

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the application of             | ) |                  |
| <b>MCI TELECOMMUNICATIONS CORPORATION</b>       | ) |                  |
| for arbitration to establish an interconnection | ) | Case No. U-11168 |
| agreement with <b>AMERITECH MICHIGAN.</b>       | ) | (After Remand)   |
| _____   | ) |                  |

At the October 23, 2003 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**OPINION AND ORDER**

In the December 20, 1996 order in this case, the Commission approved the interconnection agreement between MCI Telecommunications Corporation (now, MCI WorldCom Communications Inc., [MCI]) and Ameritech Michigan (now, SBC Michigan [SBC]) as adopted by the arbitration panel and modified by the order. The Commission resolved additional issues in an order dated June 5, 1997. By its order dated July 31, 1997, the Commission approved the interconnection agreement submitted by the parties.

Pursuant to the federal Telecommunications Act of 1996, 47 USC 251 et seq., MCI and SBC appealed the Commission's orders to the United States District Court, Eastern District of Michigan, Southern Division (District Court). On September 29, 1999, the District Court issued an opinion affirming in part and reversing in part the Commission's orders, and remanded certain issues to the Commission for either further action or reconsideration in light of Federal

Communications Commission (FCC) rules established after the Commission's July 31, 1997 order. On December 22, 1999, the District Court granted MCI's motion for reconsideration and denied Ameritech Michigan's motion for reconsideration.

SBC appealed the District Court orders to the United States Court of Appeals for the Sixth Circuit (Court of Appeals). On June 19, 2002, the Court of Appeals issued its order affirming the decision of the District Court for the reasons stated by the District Court in its written opinions.

On July 23, 2002, the Commission issued an order establishing a schedule to permit MCI and SBC to file briefs and reply briefs on the issues remanded to the Commission for further action. On September 3, 2002, MCI and SBC filed briefs. On September 17, 2002, those parties filed reply briefs.

In the meantime, the FCC's UNE Remand Order,<sup>1</sup> in which the FCC adopted the rules that the District Court directed the Commission to consider in this case, was challenged before the United States Court of Appeals for the District of Columbia (DC Court of Appeals), which found that the FCC's reasoning did not meet the standards necessary for affirming that order and the rules adopted. It therefore remanded the UNE Remand Order to the FCC in what is commonly referred to as the USTA case.<sup>2</sup> On July 8, 2002, the FCC and other parties to the USTA case filed for rehearing or consideration en banc. Those requests were denied. However, the DC Court of Appeals granted a partial stay of the vacatur of the FCC's rules established in the UNE Remand

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<sup>1</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999).

<sup>2</sup> United States Telecom Ass'n v FCC, 290 F3d 415; 351 US App DC 329 (2002), cert den 71 USLW 3611; 123 S Ct 1571; 155 L Ed 2d 344 (2003).

order on September 4, 2002. The stay, granted through January 2, 2003, was intended to last until the FCC issued its Triennial Review Order (TRO),<sup>3</sup> which was expected by the end of 2002.

In its brief and reply, SBC took the position that the Commission should await the FCC's determinations in the TRO before completing this case. Because the decision was expected to be issued momentarily, the Commission determined that it would await that decision before issuing an order in this case.

On August 21, 2003, the FCC released the TRO. That order addresses some of the issues in this case. However, there may be disagreement as to whether and in what manner the TRO should affect the outcome of the present case. The Commission therefore finds that it should permit the parties to file briefs concerning the effect, if any, that the findings and conclusions of the TRO should have on the Commission's resolution of the issues in this case. To be timely, those briefs must be filed no later than November 6, 2003. Thereafter, the parties may file reply briefs no later than November 17, 2003.

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.

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<sup>3</sup> FCC 03-36, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, rel'd August 21, 2003.

b. The parties should have an opportunity to file briefs concerning the effect, if any, that the findings and conclusions of the FCC's TRO should have on the resolution of the issues in this case.

THEREFORE, IT IS ORDERED that the parties may file briefs no later than November 6, 2003 and reply briefs no later than November 17, 2003 concerning the effect, if any, that the Federal Communications Commission decision in its Triennial Review Order should have on the resolution of the issues in this case.

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 issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

( S E A L )

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of October 23, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

b. The parties should have an opportunity to file briefs concerning the effect, if any, that the findings and conclusions of the FCC's TRO should have on the resolution of the issues in this case.

THEREFORE, IT IS ORDERED that the parties may file briefs no later than November 6, 2003 and reply briefs no later than November 17, 2003 concerning the effect, if any, that the Federal Communications Commission decision in its Triennial Review Order should have on the resolution of the issues in this case.

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

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

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Commissioner

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By its action of October 23, 2003.

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Its Acting Executive Secretary

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**MCI TELECOMMUNICATIONS CORPORATION** )  
for arbitration to establish an interconnection )  
agreement with **AMERITECH MICHIGAN.** )  
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Case No. U-11168  
(After Remand)

Suggested Minute:

“Adopt and issue order dated October 23, 2003 permitting the parties to file briefs concerning the effect, if any, that the Federal Communications Commission’s Triennial Review Order should have on the resolution of the issues in this case, as set forth in the order.”