

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
to require **SBC COMMUNICATIONS, INC.**, and)
SAGE TELECOM, INC., to submit their recently)
negotiated agreement for the provision of)
telecommunications services in Michigan for)
review and approval.)
_____)

Case No. U-14121

At the April 28, 2004 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

On April 3, 2004, SBC Communications, Inc. (SBC), the corporate parent of SBC Michigan, issued a press release indicating that SBC had entered into a seven-year agreement with Sage Telecom, Inc. (Sage), concerning SBC’s provision of telecommunications services to Sage in Michigan and several other states.

Pursuant to Section USC 252(a) and (e) of the federal Telecommunications Act of 1996 (FTA), 47 USC 252(a) and (e), interconnection agreements arrived at through negotiations must be filed with and approved by this Commission. Section 252(a) provides that an interconnection agreement “shall be submitted to the State commission under subsection (e) of this section.” Moreover, Section 252(e)(1) provides that an interconnection agreement “adopted by negotiation...shall be submitted for approval to the State commission.” More specifically,

Section 252 of the FTA requires that any interconnection agreement that is adopted by negotiation be submitted to this Commission for review as follows:

- (2) The State commission may only reject
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that--
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; . . .
- (3) Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

47 USC 252(e)(2) and (3).

The Commission’s authority to exercise its jurisdiction over the SBC/Sage agreement at issue is not limited to the FTA. Section 355 of the Michigan Telecommunication Act, 1991 PA 179, as amended, MCL 484.2101 et seq. (MTA), clearly obligates a provider of basic local exchange service such as SBC to unbundle and separately price each basic local exchange service offered by the provider into loop and port components. Section 355 also obligates the provider to “allow other providers to purchase such services on a nondiscriminatory basis.” MCL 484.2355. Section 357 of the MTA, MCL 484.2357, governs regulation of resale and wholesale rates, terms, and conditions of basic local exchange services. Further, the Commission is empowered to enforce Section 359 of the MTA, MCL 484.2359, which requires that a compensation agreement for the termination of local traffic agreed to by providers must be available to other providers “with the same terms and conditions on a nondiscriminatory basis.” MCL 484.2359.

In order for the Commission to perform these statutory duties, the SBC/Sage agreement must be formally filed with the Commission for its consideration.¹ Accordingly, SBC and Sage are ordered to file their recently negotiated agreement in its entirety with the Commission for review.² A review of the agreement by the Commission will enable it to determine whether the agreement discriminates against other competitors and is in the public interest. Because of the short timeframe in which carriers are negotiating new arrangements with SBC in light of the recent order issued by the United States Circuit Court of Appeals for the District of Columbia Circuit,³ the full agreement should be filed no later than 5:00 p.m. on May 5, 2004.

To the extent that SBC and Sage believe that a provision of the interconnection agreement contains commercially sensitive information that should remain confidential, they should identify each such specific provision and shall initially file them pursuant to Section 210 of the MTA, MCL 484.2210, under seal.

The Commission has selected this case for participation in its Electronic Filings Program. The Commission recognizes that some residential customers may not have the computer equipment or access to the Internet necessary to submit documents electronically. Therefore, residential customers may submit documents in the traditional paper format and mail them to the: Executive

¹ The Federal Communication Commission recently noted in a declaratory ruling involving QWEST Communications Corporation's failure to seek state review of interconnection agreements that without such review, the non-discriminatory pro-competitive purpose of Section 252 of the FTA would be defeated. See, Quest Communications Corporations Petition for Declaratory Ruling, 17 FCC Rcd 19337 (2002).

² The Commission intends this order to require disclosure of any and all agreements between SBC and Sage (including their affiliates) that have not been publicly filed with this Commission and that address, in whole or in part, terms, conditions, or pricing in Michigan for resale, interconnection, unbundled network elements, or port or loop components of SBC's network.

³ See, United States Telecom Ass'n v FCC, Nos. 00-1012 (consol.), 2004 WL 374262 (CADC March 2, 2004).

Secretary, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909. Otherwise, all documents filed in this case must be submitted in both paper and electronic versions. An original and four paper copies and an electronic copy in the portable document format (PDF) should be filed with the Commission. Requirements and instructions for filing electronic documents can be found in the Electronic Filings Users Manual at: <http://efile.mpsc.cis.state.mi.us/efile/usersmanual.pdf>. The application for account and letter of assurance are located at <http://efile.mpsc.cis.state.mi.us/efile/help>. You may contact Commission staff at 517.241.6170 or by e-mail at mpscfilecases@michigan.gov with questions and to obtain access privileges prior to filing.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 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. SBC and Sage should be ordered to file their recently negotiated agreement regarding the provisions of telecommunications services in Michigan with the Commission by 5:00 p.m. on May 5, 2004. SBC and Sage should also be ordered to file and disclose the full content of any understandings, oral agreements, or side agreements that may have a bearing on the agreement.
- c. SBC and Sage should identify and file under seal any specific provisions of their agreement for the provision of telecommunications services in Michigan that might contain commercially sensitive information that should remain confidential.

THEREFORE, IT IS ORDERED that:

A. SBC Communications, Inc., and Sage Telecom, Inc., shall file their recently negotiated agreement for the provision of telecommunications services in Michigan by 5:00 p.m. on May 5, 2004. The filing shall also disclose the full content of any understandings, oral agreements, or side agreements that have a bearing on the agreement.

B. SBC Communications, Inc., and Sage Telecom, Inc., shall identify and file under seal any and all specific provisions of the agreement for the provision of telecommunications services in Michigan that may contain commercially sensitive information that they believe should remain confidential.

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 April 28, 2004.

/s/ Mary Jo Kunkle

Its Executive Secretary

THEREFORE, IT IS ORDERED that:

A. SBC Communications, Inc., and Sage Telecom, Inc., shall file their recently negotiated agreement for the provision of telecommunications services in Michigan by 5:00 p.m. on May 5, 2004. The filing shall also disclose the full content of any understandings, oral agreements, or side agreements that have a bearing on the agreement.

B. SBC Communications, Inc., and Sage Telecom, Inc., shall identify and file under seal any and all specific provisions of the agreement for the provision of telecommunications services in Michigan that may contain commercially sensitive information that they believe should remain confidential.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of April 28, 2004.

Its Executive Secretary

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to require **SBC COMMUNICATIONS, INC.**, and)
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telecommunications services in Michigan for)
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_____)

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Suggested Minute:

“Adopt and issue order dated April 28, 2004 requiring SBC Communi-
cations, Inc., and Sage Telecom, Inc., to submit their recently negotiated
agreement for the provision of telecommunications services in Michigan for
review and approval by 5:00 p.m. on May 5, 2004, as set forth in the order.”