

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application for approval of an)	
an interconnection agreement between)	
CCCFI, INC., d/b/a CONNECT!, and Ameritech)	Case No. U-11886
Information Industry Services on behalf of)	
AMERITECH MICHIGAN.)	
_____)	

At the July 16, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On January 11, 1999, CCCFI, Inc., d/b/a/ CONNECT!, (CONNECT!) filed an application seeking Commission approval of an interconnection agreement between CONNECT!, on the one hand, and Ameritech Information Industry Services on behalf of Ameritech Michigan, on the other. On February 19, 1999, CONNECT! filed an amended application. It also filed a "short form" interconnection agreement signed by CONNECT! (but not by Ameritech Michigan) which, according to CONNECT!, contained the same terms and conditions as those found in the August 5, 1996 agreement between Ameritech Michigan and Brooks Fiber Communications of Michigan, Inc., (Brooks) that was approved by the Commission's November 26, 1996 order in Case No. U-11178.

CONNECT!'s amended application stated that, rather than signing the short form agreement, Ameritech Michigan unjustifiably insisted that CONNECT! sign a non-disclosure agreement and begin negotiating with Ameritech Michigan for a new interconnection agreement. Asserting that "no such negotiation is required by law," CONNECT! requested that the Commission immediately issue an order approving the short form interconnection agreement and directing Ameritech Michigan to sign the agreement. Amended application, p. 2. In support of its request, CONNECT! argued that pursuant to Section 252(i) of the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 252, (the FTA) each of Ameritech Michigan's Commission-approved interconnection agreements was "tantamount to a statutory offer to contract" that CONNECT! could accept by merely "identifying the existing contract it wished to adopt." *Id.*, p. 3. CONNECT! further asserted that by directing incumbent local exchange carriers (ILECs) like Ameritech Michigan to "make available without unreasonable delay" any interconnection, service, or network element arrangement found in their previously approved interconnection agreements, FCC Rule 51.809 likewise mandated automatic adoption of CONNECT!'s proposed agreement. *Id.*, citing 47 CFR § 51.809.

On March 5, 1999, Ameritech Michigan filed a response claiming that CONNECT!'s application should be denied for any of three reasons. First, it claimed that CONNECT! was wrong to conclude that it could unilaterally impose the terms of a two and one-half year-old interconnection agreement, rather than initiating negotiations or requesting arbitration. As such, Ameritech Michigan continued, CONNECT! failed to follow the procedures established by the Commission's July 16 and September 23, 1996 orders in Case No. U-11134, which set forth the methodology for resolving parties' differences when adopting an interconnection agreement.

Second, Ameritech Michigan argued that CONNECT! failed to make a timely application for adoption of any terms and conditions found in its interconnection agreement with Brooks. In support of that argument, Ameritech Michigan noted that FCC Rule 809(c) only obligated ILECs to make previously-approved interconnection, service, or network elements available to other telecommunications providers “for a reasonable period of time” after the agreement was approved by the Commission and thus made available for public inspection. See, 47 CFR § 51.809(c). Ameritech Michigan further noted that its interconnection agreement with Brooks was a three-year deal that will expire on August 4, 1999. Because it would take at least 150 days to implement any interconnection agreement with CONNECT!, Ameritech Michigan continued, its existing agreement with Brooks would have expired before any interconnection agreement with CONNECT! could take effect. According to Ameritech Michigan, this clearly showed that CONNECT!’s request to adopt the terms and conditions of the Brooks interconnection agreement was made well beyond the “reasonable period of time” mandated by FCC Rule 809(c), and thus must be rejected.

Third, Ameritech Michigan argued that the prices CONNECT! sought to obtain by adopting the terms of its outdated interconnection agreement with Brooks no longer comply with the pricing standards of state and federal law. Specifically, Ameritech Michigan noted that Section 252(d) of the FTA required the prices for interconnection, services, and unbundled network elements to be based on the cost of providing those items, plus a reasonable profit. Ameritech Michigan further noted that although the prices set forth in its interconnection agreement with Brooks were based on cost levels established by the Commission’s February 23, 1995 order in Case No. U-10647, a subsequent Commission order computed higher costs for nearly all of this ILEC’s services. See, the July 14, 1997 order in Case No.

U-11280. Ameritech Michigan therefore asserted that forcing it to enter into an interconnection agreement at rates that were well below the Commission's currently approved costs, as CONNECT! requested, would directly violate Section 252(d).

On March 22, 1999, the Commission issued an order in this case agreeing, in significant part, with Ameritech Michigan. The order pointed out that in addition to Sections 252(a) and 252(b) of the FTA, which grant the Commission authority to approve (1) negotiated interconnection agreements or (2) agreements reached through the application of compulsory arbitration, respectively:

Section 252(i) and its corresponding FCC rules authorize the Commission to approve (on an expedited basis) a prospective carrier's request for imposition of an interconnection agreement whose terms and conditions were previously approved by the Commission, provided that the ILEC is unable to show that:

- “(1) the costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
- “(2) the provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.”

March 22 order in Case No. U-11866, pp. 4-5, citing 47 CFR § 51.809(b). The order went on to point out that nowhere in the statutory structure does it say that a prospective carrier can request and obtain the immediate and unilateral adoption of an entire interconnection agreement without first providing the ILEC a reasonable opportunity to show that it would cost more to serve the requesting carrier or that doing so is not technically feasible. The Commission therefore denied the relief requested in CONNECT!'s amended application for failure to adhere to the statutory structure.

Nevertheless, the Commission found that it might be helpful to define the process that should be followed when a prospective carrier seeks to adopt the terms and conditions found in one or more

previously approved interconnection agreements when, as in the present case, the ILEC objects to that proposed adoption. It therefore concluded that the best way to handle a request like that set forth in CONNECT!'s amended application is to "follow the steps established by the Commission's July 16 and September 23, 1996 orders in Case No. U-11134 for arbitration of interconnection disputes, but without first requiring the parties to spend 135 to 160 days attempting to negotiate an agreement." *Id.*, p. 5. This resulted in the following process:

First, the prospective carrier shall file its application for expedited adoption of its proposed interconnection agreement, along with all information upon which it intends to rely, and serve it on the ILEC. Second, the ILEC shall file its response within 25 days, specifically stating its reasons for rejection and attaching all information upon which it intends to rely. Third, a three-member panel shall establish a schedule for (1) submitting requests for additional information, (2) filing responses to those requests, (3) filing, on a concurrent basis, each party's proposed decision of the panel, (4) hearing oral presentations in support of the respective parties' proposed decisions, (5) hearing responses to the oral presentations, (6) submitting written identification of any issues that have been resolved by the parties since the process was initiated, (7) issuing the panel's decision, and (8) the concurrent filing by the parties of any objections to that decision. As with the previously established arbitration process, it is the Commission's intent that the time between the filing of the prospective carrier's application and the submission of any objections to the panel's decision shall not exceed 90 days.

Id., pp. 5-6.

On April 22, 1999, CONNECT! filed an application for rehearing and requested that the Commission set aside its March 22, 1999 order. Ameritech Michigan filed a response on May 12, 1999.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACRS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be

incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

CONNECT!'s claims of error fall into two categories. First, it argues that its amended application "adheres to the statutory structure mandated by 47 USC § 252(i) and 47 CFR §51.809." CON-NECT!'s petition for rehearing, p. 2. It therefore contends that the Commission's conclusion to the contrary is erroneous and should be reversed. Second, CONNECT! asserts that the process described on pages 5 and 6 of the Commission's March 22, 1999 order could be deemed satisfied in this case by merely (1) considering the amended application to be a request for expedited adoption of an interconnection agreement, (2) treating Ameritech Michigan's March 5, 1999 response as its entire statement of position regarding CONNECT!'s request to obtain the same terms as Brooks, and (3) allowing CONNECT! an opportunity to respond to any affirmative defenses raised in Ameritech Michigan's response. According to CONNECT!, permitting the Commission to "make its determination on the basis of [those three] pleadings" would be both appropriate and consistent with the need for an expedited resolution of this case. Id.

In response, Ameritech Michigan argues that the Commission properly analyzed and applied the FTA and the corresponding FCC rules regarding interconnection when it initially denied CONNECT!'s request. Because CONNECT! has offered no new evidence or legal authority for its position and has merely repeated its previous arguments, Ameritech Michigan contends, no basis exists for granting the petition for rehearing. Ameritech Michigan goes on to contend that CONNECT!'s alternate proposal (to treat its amended application as a request to implement the expedited procedure described in the Commission's March 22, 1999 order and to issue a final opinion regarding interconnection once

CONNECT! responds to the defenses that were previously raised) would “deny Ameritech Michigan the due process which the Commission built into the expedited procedure.” Response to petition for rehearing, p. 5. Finally, Ameritech Michigan reasserts its claim that by waiting over two and one-half years after Brooks’ three-year interconnection agreement became available for public inspection, CONNECT! submitted its request to opt into that agreement after the close of the “reasonable period of time” provided under FCC Rule 809(c). *Id.*, citing 47 CFR § 51.809(c). For all of these reasons, Ameritech Michigan argues, the Commission should deny CONNECT!’s petition for rehearing.

The Commission agrees with Ameritech Michigan and finds that both of CONNECT!’s arguments should be rejected. As discussed on pages 4 and 5 of the Commission’s March 22, 1999 order in this case, CONNECT! failed to adhere to the statutory structure established by the FTA and the corresponding FCC rules. This is reflected in the fact that simply approving the amended application would deprive Ameritech Michigan of its statutorily established right to show that it would cost more to serve CONNECT! than Brooks or that it would not be technically feasible to provide comparable service to both of those two carriers. The Commission further finds unpersuasive CONNECT!’s alternative argument, to the effect that the amended application should be treated as the initiation of the expedited procedure described above and that a final order should be issued on the merits of that application immediately after CONNECT! responds to Ameritech Michigan’s March 5, 1999 filing. Adopting CONNECT!’s proposal would conflict with the expedited procedure described above by (1) waiving the requirement that all supporting materials be attached to the requesting carrier’s application, (2) limiting Ameritech Michigan’s response time to much less than the allotted 25 days, (3) eliminating Ameritech Michigan’s

opportunity to request information from CONNECT! for use in preparing its position, and (4) ignoring Ameritech Michigan's right to address an arbitration panel, among other things.

For these reasons, the Commission concludes that CONNECT!'s petition for rehearing and request to set aside the March 22, 1999 order should be denied. CONNECT! is free to request, in a new docket, approval of an interconnection agreement pursuant to the procedures set forth on pages 5 and 6 of that order.

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.; 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.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. CONNECT!'s April 22, 1999 petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed on April 22, 1999 by CCCMI, Inc., d/b/a CONNECT!, is denied.

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

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of July 16, 1999.

/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 16, 1999.

Its Executive Secretary

In the matter of the application for approval of an)
an interconnection agreement between)
CCCMI, INC., d/b/a CONNECT!, and Ameritech)
Information Industry Services on behalf of)
AMERITECH MICHIGAN.)
_____)

Case No. U-11886

Suggested Minute:

“Adopt and issue order dated July 16, 1999 denying the petition for rehearing filed by CCCMI, Inc., d/b/a CONNECT!, as set forth in the order.”