

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>BARAGA TELEPHONE COMPANY</b> for approval	)	Case No. U-13238
of a total service long run incremental cost study.	)	
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At the July 23, 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

**OPINION AND ORDER**

On March 21, 2002, the Commission issued an order approving, with modifications, a total service long run incremental cost (TSLRIC) study for Baraga Telephone Company (Baraga). On April 22, 2002, Ameritech Michigan filed a petition for rehearing. Baraga and the Commission Staff (Staff) filed answers to the petition.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACS, 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.

In seeking rehearing, Ameritech Michigan reiterates its argument that the cost study fails to distinguish between Baraga's operations as an incumbent local exchange carrier (ILEC) in some areas and as a competitive local exchange carrier (CLEC) in other areas and reflects only the costs of the ILEC operation. Ameritech Michigan says that providing service as a CLEC avoids certain costs associated with an ILEC operation and that the cost of providing CLEC service should therefore be less than the ILEC-based cost. Ameritech Michigan requests either that the cost study be modified to reflect the lower cost of providing CLEC service or, alternatively, that the Commission clarify that the approved TSLRICs do not apply to Baraga's CLEC operations.

This argument addresses the following provisions in the March 21, 2002 order approving the TSLRIC study:

The Commission agrees with Baraga and the Staff that there is no reason to require separate cost studies for operations as both an ILEC and a CLEC. A fundamental purpose of a TSLRIC study is to determine the costs of all services provided using the same facilities. TSLRIC principles require a cost study to "capture all relevant changes in the total cost of the firm caused by the decision to offer the service" and "reflect the entire quantity of the output provided." Order dated September 8, 1994, Case No. U-10620, Ex. A at 3, 4. Whether a provider is classified as an ILEC or a CLEC, or both, does not alter this inquiry. The Michigan Telecommunications Act (MTA) establishes TSLRIC as the cost standard for basic local exchange providers without distinguishing between ILECs and CLECs.<sup>2</sup> See MCL 484.2304,<sup>3</sup> 484.2304a.

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<sup>2</sup> The MTA does not use the terms "ILEC" or "CLEC."

<sup>3</sup> MCL 484.2304(1) requires basic local exchange rates to be "just and reasonable." As defined in MCL 484.2102(y), a "just and reasonable" rate cannot be less than TSLRIC.

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Order at 2-3. Ameritech Michigan argues that the Commission erred by misconstruing its position as proposing two separate cost studies. It argues that it is presenting newly discovered evidence

because it did not have the opportunity to review Baraga's confidential cost study prior to the order. It argues that the order will have the unintended consequence of forcing it to pay the reciprocal compensation charges incorporated from the cost study into its interconnection agreement with Baraga, even though they exceed the cost basis of Baraga's CLEC operation.

Baraga replies that Ameritech Michigan's substantive argument on rehearing is no different than the argument rejected in the March 21, 2002 order. Baraga says that its cost study reflected the cumulative costs of both its ILEC and CLEC operations as a single company. It says that the cost study was available for Ameritech Michigan to review in accordance with the procedures for maintaining confidentiality, but that Ameritech Michigan failed to request access to it. Baraga contends that the purpose of a cost study is to establish TSLRIC-based rates and that affected providers were aware that the TSLRICs produced by its study would be incorporated into its interconnection agreements. It argues that Ameritech Michigan's petition for rehearing is frivolous, so that Baraga should be awarded its attorney fees and costs under MCL 484.2209.

The Staff concurs with Baraga's arguments to deny rehearing.

The Commission finds that Ameritech Michigan's petition does not meet the standard for rehearing set forth in Rule 403. The March 21, 2002 order determined that it was appropriate for the cost study of a provider that serves as an ILEC in some areas and as a CLEC in other areas to combine the costs of its service in both areas without differentiating between the two types of service. It further determined that Baraga's cost study met this standard. The order did not approve a cost study covering only the costs to provide service in ILEC areas. As such, the cost study approved in the order is an appropriate basis for setting rates in an interconnection agreement.

If Ameritech Michigan did not review a cost study that was available to it prior to the order, its review of the study after the order is not a basis for claiming new evidence under Rule 403. Moreover, the argument it raises in seeking rehearing is not significantly different than the one in its earlier comments, which the order rejected. Although the petition for rehearing is not meritorious, the Commission does not find it to be frivolous within the meaning of MCL 484.2209.

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 petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Ameritech Michigan 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.

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 July 23, 2002.

/s/ Dorothy Wideman  
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated July 23, 2002 denying a petition for rehearing filed by Ameritech Michigan with respect to the March 21, 2002 order approving a cost study for Baraga Telephone Company, as set forth in the order.”