

- g) DSL – Line Shared
- h) Other DSL
- i) Centrex
- j) 1MB
- k) DS-3
- l) Private Line
- m) UNE Loops
- n) UNE Platforms

SBC responded to this data request as follows:

SBC Michigan objects to this request on the grounds that it is overbroad and irrelevant to the extent that it seeks data disaggregated by wire center and distribution area, for the reason that FCC TELRIC cost studies rules require the development of costs based on total aggregate demand for network facilities used to provide unbundled network elements, not wire center or distribution area specific costs.

On September 19, 2003, MCI filed a motion to compel SBC to respond to MCISBC-030 and several other matters. On September 25, 2003, SBC responded to the motion to compel.

At a prehearing conference conducted on September 30, 2003, Administrative Law Judge James N. Rigas (ALJ) ruled that although SBC should be required to respond to several of the other discovery requests covered by the motion to compel, SBC would not be required to respond to MCISBC-030. In so doing, the ALJ stated:

With regard to the Wire Center Count data, I'm satisfied that it's not sufficiently relevant to merit the burdensome task of compiling the data and that will not be provided.

2 Tr. 62.

On October 14, 2003, MCI filed an application for leave to appeal the ALJ's adverse ruling with regard to MCISBC-030. On October 28, 2003, SBC responded to MCI's appeal.

Rule 337 of the Commission's Rules of Practice and Procedure 1999 AC, R 460.17337, establishes the standards for reviewing applications for leave to appeal. Not every application

merits immediate review. An appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

The Commission finds that ruling on MCI's appeal at this time will materially advance this proceeding. Accordingly, the Commission turns to the merits of the parties' arguments.

MCI insists that the information sought by MCISBC-030 is highly relevant to this proceeding because SBC has used a LoopCAT model in this case to determine its costs. Arguing that the use of the LoopCAT model by SBC has resulted in a tripling of SBC's current costs, MCI contends that the parties must be able to examine whether the manner in which SBC chose sample loops to determine the inputs for the LoopCAT model had any untoward effects on the output of the LoopCAT model. According to MCI, the parties should be able to determine if the quantity of sample loops used in the model were so low compared to the actual number of loops that exist as to render SBC's modeling results unreliable.

MCI also contends that access to information on a wire center or distribution center area basis is very important because the percentage of loop samples used in the LoopCAT model may vary by area and, depending on what samples were used in each area, could materially alter the overall output of the LoopCAT model's costs. According to MCI, the use of a higher percentage of samples from wire centers or distribution areas with higher costs could raise SBC's overall

proposed costs. MCI asserts that absent access to such information, the Commission and the parties have no way of determining the reliability of the inputs into the LoopCAT model.

MCI states that in similar cost cases in Illinois and Indiana, SBC was asked and answered the same discovery requests. According to MCI, in those cases the requested information showed that SBC failed to include a significant percentage of certain loops in its cost studies. MCI also insists that SBC's response to the data requests in Illinois and Indiana undermines its contention in this proceeding that it would be unduly burdensome to require SBC to provide a response to the same question in this proceeding.

In response, SBC contends that it has been extremely cooperative in providing MCI with answers to hundreds of multipart data requests. Indeed, SBC asserts that MCISBC-030 is the only matter that it has refused to provide to MCI.

SBC also stresses that MCI's interpretation of SBC's response to similar requests in cost cases in Illinois and Indiana is deceptive. According to SBC, its responses in Illinois and Indiana clearly indicated that the requested data were not available by distribution area. Moreover, SBC argues that it now objects to answering the data requests in this proceeding because MCI and other parties misused the data acquired in the Indiana proceeding to attempt to redefine the wire center boundaries in SBC's network.

In any event, SBC contends that responding to MCISBC-030 would be an enormous undertaking. According to SBC, MCISBC-030 involves the request for production of data concerning every one of SBC's more than 5 million loops found in more than 355 different wire centers and 10,000 distribution areas. SBC insists that the ALJ properly ruled that the burden of producing such information clearly outweighs the slight relevance that the data might have to this proceeding.

After reviewing the arguments of the parties, the Commission finds that MCI's application for leave to appeal should be granted, in part. The Commission agrees with MCI that the requested information should be provided, at least on a wire center basis. The Commission's ability to judge the appropriateness of SBC's use of any costing model to determine the TSLRIC of its network elements is highly dependent on the accuracy of the inputs. If the inputted data is not representative, then the resulting TSLRIC of SBC's network elements will not be appropriate. The parties to this proceeding and the Commission should have the ability to review not only the output from the cost model, but also the input.

Moreover, the Commission finds it noteworthy that SBC was able to respond to similar data requests in Illinois and Indiana on a wire center basis without significant difficulty. In examining SBC's responses to the Illinois and Indiana data requests, which were attached to MCI's application for leave to appeal, there was a conspicuous absence of any claim that it would be burdensome for SBC to provide the requested data on a wire center basis.¹ Additionally, the Commission observes that a major concern regarding SBC's reluctance to provide the requested data in this proceeding was the alleged misuse of the data provided in Indiana. The Commission finds that SBC's dissatisfaction with the outcome of a discovery matter in another state is an insufficient basis for refusing to provide relevant information that will assist the parties and the Commission to determine the accuracy of the inputs to its costing model in this proceeding.

¹The Commission notes that in both Illinois and Indiana, SBC contended that the requested information was not available on a distribution area basis.

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. MCI's application for leave to appeal should be granted, in part.

c. SBC should be directed to respond to MCISBC-030 by providing the information requested by MCI on a wire center basis in accordance with the existing timeframe for responding to discovery.

THEREFORE, IT IS ORDERED that:

A. The application for leave to appeal filed by MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., and Brooks Fiber Communications of Michigan, Inc., is granted, in part.

B. SBC Michigan is directed to respond to MCISBC-030 by providing the information requested by MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., and Brooks Fiber Communications of Michigan, Inc., on a wire center basis in accordance with the existing timeframe for responding to discovery.

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

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 November 4, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of November 4, 2003.

Its Acting Executive Secretary

In the matter, on the Commission's own motion,)
to review the costs of telecommunication services)
provided by **SBC MICHIGAN**.)
_____)

Case No. U-13531

Suggested Minute:

“Adopt and issue order dated November 4, 2003 granting, in part, the application for leave to appeal filed by MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., and Brooks Fiber Communications of Michigan, Inc., and directing SBC Michigan to respond to the requested discovery on a wire center basis in accordance with the existing timeframe for responding to discovery, as set forth in the order.”