

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint and request for)
emergency relief filed by **TDS METROCOM, LLC,**) Case No. U-13789
against **SBC AMERITECH MICHIGAN.**)
_____)

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 DENYING APPLICATION FOR LEAVE TO APPEAL

On May 13, 2003, TDS Metrocom, LLC, (TDS) filed a complaint and request for emergency relief against SBC Ameritech Michigan (SBC), pursuant to MCL 484.2203(2). On May 20, 2003, SBC filed an answer.

On June 9, 2003, a hearing was held before Administrative Law Judge Barbara A. Stump (ALJ). At that time, the ALJ denied a petition to intervene filed by Telnet Worldwide, Inc., (TelNet) for purposes of the emergency hearing. The ruling was without prejudice to TelNet's ability to request intervention in the complaint case. On June 11, 2003, TelNet filed a "motion for emergency review and appeal of denial of intervention."

On June 16, 2003, the Commission issued an order in which it affirmed the ALJ's denial of TelNet's application to intervene in the emergency relief hearing. In so doing, the Commission stated:

As to Telnet's motion, the Commission finds that even if its rules could be construed to countenance such a motion, the ALJ properly denied Telnet's request to intervene at the hearing. That hearing was to address only whether emergency relief for TDS was warranted. If the issues were so compelling for Telnet, or any other competitive provider, it would have been free to file its own complaint and request for emergency relief. Having not done so, it is hardly in a position to seek intervention here. Moreover, the Commission finds that the relief that Telnet seeks (reversing the ALJ's determination) would merely delay to this case, rather than facilitate expediting it.
Id. p. 2.

On June 23, 2003, the ALJ denied TelNet's petition to intervene in the complaint case. The ALJ further granted TelNet's request to file an emergency appeal within three days, and directed SBC to respond no later than July 3, 2003.

On June 26, 2003, TelNet filed an emergency application for leave to appeal, in which it requests a Commission order reversing the ALJ's ruling by July 15, 2003. TelNet argues that "the ALJ was clearly wrong in denying TelNet the right to participate in the complaint phase of this proceeding." Petition, p. 2. TelNet asserts that its interests are identical to those of TDS and that TelNet may demonstrate a far greater injury than TDS. TelNet states that two of its customers are facing a combined total of \$500,000 in termination penalties. TelNet argues that if it is not permitted to be heard in this case, its customers face very serious and substantial injury. TelNet further argues that it is preparing to file testimony in this proceeding, despite the ALJ's ruling, so that little or no delay will occur if the Commission promptly reverses the ALJ's determination. TelNet argues that although it should be granted intervention as of right, in the alternative, the Commission should grant discretionary intervention to further the public interest and promote administrative efficiency.

SBC filed a response on July 3, 2003, in which it argues that the ALJ correctly determined that TelNet should not be permitted to intervene in this case.

After a review of the arguments and the hearing record, the Commission finds that the determination of the ALJ denying TelNet's petition to intervene should be affirmed. If TelNet desires to prosecute its own complaint against SBC, it is free to do so. However, at this juncture, the Commission is persuaded that TDS's complaint should be heard without TelNet's intervention. Contrary to TelNet's assertions, its rights will not be compromised by the complaint case proceeding to resolution and TelNet will not be injured by its exclusion from this case.

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. TelNet's application for leave to appeal should be denied.

THEREFORE, IT IS ORDERED that the application for leave to appeal filed by TelNet Worldwide, Inc., 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 8, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of July 8, 2003.

Its Acting Executive Secretary

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Suggested Minute:

“Adopt and issue order dated July 8, 2003 denying the application for leave to appeal filed by TelNet Worldwide, Inc., as set forth in the order.”