

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter on the Commission's own motion, )	
to review the costs of telecommunications services )	Case No. U-13531
by <b>SBC MICHIGAN</b> . )	
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At the December 21, 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

**OPINION AND ORDER**

On September 21, 2004, the Commission issued an order (September 21 order) approving total service long run incremental cost (TSLRIC) and total element long run incremental cost (TELRIC) studies for SBC Michigan (SBC). By October 21, 2004, the Commission received petitions for rehearing from Talk America Inc., SBC, AT&T Communications of Michigan, Inc. (AT&T), TCG Detroit, (collectively, the Joint CLECs), MCImetro Access Transmission Services LLC, and TDS Metrocom, LLC and XO Michigan, Inc. (collectively, TDS and XO). On November 10, 2004, TDS and XO filed a supplement to their petition for rehearing.<sup>1</sup> By November 12, 2004, the

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<sup>1</sup> Because the Commission's Rules of Practice and Procedure do not allow for a supplement to a rehearing request filed after the date for timely rehearing requests and the issues raised in the supplemental filing are more in keeping with comments permitted during the compliance phase of this case or are addressed by other parties, the Commission will not respond directly to the issues in this filing.

Commission received responses to the petitions for rehearing filed by Talk America, SBC, AT&T, the Joint CLECs, and TDS and XO.<sup>2</sup>

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.

### SBC's Petition

#### A. Linear Loading Factors

The Commission rejected SBC's proposed use of linear loading factors, which SBC proposed to apply to vendor material prices in order to calculate total installation costs. SBC objects and argues that this rejection was erroneous for several reasons. Although SBC admits that the relationship between installation and material costs is not the same for every project, it asserts that its loading factors represent average relationships developed over hundreds or thousands of projects. It argues that the Commission's resolution of this issue reflects a fundamental misunderstanding of SBC's installation costs. According to SBC, the Commission's decision also indicates the Commission's belief that linear loading factors had not been used in previous cost cases. It further asserts that other jurisdictions have rejected the same competitive local exchange carriers' (CLECs) contrary arguments raised in this proceeding.

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<sup>2</sup> Talk America filed its petition for rehearing on September 30, 2004. Responses to that petition were filed by SBC and the Joint CLECs on October 21, 2004.

AT&T argues that SBC's petition for rehearing fails to meet the standard for granting rehearing. It asserts that neither the argument that the Commission misapprehended SBC's position nor the argument that the Commission erroneously believed that linear loading factors had not been used previously are an appropriate basis for granting rehearing, even if accurate. First, AT&T argues that these arguments were previously presented to the Commission and rejected and are, therefore, merely reargument. AT&T argues that SBC has "had its day in court" (AT&T response, p. 4) and that SBC's petition merely indicates its disagreement with the Commission's conclusion.

AT&T states that SBC's references to decisions from other jurisdictions are neither newly discovered evidence nor new facts or circumstances arising after the September 21 order. AT&T argues that SBC fails to explain how the decisions it cites are relevant to the Commission's analysis in the order. There is no suggestion that they are binding authority, which they are not. Moreover, AT&T argues, there is ample authority to the contrary.

Finally, AT&T argues, the Commission's September 21 order did not find that linear loading factors had never been used in approved cost studies. Rather, the order noted that the issue had not been in dispute, discussed, or specifically ruled upon in prior cases. Thus, AT&T argues, SBC creates its own error so that it may introduce a remedy, i.e., adopting SBC's position.

TDS and XO argue that the Commission has already considered and properly rejected SBC's misguided request to use linear loading factors. They argue that the rejection was based upon the lack of linear relationship demonstrated to exist between installation costs and material costs, and that the proposed factors reflected embedded, historical costs that were not sufficiently forward-looking for TELRIC requirements. They argue that the Commission's determinations are well

supported by the record. Because these arguments were considered and rejected, TDS and XO state, they should not be reconsidered on rehearing.

MCI joins the arguments of AT&T and TDS and XO. It further notes that there are many decisions in other jurisdictions that have rejected SBC's proposed linear loading factors for installation costs, but which SBC failed to cite in its petition for rehearing. It further argues that "absent from SBC's criticism of the Commission's decision is any discussion of the installation costs [approved by] the Commission . . . ." MCI response, p. 5.

The Commission finds that SBC's argument on this issue is fraught with inaccuracy and attempts to reargue an issue already decided by the Commission. There are no new facts or circumstances or unintended consequences that would suggest that the Commission should alter its resolution of this issue. The Commission assures SBC that it did in fact understand the linear loading factors. Moreover, the Commission did not find that linear loading factors had never been used before. Rather, as set forth in the order, the Commission found no reference to linear loading factors in previous opinions, which suggested that the issue had not been disputed and ruled upon in the previous cost case before this Commission. Thus, there had been no previous explicit approval of linear loading factors. The Commission is still persuaded that its resolution of this issue will result in the most accurate installation costs and hereby affirms it.

#### B. Non-Recurring Charges (NRCs)

SBC objects to the Commission's determination to adopt the Commission Staff's (Staff) proposed resolution of this issue. SBC argues that it developed 15 different TELRIC service order studies related to a wide range of unbundled network elements (UNEs). It argues that its proposed costs were supported by extensive testimony of its expert witnesses.

SBC argues that the Commission applied an incorrect standard when it excluded incremental costs, which the incumbent local exchange carrier (ILEC) incurs to provision UNEs out of a concern for the rate that would flow from the TELRIC cost study. It argues that the Commission has therefore, prevented SBC from recovering its legitimate non-recurring costs to which it is entitled. It argues that the sizable proposed increase in NRCs is not a sufficient reason for the Commission to reject SBC's proposal.

Moreover, SBC argues, the fact that manual intervention is needed in certain circumstances is not an appropriate reason to reject the studies. It states that the Federal Communications Commission (FCC) has noted that some manual activities always will be needed, even for highly automated systems. It argues that even if the Commission takes issue with certain task times or task occurrence factors as not being forward-looking or efficient, the Commission's approach rejects too much and is clearly erroneous.

AT&T argues that once again, SBC is merely rearguing the position that it took during this proceeding. AT&T argues that SBC raises no new evidence or change of circumstance that might justify rehearing. Rather, AT&T argues, it is apparent SBC merely disagrees with the Commission's resolution of the issue.

TDS and XO argue that to a limited extent, SBC is correct that NRCs need to be based on TELRIC, which they state the Commission failed to do with respect to current (previously approved) NRCs. It argues that the Commission appears to have adopted a "hodge-podge" compromise that is not based on TELRIC. It states that the Commission can rectify this problem by adopting the same process for existing NRCs that the Commission adopted for new NRCs. In any event, these parties argue, the Commission should not adopt SBC's NRC studies after having correctly recognized that they are not based on TELRIC principles. They argue that rehearing

should not be merely a new opportunity for SBC to reargue its position, which the Commission has properly rejected three times.

MCI argues that SBC's objections are based on two fallacious arguments. First, MCI states, SBC argues that it is entitled to NRCs that recover its costs. However, MCI argues, SBC's citation to authority for this proposition takes the FCC's statements out of context and leaves out its statement that only forward-looking, incremental costs of the most efficient technology available shall be included in a TELRIC study. See, ¶ 690 of the FCC's Local Competition Order.<sup>3</sup>

MCI further argues that SBC's citing of testimony of its witness Dr. Currie is merely an attempt to reargue its position following issuance of the Commission order. Although the Commission relied upon the arguments of the Staff and the CLECs in rejecting SBC's proposed NRC and labor costs, MCI notes, SBC does not address those arguments in its plea for the Commission to alter the result. MCI argues that SBC's objection to the Commission's noting the manual intervention assumptions within the rejected studies essentially seizes on a few isolated sentences in the September 21 order and misconstrues the language. In short, MCI argues, the petition does not present any new information, and should be denied.

The Commission finds that SBC's objection to the NRC portion of the order does not meet the standard for granting rehearing, and should be rejected. In the Commission's view, the order sufficiently articulates the reasons for the conclusion reached. Contrary to SBC's hypothesis, the Commission's conclusion was not based solely on the assumed manual intervention, although the amount of manual intervention assumed in SBC's proposed studies is unacceptable for forward-looking, most efficient operations required under TELRIC principles.

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<sup>3</sup> FCC Order 96-325, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order and Notice of Proposed Rulemaking, (rel'd August 8, 1996).

Moreover, the Commission notes that TELRIC and TSLRIC pricing does not seek to guarantee recovery of costs that the company incurs. The principles underlying TELRIC and TSLRIC are aimed at recovery of the incremental, forward-looking costs that would be incurred by a carrier using the most efficient technology available. In the Commission's view, SBC's NRC study failed to sufficiently recognize these principles. Because of that lack, the Commission made a determination to use a different scheme for determining the TELRIC and TSLRIC of the elements.

C. Transitional Benefit Obligation (TBO)<sup>4</sup>

SBC objects to the Commission's determination that the amortized TBO should not be included in shared and common costs. It argues that it actually incurs a significant level of this expense and will incur it through the period that this cost case will cover. It argues therefore, that the cost is forward-looking and should be included in shared and common costs because it is not assignable as a direct cost. SBC cites various orders from other jurisdictions in which the governing authority granted SBC's request to include the TBO in shared and common costs. It asserts that the Commission's decision on this issue is clearly erroneous.

AT&T argues that SBC has not cited any new facts or circumstances to support its request for rehearing on this issue. Rather, AT&T states, SBC merely relies on the filed testimony of its witness, Mr. Dominak. AT&T argues that contrary to SBC's assertion, the Commission was not confused, but appropriately concluded that the TBO is an obligation separate from, and in addition, to the benefits currently being earned, and thus, is not properly included in the

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<sup>4</sup> As more fully explained in the September 21 order, the TBO relates to an accounting change for costs associated with post retirement benefits other than pensions. The TBO is the value of the earned but not recorded portion of these benefits at the time of the accounting change. Pursuant to FCC rulings, communications carriers amortized the TBO over a number of years, which will begin to expire at the end of 2008.

calculation of common costs. Moreover, AT&T notes, SBC admits that the Commission based its decision on the testimony and arguments of three, unrelated parties to this case in reaching its determination on this issue. Against that backdrop, AT&T argues, SBC's claim that the Commission's determination was clearly erroneous fails to meet the burden of one seeking rehearing.

TDS and XO agree that the Commission reached the correct determination on this issue. It argues that the Commission correctly concluded that the TBO is an obligation incurred due to past service of employees. Therefore, these parties state, there is no basis upon which to include the TBO in forward-looking costs. TDS and XO state that the Commission reached the same conclusion as that reached by the California Public Utilities Commission. These parties argue that SBC has failed to refute the fundamental premise that the TBO relates to expenses incurred due to past service.

MCI states that SBC's argument concerning the TBO is without merit. MCI argues that the accounting directives of the FCC and the Commission were issued prior to the federal Telecommunications Act of 1996 (federal Act), 47 USC 251 et seq., and the subsequent design of the TELRIC methodology for pricing UNEs. Neither of those orders found the TBO to consist of forward-looking costs.

Further, MCI states that the Commission's decision concerning the TBO does not conflict with its prior determination in Case Nos. U-10040 and U-10040A, and is consistent with the conclusion reached in four other SBC states: California, Illinois, Texas, and Ohio. It argues that SBC sets forth no new information in its petition on this issue and its objections should be rejected.

The Commission finds that SBC's argument that the TBO should be included in shared and common costs is without merit. The Commission reaffirms its discussion and findings on this issue in the September 21 order. These costs do not meet the definition of forward-looking costs for purposes of TELRIC and TSLRIC analysis. That they may be "incurred" for accounting purposes as they are amortized does not make them forward-looking costs. The fact that any cost is incurred is not alone sufficient to include it in TELRIC cost studies. To be included in these studies, a cost must be incremental, forward-looking, and that which would be incurred by a carrier using the most efficient technologies available.

D. Mix of Integrated Digital Line Carriers (IDLC)  
Universal Digital Line Carriers (UDLC)

SBC argues that the Commission erroneously rejected SBC's proposed mix of IDLC and UDLC in the network. It provides a summary and excerpts of the arguments and testimony presented to the Commission prior to the September 21 order. It argues that both the FCC and the Illinois Commerce Commission have determined that IDLC technology cannot be used to provide stand-alone loops. Therefore, SBC argues, assuming 100% IDLC technology is not correct.

AT&T responds that, similar to SBC's arguments on the previous issues, SBC merely rehashes its testimony and arguments already presented to the Commission and rejected, and relies on a decision in Illinois that was based upon the lack of clear evidence confirming the technical feasibility of unbundling loops served via IDLC technology. AT&T asserts that neither of these should be sufficient to alter the Commission's decision.

Moreover, it notes that the Commission's decision is supported by the testimony of Messrs. Pitkin and Turner, who discussed the ability of the IDLC and next generation DLC (NGDLC) technology to support the provision of unbundled loops by using the multi-hosting capabilities.

Thus, it argues, the Commission was provided with significant evidence justifying its decision that IDLC technology can be used to provision unbundled loops.

TDS and XO agree with AT&T that SBC has merely reargued its position taken before the Commission issued its final order in this case. They note that the Commission rejected SBC's position in the previous cost case, Case No. U-11831. Moreover, TDS and XO argue, SBC ignores the FCC's Wireline Bureau determination in what is commonly referred to as the Virginia Arbitration Order.<sup>5</sup> In that memorandum and order, the Wireline Bureau determined that NGDLC can be unbundled and therefore directed Verizon Virginia to include 100% NGDLC loops in its TELRIC studies.

MCI argues that SBC's petition "does little more than dredge up the same arguments this Commission has rejected over and over again." MCI response, p. 11. MCI argues that although SBC does not take issue with the fact that IDLC is more efficient and less costly, it continues to rely upon the tired and erroneous assertion that IDLC technology cannot support unbundled loops. MCI also points to the Virginia Arbitration Order. In addition, MCI states that the Virginia Arbitration Order determination was affirmed on this issue in the FCC's Triennial Review Order.<sup>6</sup> This section of the FCC's order was not vacated by the United States Circuit Court of Appeals for the District of Columbia.

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<sup>5</sup> In the Matter of the petitions of Worldcom, Inc., and AT&T Communications of Virginia, Inc., pursuant to Section 252(e)(5) of the Communications Act for preemption of jurisdiction of the Virginia State Corporation Commission regarding interconnection disputes with Verizon Virginia, Inc., CC Docket Nos. 00-218, 00-0251, Memorandum and Order released August 29, 2003.

<sup>6</sup> FCC 03-36, 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, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, rel'd August 21, 2003. ¶¶ 297 and 855.

The Commission finds that SBC has failed to meet the burden of demonstrating that a different result is required from that reached in the September 21 order. The Commission reviewed the evidence and testimony provided by the parties before reaching its determination. The Commission hereby reaffirms its determination with regard to the need to assume 100% IDLC technology for purposes of TELRIC and TSLRIC determinations.

E. Flex-ANI

SBC complains that the Commission reached a result concerning its decision on the Flex-ANI issue that is contrary to current federal law. It points to the FCC's Interim Unbundling Rules Order<sup>7</sup>, for which it says the fundamental directive was to preserve the status quo for the unbundled elements that must be provided by incumbent local exchange carriers without expanding unbundling obligations beyond those in place on June 15, 2004.

SBC states that there is no disagreement that SBC did not offer, and was not contractually required to offer, a Flex-ANI feature for unbundled ports, either on a stand-alone basis or as a type of UNE-platform (UNE-P) offering. Consequently, SBC argues, it may not be required to offer such a UNE pursuant to the terms of the Interim Unbundling Rules Order. Moreover, SBC argues, it would serve no purpose to require it to obtain the switch software features and to incur the costs to develop and implement provision of the Flex-ANI feature for unbundled ports, which it is not required to offer.

The Commission finds that SBC's arguments must be rejected. In reaching the conclusion that it did in the September 21 order, the Commission found that Flex-ANI is a part of a fully functioning port. The Commission has consistently found that CLECs are entitled to all features

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<sup>7</sup> Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 and CC Docket No. 01-338, Order and Notice of Proposed Rulemaking (rel'd August 20, 2004).

and functionalities when purchasing a port. The fact that SBC's choice of network configuration essentially turns off this function, does not make it any less a feature or functionality of the port. The requirement to provide Flex-ANI, therefore, is not a new one, but rather an ongoing one from before the June 15, 2004 status quo date in the FCC's Interim Unbundling Rules Order. Therefore, there is no conflict with current federal law in requiring that it be provided at this time. However, because the requirement to provide Flex-ANI arises out of the requirement to provide the switch as a UNE, it exists coextensive with the requirement to provide the switch. In other words, if the rules change for when the switch port must be provided, they also will change for Flex-ANI as a function of the switch.

Talk America's Petition  
Effective Date of New Rates

Talk America argues that the Commission's order granting SBC authority to implement new rates upon its compliance filing creates unintended consequences, impermissibly delegates to SBC the authority to set its own rates, and negatively affects the competitive market by permitting SBC to implement rate increases to its competitors before it is required to increase rates for its retail customers.

Talk America further argues that the Commission failed to establish TSLRIC or TELRIC costs and prices in the September 21 order. It argues that Section 352 of the Michigan Telecommunications Act (MTA), MCL 484.2352, requires the Commission to "determine" just and reasonable rates for interconnection. Rather than set the rates, Talk America argues, the Commission set up a compliance filing schedule, which essentially permits SBC to implement new wholesale rates of its choosing within 45 days.

Talk America further argues that correctly implementing the rates resulting from the September 21 order is not a mere ministerial act that can be properly delegated to the ILEC. It argues that to determine the amount of UNE rate increases requires not only access to the proprietary cost studies, but also the use of judgment and discretion for interpreting the Commission's resolution of disputed issues. It argues that the Commission's August 31, 2000 order in Case No. U-11831, resolving issues on rehearing in SBC's most recent previous cost case, the Commission repeatedly found that SBC had misinterpreted the Commission's prior orders. Thus, Talk America argues, history demonstrates that SBC should not be trusted to correctly apply the findings in the Commission's September 21, 2004 order in this case.

Talk America further argues that the true-up mechanism does not adequately protect CLECs. It states that even if a CLEC need not pay disputed amounts, it still must book those amounts for financial accounting purposes. It argues that the total amount of bogus charges that SBC may impose could be astronomical.

Further, Talk America argues, the Commission's order when combined with the delay for CLECs to increase their retail rates pursuant to the MTA results in confiscatory regulation. It argues that providers of rate-regulated services have a right to recover their reasonable expenses through rates. It argues that this right entitles the providers to immediate relief. To ensure that recovery, Talk America argues, the Commission must order that no wholesale rate increases become effective until an opportunity has been provided for the CLECs to obtain corresponding retail rate increases. Thus, it argues, the Commission should not permit the new wholesale rates to become effective sooner than 120 days from the date the Commission actually sets the wholesale rate increases.

Finally, Talk America argues, the Commission should require SBC to simultaneously increase its wholesale and retail rates. Otherwise, Talk America argues, SBC is given an unfair opportunity to engage in below market offers to retail customers, while increasing wholesale charges to its competitors.

The Joint CLECs support the relief requested by Talk America. They specifically support Talk America's argument concerning the authorization for SBC to increase its wholesale rates for CLECs in a process that effectively prohibits the CLECs from a realistic chance to recover the increased costs in their retail basic local exchange service rates. Because of the prohibition against retroactive ratemaking, the Joint CLECs argue, there will be no opportunity for the CLECs to recover the increases paid before authorization to increase the CLECs' retail rates. The Joint CLECs request that the Commission defer wholesale rate increases from taking effect until 210 days following the resolution of all compliance disputes. As a practical matter, the Joint CLECs argue, they cannot file an application to increase their retail rates until they know what those rates will be. Otherwise, they face the probability of guessing too high or too low, either of which poses problems for competition. The Joint CLECs request that the Commission promptly grant the Talk America petition to avoid irreparable harm to CLECs arising out of the September 21 order.

SBC responds that Talk America has failed to meet the requirements for the Commission to grant rehearing. It argues that Talk America has failed to demonstrate that the September 21 order will result in unintended consequences or erroneous findings of fact or conclusions of law.

SBC argues that Talk America did not offer its own proposal for post-order process, and should not now be heard to complain that the Commission adopted in large part the process proposed by another party. SBC argues that contrary to Talk America's argument, the Commission approved cost studies filed by SBC with the modifications required by the Commission.

Those cost studies, SBC argues, cover every SBC UNE and interconnection offering. The Commission further approved the allocation of shared and common costs which are to be added by SBC to the underlying TELRIC costs to establish the approved recurring rate for every UNE and interconnection service. Thus, SBC states, the recurring cost studies include the direct costs as well as the overhead costs as required by the federal Act. With the approval of these costs, computing prices is essentially a matter of arithmetic using the cost study values approved by the Commission.

SBC further states that whether the compliance filing required by the September 21 order is a ministerial act does not provide the basis for rehearing of the substance of the order or that rehearing should be granted.

Next, SBC argues that any increase in wholesale rates does not necessarily justify an increase in CLEC retail rates. It argues that, on September 15, 2004, Talk America's Chairman, Gabriel Battista, told the Michigan Chamber of Commerce Board of Directors that Talk America's average revenue per customer was \$45. It argues that such a huge margin over Talk America's wholesale cost of UNE-P would not justify the need for any rate increase. In any event, SBC argues, Talk America must decide for itself if or how to provision services and how to recover costs. SBC posits that it might be that Talk America is experiencing declining costs in another area that would permit it to absorb the wholesale increase without the need to increase its retail rates. Moreover, SBC points out that Section 304 of the MTA, MCL 484.2304, does not apply to toll services or optional features like voicemail, caller ID, call waiting, etc., or to bundles of such services, which are not regulated. Thus, SBC argues, Talk America may increase those rates on its own without Commission approval.

Additionally, SBC argues, Talk America has been aware for a significant period of time that an increase in wholesale rates was likely. Thus, SBC argues, the CLEC could have filed for an increase in basic local exchange rates in anticipation of the September 21 order. Moreover, nothing prohibits Talk America from filing such an application to increase its rates now. Because of these considerations, SBC argues, the Commission should reject Talk America's argument concerning confiscatory rates.

To Talk America's argument that the Commission should require SBC to implement rate increases on its retail rates simultaneously with its wholesale rates, SBC responds that while SBC's UNE and interconnection rates derive directly from the approved TELRIC costs that are a federal law requirement, SBC's other rates are not set in relation to TELRIC standards. Also, SBC argues, that some of its retail rates may still be above the Commission approved TSLRIC for those services, and would not require an immediate rate increase. Further, SBC argues that many of its retail services are not rate regulated, and thus do not come within the provision in Section 321 of the MTA, MCL 484.2321, that requires the rate for regulated services to meet or exceed the TSLRIC for that service.

SBC argues that Talk America's arguments concerning the amount of any overcharges should be disregarded. SBC states that it has no incentive to intentionally misinterpret the Commission's order, thereby risking Commission sanctions or complaints at the FCC. Moreover, SBC argues, the process of reviewing the compliance filing and resolving any issues related to it should not take the months or years contemplated by Talk America. Rather, the schedule in the order, SBC states, contemplates final resolution within a few months after the compliance filing.

After reviewing the parties' arguments, the Commission is not persuaded that it should alter the effective date of the tariffs filed in compliance with the Commission's September 21 order.

The Commission finds that the process approved in that order for compliance filing and review, with a true-up if changes are required, sufficiently protect the CLECs from unavoidable harm and do not impermissibly delegate ratemaking authority to SBC. Further, the Commission notes that in an order issued today in Case No. U-14309, the Commission granted a request for declaratory ruling concerning tariff requirements for bundled services filed by MCImetro Transmission Access Services, Inc. That order sets out the requirements to be met for altering rates for unregulated or bundled services, and will likely limit the CLECs' losses from any rate increases at the wholesale level. Therefore, the Commission concludes that Talk America's petition for rehearing should be denied.

Joint CLECs' Petition  
Metering DC Power Consumption

The Joint CLECs request that the Commission clarify the September 21, 2004 order regarding the appropriate methodology for measuring the actual DC power consumption of a collocating CLEC. The Joint CLECs state that the Commission rejected SBC's collocation study and approved the model offered by AT&T, adjusted to use the input determinations for cost of capital, depreciation, and fill factors discussed in the order. The Joint CLECs argue that there is no doubt that the Commission adopted the Collocation Cost Model (CCM) offered by AT&T. However, the Joint CLECs state, as a part of its presentation on this issue, Steven Turner's testimony recommended that the Commission require SBC to charge CLECs for DC power consumption based only on the amount of DC power used by the CLEC. The Joint CLECs state that because there is no contrary finding in the September 21 order and the Commission adopted the CCM, as modified, the Commission implicitly adopted AT&T's proposed DC power consumption charge. The Joint CLECs request that the Commission clarify the September 21 order by expressly

specifying the power metering method that SBC must use to implement the Commission's order. They argue that the CCM included a number of alternatives for the Commission to consider regarding how the measurement of DC power consumption might be accomplished. All of those options involved actual metering of the DC power consumption. As first choice, AT&T recommended measuring DC power consumption using handheld meters. However, AT&T offered several alternative methods and suggested that SBC undertake a study to determine the least cost method to implement DC power consumption metering in Michigan. The Joint CLECs state that the Commission may require SBC to use the handheld meter method, any other method proposed by AT&T, or a combination of those methods proposed by AT&T. It states that the Commission could order SBC to begin with one method, but initiate a cost study to determine the least cost method of measuring DC power usage.

SBC responds that the Joint CLECs' motion for clarification or petition for rehearing on the DC power consumption issue should be denied. SBC argues that the Commission did not in fact order a change in the method of calculating collocation rates approved in the November 16, 1999 order in Case No. U-11831. SBC argues that the Case No. U-11831 order did not provide for DC power metering. The only adjustments to the CCM approved in Case No. U-11831, SBC argues, were for cost of capital, depreciation, and fill factors discussed in the order, and do not include altering the method for recovering DC power costs. In SBC's view, clarifying the Commission's September 21 order in the manner requested by the Joint CLECs would constitute a complete reversal of the Commission's decision to continue the approach first approved by the Commission in Case No. U-11831.

Moreover, SBC argues, the Joint CLECs' petition does not meet the standards for rehearing. SBC notes that the out-of-state precedents cited by the Joint CLECs are nothing new, certainly of

little value after the order in this case was issued. Moreover, SBC states, the testimony of its witness Warner explains at length why the power metering required by the Illinois Commission in its 1998 order is expensive, dangerous, and inaccurate. It argues that the same testimony demonstrates that power metering (1) requires the special design and manufacture of equipment for central offices not designed to measure DC power; (2) is not accurate due to significant amounts of current flowing on the frame grounding conductors of DC-powered collocated equipment; (3) has an error rate for “return side” power metering that may range from 30% to 50% in power consumption not metered; (4) creates safety risks when using shunt metering on the supply side to both SBC and CLEC personnel and equipment; and (5) creates a risk to the reliability of the network.

The Commission finds that its September 21 order adopted AT&T’s proposal in this case for collocation, as modified to include the previously determined cost of capital, depreciation, and fill factors. Contrary to SBC’s argument, the Commission intended its decision to include charging a CLEC only for the DC power that it uses, not for the redundancy that is required to ensure that the CLEC will have the power that it needs or for capacity rather than power use. The Commission is aware that AT&T and SBC have reached an agreement concerning the redundancy issue, which is codified in an amendment to the interconnection agreement, approved by the Commission in the September 21, 2004 order in Case No. U-12465. That amendment provides that SBC will charge AT&T for the power ordered, not for the redundancy required to ensure that power is available. The Commission finds that SBC should treat all CLECs similarly with respect to this issue.

As to the metering issue, the Commission’s order did not choose a method for measuring DC power use, because the Commission believed that SBC should be permitted to choose the least-cost, safest method available. However, after reviewing the arguments of the parties and the

record evidence on this issue, the Commission is now persuaded that there is no proposed measuring method that does not have significant problems associated with it. Some of those problems, as noted in SBC's response to the requests for rehearing, relate to accuracy and safety, both crucial concerns. Therefore, the Commission finds that it should not, at this time, require SBC to meter CLECs' DC power use. However, the Commission encourages the parties to collaborate and negotiate with each other and other industry participants with respect to implementing a reasonable method of measuring DC power usage that will not place an undue burden on either SBC or the collocating CLEC. The Commission is open to revisiting this issue in an appropriate proceeding.

#### TDS and XO Petition for Rehearing

##### A. Fill Factors

TDS and XO argue that the Commission arbitrarily lowered the fill factors approved in Case No. U-11831, which they argue results in an unjustified increase in loop and transport rates, critical UNEs for facilities-based providers. These parties argue that the Commission's determination to split the difference between the fill factors proposed by SBC and those that the Commission had previously adopted is unsupported by any witness or any sound costing methodology and is arbitrary and capricious. They argue that the Commission's previously adopted fill factors have been affirmed by the Commission and the FCC, and should be reinstated.

These parties argue that the Commission's determination concerning fill factors rewards SBC for continuous litigation of previously determined issues. They argue that the Commission has previously rejected SBC's proposal to use actual fill factors twice and actually rejected that position again in the September 21 order. They argue that the Commission split the difference between fill factors proposed by SBC, which are found to be inaccurate, unreliable, and not

TELRIC compliant, and fill factors that the Commission has previously approved, which they argue would be TELRIC compliant.

TDS and XO further argue that the fill factors significantly impact loop rates and unbundled transport rates, leading to unintended consequences on facilities-based competition. It argues that these UNEs are the very ones that facilities-based providers must use to provide service.

SBC responds that TDS and XO have failed to demonstrate that rehearing is necessary or appropriate for the Commission's decision on fill factors. It argues that the Commission had in this case extensive information concerning the network usage levels that the Commission did not have when it approved the previous objective fill factors. Moreover, SBC argues, the Commission is correct that actual fills experienced on SBC's system is a good base from which to project forward-looking network fills.

SBC further argues that TDS and XO provide no authority for their position that the Commission must adopt a position offered by one of the parties on the record, rather than a position that may be within a range presented on the record.

The Commission rejects the arguments of TDS and XO, and finds that its decision concerning the appropriate fill factors is far from arbitrary and capricious. Rather, it adopts a position that is within a range recommended by the parties placing positions on the record on this issue. The Commission determined that SBC's proposed fill factors were not high enough to state the fills of an efficient provider. It further determined that the previous fill factors would no longer meet the requirement because they overstate the fills to be expected of an efficient provider. After reviewing all of the information on the record, the Commission concluded that fill factors at the midpoint of those previously approved and those proposed by SBC would be appropriate and compliant with TSLRIC and TELRIC principles. The Commission views a determination of

appropriate fill factors to be comparable to a determination concerning the cost of money. The Commission has frequently determined that the mid-point or near the mid-point of a range is appropriate. See, e.g. July 14, 1997 order in Case No. U-11280.

B. Non-Recurring Charges (NRCs)

TDS and XO argue that the Commission's September 21 order is ambiguous concerning the increases adopted for NRCs. It argues that the ambiguity arises because the Commission recognizes that the Staff presented three alternatives with respect to establishing NRCs, but does not clearly identify the alternative that the Commission adopted.

Further, TDS and XO argue, the increased NRCs are not based on sound costing principles, but rather on a rationale already rejected in the order. It states that there is no evidence to support a finding that increases in the average costs of recurring services under the UNE-P in any way relates to increases in NRCs associated with those services. Thus, they argue, there is no justification for increasing the existing NRCs by this "adder." They further argue that calculating an average UNE-P rate increase will be difficult because for example, the Commission just adopted a flat fee approach for switching, rather than the usage sensitive charges previously employed. Moreover, they argue, where a UNE rate decreases, it would be illogical to raise the NRC based on the unrelated increase in the UNE-P rate.

TDS and XO argue that excessive NRCs will harm competition, and thus, they should be increased only if required by sound costing principles. It says that the most appropriate course for the Commission concerning NRCs is to extend the portion of the Staff's third alternative relating to NRCs where no corresponding rate exists from Case No. U-11831 to all NRCs. This would result in using the NRCs proposed by AT&T with a 20% increase to compensate for labor rates and activity times, except if that would result in a rate higher than proposed by SBC. In the latter

case, they state, the Commission should adopt the SBC proposed rate. They say this method “would assure that all NRCs were based on appropriate cost principles.” TDS and XO exceptions, p. 13.

SBC responds that it too challenges the Commission’s findings and conclusions concerning NRCs, but argues that the correct remedy is for the Commission to approve SBC’s proposed TELRIC and labor cost studies for the NRCs and set NRCs at a level consistent with those cost studies. It argues that the proposal by TDS and XO to take AT&T’s NRCs and increase them by 20% unless that would result in a rate higher than SBC proposed is contrary to TELRIC principles.

The Commission finds that the exceptions filed by TDS and XO concerning the Commission’s treatment of NRCs should be rejected. In the September 21 order, the Commission rejected the proposed cost studies related to NRCs submitted by both SBC and AT&T, because each generally reached an unreasonable result. The Commission found SBC’s proposal fraught with problems, as explained more fully in the order. Because both positions were flawed and reached unreasonable results, the Commission determined to adopt a position that would be TELRIC and TSLRIC compliant and reach reasonable results.

To that end, the Commission determined that the Staff’s proposal from its final comments should be adopted. The use of the plural term recognizes that much in the Staff’s final proposal was also included in its original proposal. The adopted proposal is set out in a quote from the Staff’s final comments in this case:

First, the Commission should use the existing rates from Case No. U-11831, with an “adder” to increase rates to a level equal to the percentage the average UNE-P recurring rate is allowed to increase. Next, compare the AT&T rates for all NRCs and determine if AT&T proposes a higher rate than what the first step produces. If it does, use the AT&T rate with 20% increase as discussed below. In those instances where there is not a corresponding rate from Case No. U-11831, Staff recommends a 20% increase to AT&T’s proposed rates to compensate for labor rates and activity times. However, if this results in a rate that is above the

amount requested by SBC, the Commission should use the SBC proposed rate. Finally, if SBC's rate is lower than the existing rate, use the AT&T rate plus 20%.

September 21, order, p. 73.

The Commission reaffirms its position on this issue and rejects the exceptions of TDS, XO, and SBC.

### C. Commission Approval of Rates

TDS and XO raise essentially the same arguments that the Commission rejected in the section dealing with Talk America's exceptions. The Commission is not persuaded that it should alter its decisions concerning the compliance filing and implementation of the new wholesale rates. The compliance filing will be subject to Commission approval following the submission of comments by objecting parties and response comments from SBC. No cost study or rate is final until the Commission approves the compliance filing. As to the timing of SBC's increase for retail rates, SBC must assure itself that its rate regulated services are not priced below the TSLRIC for those services. Any party that desires to challenge the sufficiency of SBC's rates may take appropriate steps as provided by law.

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 petitions for rehearing, reconsideration, or clarification should be denied, except as provided in this order.

THEREFORE, IT IS ORDERED that the petitions for rehearing, reconsideration, or clarification filed by Talk America Inc., SBC Michigan, AT&T Communications of Michigan, Inc., TCG Detroit, MCImetro Access Transmission Services LLC, TDS Metrocom, LLC, and XO Michigan, Inc. are denied except as provided in this order.

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 December 21, 2004.

/s/ Mary Jo Kunkle

Its Executive Secretary

THEREFORE, IT IS ORDERED that the petitions for rehearing, reconsideration, or clarification filed by Talk America Inc., SBC Michigan, AT&T Communications of Michigan, Inc., TCG Detroit, MCImetro Access Transmission Services LLC, TDS Metrocom, LLC, and XO Michigan, Inc. are denied except as provided in this order.

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

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Commissioner

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Commissioner

By its action of December 21, 2004.

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Its Executive Secretary

In the matter on the Commission's own motion, )  
to review the costs of telecommunications services )  
by **SBC MICHIGAN**. )  
\_\_\_\_\_ )

Case No. U-13531

Suggested Minute:

“Adopt and issue order dated December 21, 2004 denying the petitions for rehearing, reconsideration, or clarification filed by Talk America Inc., SBC Michigan, AT&T Communications of Michigan, Inc., TCG Detroit, MCImetro Access Transmission Services, LLC, TDS Metrocom, LLC and XO Michigan, Inc., as set forth in the order.”