

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
to review the costs of telecommunication services )  
provided by **SBC MICHIGAN**. )  
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Case No. U-13531

At the September 30, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

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

**ORDER AND NOTICE OF PREHEARING CONFERENCE**

On May 2, 2003, SBC Michigan (SBC) filed an application in this docket seeking approval of total service long run incremental cost (TSLRIC) studies. Petitions to intervene were filed by the Competitive Local Exchange Carriers Association of Michigan (CLECA), Sage Telecom, Inc., (Sage), Covad Communications Company (Covad), McLeodUSA Telecommunications Services, Inc., (McLeod), Comcast Telecommunications of Michigan, LLC, (Comcast), Sprint Communications Company, L.P., (Sprint), the Association of Communications Enterprises (ASCENT), Borderland Communications, LLC, (Borderland), Attorney General Michael A. Cox (Attorney General), MCI metro Access Transmission Services LLC, MCI WorldCom Communications, Inc., and Brooks Fiber Communications of Michigan, Inc., (collectively, MCI), AT&T Communications of Michigan, Inc., (AT&T), LDMI Telecommunications, Inc., (LDMI), XO Michigan, Inc., (XO), Talk America, Inc., TDS Metrocom, Inc., (TDS), Z-Tel Communications,

Inc., (Z-Tel), TelNet Worldwide, Inc., (TelNet), and Climax Telephone Company (Climax). The Commission Staff (Staff) also participated in the proceedings.

On June 16, 2003, a prehearing conference was conducted by Administrative Law Judge James N. Rigas (ALJ). The prehearing conference was attended by SBC, AT&T, the Attorney General, the CLECA, LDMI, Sage, Comcast, Sprint, McLeod, MCI, Covad, TelNet, Z-Tel, XO, TDS, Talk America, and the Staff. After listening to suggestions by the parties on how to proceed, the ALJ determined that the issue should be briefed and the determination placed before the Commission.

On August 18, 2003, the Commission issued an order finding that the Staff's proposal for the scheduling and processing of this application is reasonable and in the public interest, and should be adopted. The Commission attached a schedule for the processing of the proceeding to that order calling for the filing of initial comments by the parties by November 10, 2003. Response comments are due by January 19, 2004 and final reply comments are due February 9, 2004.

However, the Commission recognized that the Federal Communications Commission's (FCC) long-awaited written decision in its Triennial Review proceeding entitled "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, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147," could have a significant effect on this proceeding. Accordingly, the Commission provided that "[a]fter the FCC issues its final order in that proceeding, any party may propose a schedule amendment to the ALJ. In the event that the ALJ is persuaded that a schedule amendment is necessary, he may revise the schedule set forth on Exhibit A accordingly." August 18, 2003 order, p. 6.

On August 21, 2003, the FCC released the text of its Triennial Review Order (TRO), which was published in the Federal Register on September 2, 2003 and which will become effective on October 2, 2003. In so doing, the FCC directed the states to conduct proceedings within nine months to make impairment and unbundling determinations regarding, at a minimum, DS1 loops, DS3 loops, dark fiber loops, dedicated transport, and DS0 capacity (mass market) local circuit switching.

On September 9, 2003, MCI filed a motion directly with the Commission to stay all proceedings in this docket until the aftermath of the FCC's TRO is better understood. MCI was concerned that implementation of the TRO would affect not only the manner by which cost-based rates must be set, but also could change the very nature of the unbundled network elements (UNEs) for which rates will be established. According to MCI, the Commission should allow itself and the parties additional time to gauge the effect that the TRO will have on UNEs as well as the FCC's total element long run incremental cost (TELRIC) standard and the Commission's TSLRIC standard.

MCI's September 9 motion led to a barrage of letters from MCI and SBC. In its September 12, 2003 letter to the ALJ, SBC insisted that "to the extent that the Commission or the ALJ intends to hear MCI's motion, a schedule for parties to respond and a hearing date should be established." SBC September 12, 2003 letter, p. 2.

The Commission is not persuaded that MCI's motion to indefinitely postpone this proceeding should be granted or denied based only on a review of the letters from MCI and SBC. However, in light of issuance of the FCC's TRO, MCI's motion, and SBC's response to MCI's motion, SBC's September 18, 2003 response to the Commission's September 11, 2003 order, as well as the fact that the FCC has two pending notices of proposed rulemakings concerning TELRIC and "pick

and choose” issues, the Commission is persuaded that it should provide an opportunity for all of the affected parties to this proceeding to submit comments on the best approach to address these concerns. Accordingly, the Commission sets October 8, 2003 as the date for parties to file comments. These comments shall address all matters that affect the outcome of this proceeding and shall suggest approaches that can be followed to deal with such matters in an orderly and thorough manner. Thereafter, the ALJ shall conduct a prehearing conference at 9:00 a.m. on October 15, 2003 for the purpose of transcribing the arguments of the parties so that the Commission may rule on all issues raised in the October 8 comments, including whether developments occurring subsequent to the Commission’s August 18, 2003 scheduling order require accommodations to be made to the schedule to allow the Commission to reach a fair and equitable resolution of SBC’s application in a timely manner.

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, 1999 AC, R 460.17101 et seq.
- b. The Commission should provide an opportunity for all of the affected parties to this proceeding to submit comments on the best approach for addressing matters that affect the outcome of this proceeding that have arisen subsequent to issuance of the Commission’s scheduling order on August 18, 2003.
- c. Parties should have until October 8, 2003 to file comments in this docket addressing all matters that affect the outcome of this proceeding and suggesting approaches that can be followed to deal with such matters in an orderly and thorough manner.

d. The ALJ should be directed to conduct a prehearing conference at 9:00 a.m. on October 15, 2003 for the purpose transcribing the arguments of the parties so that the Commission may rule on all issues raised in the October 8 comments.

THEREFORE, IT IS ORDERED that:

A. Parties shall have until October 8, 2003 to file comments in this docket addressing all matters that could affect the outcome of this proceeding and suggesting approaches that may be followed to deal with such matters in an orderly and thorough manner.

B. Administrative Law Judge James N. Rigas shall conduct a prehearing conference at 9:00 a.m. on October 15, 2003 for the purpose of transcribing the arguments of the parties so that the Commission may rule on all issues raised in the October 8, 2003 comments.

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/ J. Peter Lark  
Chair

( S E A L )

/s/ Robert B. Nelson  
Commissioner

By its action of

/s/ Robert W. Kehres  
Its Acting 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.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

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Commissioner

By its action of September 30, 2003.

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Its Acting Executive Secretary

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Suggested Minute:

“Adopt and issue order dated September 30, 2003 providing the parties with an opportunity to file comments by October 8, 2003 regarding all matters that could affect the outcome of this proceeding that have arisen subsequent to issuance of the Commission's scheduling order on August 18, 2003 and scheduling a prehearing conference for 9:00 a.m. on October 15, 2003, as set forth in the order.”