

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
PIGEON TELEPHONE COMPANY for approval)
of an alteration to the geographic area of its license) Case No. U-13793
to provide basic local exchange service.)
_____)

At the July 31, 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

OPINION AND ORDER

On May 16, 2003, Pigeon Telephone Company (Pigeon) filed an application, pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq., to amend its license to provide basic local exchange service to include the territory along its northern boundary where it adjoins the Caseville exchange currently served by Verizon North Inc. (Verizon).

Pigeon served a notice of opportunity to comment on other local exchange carriers. SBC Ameritech Michigan (SBC) filed comments on June 6, 2003. SBC does not oppose Pigeon's application to provide local exchange service in portions of Verizon's Caseville exchange, however, it advises the Commission that if the application is granted, it does not intend to provide intraLATA toll service to the expanded area. SBC does provide that service to customers in the existing Pigeon exchange.

On July 8, 2003, Verizon filed a petition to intervene in this proceeding. Verizon claims that because Pigeon's application requests expansion into its service territory, it has an interest in this proceeding. Verizon remarks that Pigeon's application seeks to cover over 8.5 square miles of its service territory where over 1,000 customers exist. Verizon claims that if the application is granted, it will suffer an injury in fact. Furthermore, Verizon raises a number of policy issues that it believes need to be resolved before the Commission can find that granting Pigeon's application would be in the public interest. Additionally, Verizon asserts that the Commission cannot approve Pigeon's application until there has been an opportunity for notice and a hearing. Finally, Verizon claims that Pigeon must obtain a competing license to operate as a competitive local exchange carrier and execute an interconnection agreement with Verizon in order to provide service. Verizon argues that the Commission should consider all the implications of permitting an incumbent local exchange carrier to serve as a second incumbent in another incumbent's local service area.

On July 23, 2003, Verizon filed additional comments. Verizon raises five arguments in opposition to Pigeon's application. First, Verizon asserts that Pigeon's request for ex parte approval of its application is unlawful, because Section 302 of the MTA requires notice and a hearing before Commission approval of an application for a license. Second, Verizon asserts that Pigeon's application does not satisfy the statutory standard. Verizon claims that Pigeon has failed to provide any evidence upon which the Commission could find that it possesses sufficient technical, financial, and managerial resources to provide the local exchange service, or that granting the application is in the public interest. MCL 484.2302. Third, Verizon claims that any license granted to Pigeon should be as a competitive local exchange carrier. Verizon asserts that there cannot be two incumbent carriers serving the same territory and that where boundary

changes have occurred, they occurred by the two carriers serving the adjoining territory filing a joint application for the boundary change. Verizon claims that if any license is to be granted to Pigeon, it must be as a competitive carrier. Fourth, as a competitive carrier, Verizon asserts that Pigeon must enter into an interconnection agreement as required by law. MCL 484.2303 and 47 USC 251 and 252. Fifth, Verizon asserts that Pigeon cannot be permitted to use its rural high costs universal service fund support to gain a competitive advantage in the Caseville exchange. Verizon argues that if the Commission grants Pigeon a license, it should be as a competitive eligible telecommunications carrier. That way, Pigeon would be compelled to keep its incumbent investments and line counts separate from its competitive operations.

Also on July 23, 2003, Pigeon filed a response to Verizon's petition to intervene. Pigeon asserts that its application is pursuant to MCL 484.2303 that applies to amendments to existing licenses. Pigeon claims that Section 303 does not require a hearing. Pigeon also asserts that if its application is approved, it intends initially to provide service to one customer in the Caseville exchange over its own facilities. Pigeon argues that such facilities-based competition is encouraged by the MTA and is in the public interest. Pigeon claims that Verizon's opposition in this proceeding merely stems from the fact that it is a competitor. Pigeon asserts that Verizon's request to intervene and for a formal hearing will only delay and hinder the development of competition. Pigeon further claims that it uses appropriate accounting practices in compliance with federal universal service support requirements.

In its April 17 and July 11, 2001 orders in Case No. U-12809, the Commission established that it was consistent with the competitive purposes of the MTA to expand the geographic area of one provider's license to provide basic local exchange service without making a corresponding reduction in the geographic area of another provider's license. Indeed, as noted by Pigeon,

Section 303 of the MTA, MCL 484.2303, authorizes the Commission to alter or amend the geographic area of a license without the need for a hearing. Therefore, the Commission finds that approval of Pigeon's application is in the public interest. The expansion of the license is conditioned on compliance with the anti-slamming procedures adopted in Case No. U-11900, the number portability provisions of the MTA, and the number reclamation process adopted in Case No. U-12703. Failure to comply fully with those procedures may result in revocation of the license or other penalties. Further, the expansion of the license is conditioned upon the provision of service to customers in the added exchanges within a reasonable time. Failure to do so may result in revocation of the expansion of the license.

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. Amending Pigeon's license to provide basic local exchange service is in the public interest.
- c. Verizon North Inc.'s petition to intervene should be denied.

THEREFORE, IT IS ORDERED that:

A. The license of Pigeon Telephone Company to provide basic local exchange service is amended to include the territory along its northern boundary where it adjoins the Caseville exchange currently served by Verizon North Inc.

B. Pigeon Telephone Company shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act,

MCL 484.2101 et seq., including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Verizon North Inc.'s petition to intervene is denied.

D. Before commencing basic local exchange service in the areas added to the license by this order, Pigeon Telephone Company shall submit its tariff identifying the additional exchanges in which it will offer service.

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 31, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

MCL 484.2101 et seq., including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Verizon North Inc.'s petition to intervene is denied.

D. Before commencing basic local exchange service in the areas added to the license by this order, Pigeon Telephone Company shall submit its tariff identifying the additional exchanges in which it will offer service.

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Case No. U-13793

Suggested Minute:

“Adopt and issue order dated July 31, 2003 amending the license of Pigeon Telephone Company to provide basic local exchange service, as set forth in the order.”