

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
to open a docket and to establish a deadline for )  
telecommunications providers to petition the ) Case No. U-13895  
Commission for a determination to rebut the )  
national finding of non-impairment for unbundled )  
local circuit switching in the enterprise market. )  
\_\_\_\_\_)

At the November 25, 2003 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

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

**ORDER CLOSING DOCKET**

On February 20, 2003, the Federal Communications Commission (FCC) announced that it was adopting rules in its Triennial Review proceeding<sup>1</sup> that will affect how incumbent local exchange carriers (ILECs) meet their statutory obligations to make unbundled network elements available to new entrants.

In an order issued on May 28, 2003 in Case No. U-13796, the Commission commenced a proceeding to facilitate the implementation of the FCC's anticipated Triennial Review Order

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<sup>1</sup> 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.

(TRO) by soliciting input from stakeholders. In so doing, the Commission requested comments on certain specific issues.

On August 21, 2003, the FCC released the text of its TRO, which was published in the Federal Register on September 2, 2003 and which became effective on October 2, 2003. Among other things, the TRO sought to determine on a national basis whether competitive local exchange carriers (CLECs) are impaired in the market without access to certain elements of an ILEC's network. In so doing, the FCC made a national finding that telecommunications carriers requesting interconnection are not impaired in the enterprise market without access to local circuit switching to serve customers using DS1 capacity and above.

The FCC provided that states may rebut this finding within 90 days of the effective date of the TRO. The FCC gave the states an opportunity to conduct a more granular analysis of the markets subject to their jurisdiction and to determine whether CLECs are impaired competitively without access to those network elements in certain geographic areas or to specific end users. The FCC order also provided that, if a state commission fails to exercise its authority in this regard, a party may petition the FCC to step into the role of the state commission and the FCC may assume responsibility for conducting the proceeding.

As of October 7, 2003, the Commission had received no indication of claimed impairment without access to local switching for carriers serving enterprise market customers using DS-1 capacity and above. However, because such a determination must be made, if at all, within 90 days of the effective date of the TRO (or by January 1, 2004), the Commission issued an order opening this docket and established a deadline for parties interested in this issue to file a statement of position, with prepared direct testimony and supporting documentation, including the designation of all geographic areas encompassed by the filing. The filing deadline was

October 20, 2003. By that date no party filed a statement of position or prepared direct testimony as required by the October 7 order. However, LDMI Telecommunications, Inc., (LDMI) filed a motion to stay the proceedings on that date.<sup>2</sup>

On November 5, 2003, Quick Communications and Superior Spectrum, Inc., (collectively, Quick) filed a motion to revise the schedule established in the October 7 order. Quick also filed a statement of position and prepared direct testimony in support of its contention that CLECs in Michigan's Upper Peninsula are impaired if they do not have access to unbundled local DS-2 enterprise switching.

On November 5, 2003, TelNet Worldwide, Inc., filed a statement of position and prepared direct testimony in support of its contention that it would be impaired if unbundled DS-1 or above enterprise switching is not available in the service territory of Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (Verizon). With regard to SBC's service territory, TelNet took the position that impairment regarding DS-1 or above enterprise switching should be determined on a CLEC by CLEC basis, with the Commission reviewing the economic situation of each CLEC. According to TelNet, this review could be conducted when a CLEC makes application to the Commission and demonstrates impairment if access to such switching were not available.

On November 12, 2003, SBC filed an answer in opposition to the motion to revise the schedule set in the October 7 order.

On November 20, 2003, Verizon filed a motion to strike TelNet's statement of position and prepared direct testimony.

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<sup>2</sup> On October 28, 2003, SBC Michigan (SBC) filed an answer in opposition to LDMI's motion, which it supplemented on November 5, 2003.

The Commission finds that the filings submitted by LDMI, Quick, and TelNet should be rejected and that the docket in this proceeding should be closed. These filings all made reference to the existence of a stay issued by the Second Circuit Court of Appeals. However, that stay is no longer in effect and did not bind this Commission in any event. Moreover, because the filings submitted by LDMI, Quick, and TelNet failed to comply with the requirements of the October 7 order, the Commission finds that the filings should be rejected. Therefore, the Commission concludes that this docket should be closed.

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.; the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.; and 47 USC 251 and 252.
- b. The filings submitted by LDMI, Quick, and TelNet failed to comply with the requirements of the October 7 order and should be rejected.
- c. This docket should be closed.

THEREFORE, IT IS ORDERED that:

- A. The filings submitted by LDMI Telecommunications, Inc., Quick Communications and Superior Spectrum, Inc., and TelNet Worldwide, Inc., are rejected.
- B. This docket is closed.

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 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

/s/ Laura Chappelle  
Commissioner

By its action of November 25, 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 November 25, 2003.

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Its Acting Executive Secretary

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Case No. U-13895

Suggested Minute:

“Adopt and issue order dated November 25, 2003 closing the docket in this proceeding, as set forth in the order.”