

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CARR TELEPHONE COMPANY for authority)	
to offer expanded local calling and to adjust rates)	Case No. U-13760
for basic local exchange service.)	
_____)	

At the July 8, 2003 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

ORDER DISMISSING APPLICATION

On April 10, 2003, Carr Telephone Company (Carr) filed an application requesting authority to offer expanded local calling from its Carr exchange to all adjacent exchanges and to 11 non-adjacent exchanges. Currently, Carr’s customers may place local calls only within the Carr exchange. If granted, these customers could place local calls to an additional 16 exchanges including the SBC Ameritech Michigan (SBC) exchanges of Baldwin, Big Rapids, Fountain, Freesoil, Irons, Luther, Manistee, Reed City, Scottville, and White Cloud; the Verizon North, Inc. and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon) exchanges of Hart, Hesperia, Ludington, Pentwater, and Shelby; and the Dublin exchange of the Kaleva Telephone Company

(Kaleva).¹ The application also requested authority to implement associated rate increases of \$4.42 to its residential one-party line monthly rates and \$5.30 to its business rates. Under this rate structure, customers would receive a monthly 2000-minute calling allowance for calls placed into the specified exchanges, with additional minutes in excess of the monthly allowance charged at 4 cents a minute. Local calls occurring entirely within the Carr exchange would not count against the 2000-minute allowance. The proposed rates are inclusive of an intrastate end-user common line service charge (EUCL), touchtone, and dialing parity services. Further, Carr sought to block 1+ originating toll calling from the Carr exchange to the expanded local calling area. Finally, Carr requested confirmation that the new local calls to the expanded local calling area would be considered “local” rather than toll and treated as local termination for intercarrier compensation paid to SBC, Verizon, and Kaleva.

Pursuant to Commission directive, Carr published a notice of opportunity to comment that invited interested persons to submit written or electronic comments to the Commission by June 12, 2003. Eleven individual residential customers sent in comments supporting the application. Another 15 customers joined in signing a petition expressing their support for the application. Four residential customers opposed the application. Other comments were submitted by the Commission Staff (Staff), SBC, and The Iserv Company (Iserv).

The Staff generally supports the application. According to the Staff, Carr’s application offers its customers the benefits of a greatly expanded local calling area in trade for a reasonable rate increase. The Staff also stresses that Carr’s application does not contain any of the pitfalls presented in similar applications filed by other providers.

¹ Pursuant to the October 6, 2000 order in Case No. U-12582, the Commission has determined that Carr is exempt from MCL 484.2304(11), which specifies that “[a] call made to a local calling area adjacent to the caller’s local calling area shall be considered a local call and shall be billed as a local call.”

However, the Staff indicates that Carr's application does contain several unique issues. According to the Staff, this application is the first presented to the Commission that specifically requests to block all 1+ calls to the new local calling area. The Staff maintains that the Commission should approve this aspect of the application because it is necessary in implementing the expansion of a local calling area. The Staff believes that calls to the expanded area can be either local or toll, but should not be a combination of both local and toll. Citing MCL 484.2304(11), the Staff insists that all calls within the new local area must be considered local calling whether the calls are included in the 2000-minute cap or are charged at the 4 cents per minute rate.²

The Staff also points out that Carr seeks affirmation that it will be entitled to pay local access for the termination of the calls for its new local calling area as opposed to toll access charges. Citing the June 25, 1997 order in Case No. U-11340 and the February 5, 2001 order in Cases Nos. U-12515 and U-12528, the Staff contends that there is some precedent to support Carr's position on this issue.

Although SBC does not oppose expansion of Carr's local calling area, SBC contends that Carr's application raises significant competitive concerns and has the potential to disrupt current intercarrier compensation policies. SBC insists that Carr has not provided any justification for expanding its local calling into non-adjacent exchanges, other than it would give Carr's customers a substantially larger local calling area. SBC questions whether the proposal would benefit a majority of Carr's customers or simply the highest toll users.

According to SBC, expansion of local calling to non-adjacent exchanges is not in the public interest if the expansion leads to asymmetrical local calling areas or disrupts intercarrier

² The Staff notes that customers will be able to use calling cards that may provide additional savings beyond the 4 cents per minute rate proposed by Carr.

compensation regimes. Citing Case No. U-12528, SBC contends that the expansion of the local calling areas may have adverse effects on competition, particularly in areas of the state served by a rural local exchange. SBC urges the Commission to consider whether competitive carriers seeking to offer services in the exchanges affected by Carr's proposal could be deterred from doing so because of the increased cost of providing local service. SBC also maintains that toll providers could find it unattractive to offer toll in areas where significant amounts of potential toll revenue have been converted to local calling. According to SBC, one of the most significant consequences to the conversion of historically toll routes to local calling is the potential to fundamentally alter the existing intercarrier compensation regime. SBC insists that the creation of new one-way expanded area calling routes is inconsistent with the Commission's longstanding policies and is inconsistent with the balance among competing interests struck by the Legislature. Therefore, SBC argues that the Commission should deny Carr's request to expand its local calling area to its non-adjacent Big Rapids, Freesoil, Luther, Manistee, Reed City, and White Cloud exchanges. In the alternative, SBC contends that the Commission should require that the current intercarrier compensation arrangements with respect to calling from the Carr exchange to non-adjacent SBC exchanges remain unchanged.

Iserv applauds Carr's efforts to expand its local calling area and states that the proposed rate increase seems reasonable. However, Iserv argues that the application should be rejected because of Carr's proposal to have a 2000-minute rate cap, a 4-cent per minute rate for usage over the 2000-minute cap, and the 1+dialing prohibition. Iserv states that the 2000-minute rate cap confuses and harms the customers by artificially preventing them from subscribing to internet service providers outside of their exchange. Indeed, Iserv suggests that the 2000-minute cap

constitutes an effort by Carr to retain its captive customer base for its unregulated internet division, thereby thwarting competition.

With regard to the 4 cent per minute charge above the 2000-minute cap, Iserv states that it is too expensive because cheaper alternatives are available from other carriers.

Finally, Iserv contends that blocking 1+ dialing to the new calling area is completely unacceptable. According to Iserv, customers should be able to “dial around” the local provider to avoid local route truck failures, to access cheaper plans from other providers, and to promote competition.

On June 24, 2003, Carr filed a motion for leave to file supplemental testimony pursuant to R 460.17335 to address a new development regarding the network configuration and call routing to be used to implement its proposed local area calling expansion. According to Carr, when it contacted Verizon to address how toll calls could be routed from the Carr exchange to the five Verizon exchanges included in the expanded local calling area, Verizon informed Carr that Verizon would not allow Carr to access to Verizon’s Muskegon tandem switch for local calling termination. Carr contends that Verizon informed Carr that Carr must provide end office direct trunks to reach all Verizon customers, as well as competitive local exchange carriers (CLECs) and commercial mobile radio service (CMRS) providers operating off of the Muskegon tandem switch.

Carr maintains that Verizon’s position, which it deems to be improper, will have a significant effect on the implementation of its proposal. Carr indicates that, should the Commission choose to issue an order granting its application, the Commission should also state that Carr’s assumptions were correct and that Verizon must terminate Carr’s local calls in a manner that is consistent with Verizon’s offerings to itself, CLECs, CMRS providers, and “primary” local exchange carriers. Toward that end, Carr requests that the Commission permit Carr to file the supplemental testimony

of Mitchel Bogner, which Carr maintains will identify the network configuration required by Verizon and the potential discrimination and anticompetitive effects of that network configuration on Carr's ability to implement expanded local calling as proposed in its application.

On July 7, 2003, Carr submitted a request to withdraw its June 24, 2003 filing.

The Commission finds that given the issues raised by SBC and Iserv and Carr's last minute effort to withdraw its June 24, 2003 filing, Carr's application should be dismissed without prejudice to the resubmission of an application that will allow the Commission to address the issues that must be resolved in order to rule on the merits of Carr's local calling area expansion proposal in an orderly manner. Section 203 of the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2101 et seq., places strict filing requirements and time constraints on the processing of applications. Pursuant to MCL 484.2203(2), at the time of filing, an application or complaint must contain all of the information, testimony, exhibits, and other documents on which the applicant or complainant intends to rely. This requirement is necessary for the Commission to act on an application or complaint in the expedited timeframe required by the Legislature. In the event that an applicant or complainant fails to submit all of the required information and documentation, Section 203(2) requires that the application or complaint "shall be dismissed or suspended pending the receipt by the commission of the required information."

MCL 484.2203(2).

The Commission is persuaded that dismissal of Carr's application without prejudice to resubmission of another application is appropriate under the circumstances. Facing a July 9, 2003 statutory deadline for resolving Carr's application, the Commission has seen Carr switch positions twice in the last two weeks. Section 203 of the MTA does not empower an applicant to repeatedly shift positions and most certainly does not require the Commission to hit a constantly moving

target. Therefore, the Commission finds that Carr's April 10, 2003 application should be dismissed.

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. Carr's April 10, 2003 application for authority to offer expanded local calling from its Carr exchange to all adjacent exchanges and to 11 non-adjacent exchanges should be dismissed without prejudice to its resubmission.

THEREFORE, IT IS ORDERED that Carr Telephone Company's April 10, 2003 application for authority to offer expanded local calling from its Carr exchange to all adjacent exchanges and to 11 non-adjacent exchanges is dismissed without prejudice to its resubmission.

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 8, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of July 8, 2003.

Its Acting Executive Secretary

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Case No. U-13760

Suggested Minute:

“Adopt and issue order dated July 8, 2003 dismissing Carr Telephone Company’s April 10, 2003 application for authority to offer expanded local calling from its Carr exchange to all adjacent exchanges and to 11 non-adjacent exchanges without prejudice to its resubmission, as set forth in the order.”