PREPARATION: 07/06/98

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MUSKEGON MI 49443 0269

PROOF OF SERVICE

STATE OF MICHIGAN)
)
County of Ingham)

Case No. U-11580

Marcia Hoskins, being duly sworn, deposes and says that on July 15, 1998, 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.

Marcia Hoskins

Subscribed and sworn to before me
this 15th day of July, A.D., 1998.

Sharon Wiggins Allen
Notary Public, Ingham County, Michigan
My Commission expires August 16, 2000

SERVICE LIST FOR DOCKET # U - 11580- CASE #
DATE OF PREPARATION: 07/15/98

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