

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>MCI TELECOMMUNICATIONS CORPORATION</b>	)	
for arbitration to establish an interconnection	)	Case No. U-11168
agreement with <b>AMERITECH MICHIGAN.</b>	)	
_____	)	

At the August 31, 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 DENYING REHEARING**

On June 3, 2004, the Commission issued an order that resolved the issues presented on remand from the United States District Court, Eastern District of Michigan, Southern Division, as affirmed by the United States Court of Appeals for the Sixth Circuit. On July 6, 2004, MCImetro Access Transmission Services LLC (MCI) and SBC Michigan (SBC) filed their respective petitions for clarification or rehearing of certain portions of the Commission's June 3, 2004 order.

On July 30, 2004, SBC and MCI filed a joint notice of reformation, stipulation on certain issues, and withdrawal of SBC's petition for rehearing. On August 6, 2004, the parties filed Exhibit 1, which contains the language that the parties agree reforms the agreement as required by the Commission's June 3, 2004 order and which had been inadvertently omitted from the July 30 filing.

The Commission accepts both the joint filing as compliant with the June 3, 2004 order and the withdrawal of SBC's petition for rehearing. However, the parties stipulation does not include withdrawal of the petition for rehearing or clarification filed by MCI.

MCI requests that the Commission grant rehearing on two specific portions of the June 3 order. First, on pages 13-14, the Commission briefly described the manner in which rate changes generally become effective in current interconnection agreements. MCI is concerned that the Commission has prejudged its complaint in Case No. U-14004, a complaint case in which MCI argued that the new rates approved in Case No. U-11831 became effective without the need for a Commission-approved amendment to the agreement. MCI requests that the Commission either amend the order to delete the two descriptive sentences or grant rehearing on the issue.

Second, MCI complains that the Commission should have relied upon the ruling in Michigan Bell Telephone v MCImetro Access Transmission Services, 323 F3d 348, 357 (CA 6, 2003), concerning the dark fiber issue, in addition to or instead of its discussion on that issue. MCI states that the cited decision provides stronger support for the Commission's finding than the discussion in its June 3, 2004 order. MCI requests that the Commission amend the order to include this support.

SBC responds that MCI's request for rehearing does not meet the Commission's standard for rehearing. The first request, SBC says, is baseless. It argues that the Commission's statement could hardly be clearer. Moreover, SBC states, the complained of description merely reflects the Commission's consistent approach in matters arising under the federal Telecommunications Act of 1996, 47 USC 251 et seq. It argues that the statements do not prejudge the issues in Case No. U-14004, as there is no reference to that case within the order. Rather, SBC argues, it is a straight forward application of the Commission's practice, as stated in the Commission's September 27,

2001 orders in Cases Nos. U-13003 and U-13006, and the Commission's June 3, 2004 order in Case No. U-14139.

Likewise, SBC argues, there is no basis for clarification or rehearing of the Commission's rulings with respect to dark fiber and access to loop distribution. SBC states that MCI asked for and received a ruling that it is entitled to unbundled access to subloops and dark fiber. Its petition for rehearing asks for no additional or different relief than that which the Commission has already granted. Rather, MCI appears to be requesting that the Commission amend its prior order to alter the rationale for its decision. SBC argues that the Commission's decision is entirely consistent with the Commission's previous decisions and complies with federal law, which provides the exclusive process for obtaining interconnection.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission finds that MCI's request for rehearing does not meet the standard for granting rehearing. MCI does not request that any result be changed in the order. Rather, it desires the order be amended to reflect its own preferred reasoning and deletion of a description of general practice to enhance its position in a separate case.<sup>1</sup> The Commission's June 3, 2004 order

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<sup>1</sup> The Commission recognizes that *Michigan Bell Telephone Co v MCImetro Access Transmission Services*, 323 F3d 348, 357 (CA6, 2003) provides additional support for the findings in the June 3, 2004 order.

did not prejudice the merits of Case No. U-14004. The Commission was aware of the complaint at the time that the June 3 order was issued. However, the June 3 order was intended only to resolve the issues remanded to the Commission and to take actions required by the District Court in its order remanding this case. The Commission remains free to address all of the issues in Case No. U-14004, including the effective date of the rates approved in Case No. U-11831 for purposes of the parties' interconnection agreement.

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. The petition for rehearing or clarification filed by MCI of the June 3, 2004 order should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing or clarification of the Commission's June 3, 2004 order filed by MCI Telecommunications Corporation 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/ J. Peter Lark  
Chair

( S E A L )

/s/ Robert B. Nelson  
Commissioner

/s/ Laura Chappelle  
Commissioner

By its action of August 31, 2004.

/s/ Mary Jo Kunkle  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Commissioner

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Commissioner

By its action of August 31, 2004.

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Its Executive Secretary