

“Adopt and issue minute dated October 4, 2004 transmitting to the Federal Communications Commission (FCC) a summary of the record in this docket, which was opened by the Michigan Public Service Commission to facilitate determinations to be made in accordance with the FCC’s proceeding entitled: 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.”

MICHIGAN PUBLIC SERVICE COMMISSION

J. Peter Lark, Chair

Robert B. Nelson, Commissioner

Laura Chappelle, Commissioner

Mary Jo Kunkle,
Executive Secretary

**Before the
Federal Communications Commission
Washington, D.C. 20554**

IN THE MATTER OF)	
)	
)	WC Docket No. 04-313
Unbundled Access to Network Elements)	
)	CC Docket No. 01-338
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	
Carriers)	

INITIAL COMMENTS AND WAIVER REQUEST OF THE
MICHIGAN PUBLIC SERVICE COMMISSION

The Michigan Public Service Commission respectfully submits these initial comments electronically in response to the August 20, 2004 released *Order and Notice of Proposed Rulemaking (Interim Order and NPRM)*, FCC 04-179, 69 Federal Register 55128 (September 13, 2004) seeking input on a variety of issues related to the development of final network unbundling rules.

The Michigan Public Service Commission also requests any waivers necessary to file evidence from its State TRO proceeding only in CD-ROM format.

We have included a summary of the evidence presented on the CD-ROM as an appendix to this pleading. A hard copy of this pleading and the record referenced in that summary is being filed separately by CD-ROM.

The CD-ROM will be available for inspection at the FCC's headquarters.

TABLE OF CONTENTS

I. Request for Waiver.....3

II. Comments on Further Notice.....4

Appendices –

Commission Order in Case No. U-13895 (Enterprise Switching) issued on 10/7/03

Administrative Law Judge Proposal for Decision in Case No. U-13796 (Mass Market, Loops, and Transport) issued on 5/10/04

Commission Order in Case No. U-13891 (Batch Hot Cut) issued on 6/29/04

Michigan Public Service Commission Comments in CC Docket No. 01-338

Michigan Public Service Commission Reply Comments in CC Docket No. 01-338

Full and complete records developed in MPSC Cases Nos. U-13895, U-13796, and U-13891 will be submitted on CD-ROM.

I. REQUEST FOR WAIVER OF FILING REQUIREMENTS

Due to the voluminous nature of the *TRO* proceedings' records, and the cost and time associated with duplicating and filing same, the Michigan Public Service Commission respectfully requests a waiver pursuant to FCC rule 1.3¹ of the filing requirements in FCC rules 1.51 and 1.419² to allow it to file its *TRO* proceedings' records in CD-ROM format only. Finally, and also for the same reasons, the Michigan Public Service Commission requests a waiver of paragraph 33 of the *NPRM* in order to allow it to file its comments using the FCC's ECFS system, but without having to upload and attach all of the documents on the CDs.

Pursuant to FCC rule 1.3, the Commission may waive its rules for good cause. Good cause may be found when special circumstances exist to warrant a deviation from the general rule³, or where circumstances make strict compliance inconsistent with the public interest.⁴ In this matter, good cause exists simply based on the sheer volume, time, and expense involved with submitting Michigan's *TRO* proceedings' records in paper format. Moreover, the Michigan Public Service Commission spent considerable time in compiling the CDs and ensuring that they accurately represent the record from each *TRO* proceeding. Finally, by allowing Michigan to submit its records on CD, the Commission avoids the prospect of being inundated with such records in piecemeal fashion by the participating parties. This is not to say that Michigan does not expect parties to provide comments to the *NPRM* and to include therein additional comments on Michigan's *TRO* proceedings.

¹ 47 C.F.R. § 1.3 (2004).

² 47 C.F.R. §§ 1.51 and 1.419 (2004).

³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert denied* 409 U.S. 1027 (1972).

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166.

II. COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING

On August 20, 2004, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (Notice) to solicit comments on alternative rules that will implement the obligations of section 251(c)(3) of the Communications Act of 1934, as amended, in a manner consistent with the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *United States Telecom Assn v FCC*. In par. 15 of the FCC's Notice, the FCC provides guidance on how the state commissions can provide the extensive information that the states have gathered in their own state proceedings relevant to this inquiry.

The FCC in par. 15 states:

Given that our inquiry raises complex issues, and proceedings that state commissions initiated to implement the Triennial Review Order developed voluminous records containing information potentially relevant to our inquiry, we anticipate that parties might wish to submit much of that same factual evidence to support their positions here. To be sure, the state commissions' dedication in executing the difficult tasks set out for them in our Triennial Review Order was impressive, and we appreciate their efforts. To make the records from state proceedings more usable, we encourage state commissions and other parties to file summaries of the state proceedings, especially highlighting factual information that would be relevant under the guidance of USTA II. Similarly, we encourage state commissions and other parties to summarize state commission efforts to develop batch hot cut processes.

The Michigan Commission offers the following information that it has gathered relevant to this docket. The Michigan Commission has been conducting proceedings for well over a year and has issued an order on October 7, 2003 in the 90-day proceeding concerning impairment in the enterprise switching market in Case No. U-13895 (Attachment A). We submit that order into the record here. The Michigan Commission initiated Case No. U-13796 to gather information in order to render a decision related to mass market switching, loops, and transport issues. The record in that proceeding is very voluminous and the parties conducted discovery, submitted

testimony, and participated in hearings. This resulted in a recommendation by the Administrative Law Judge (ALJ) that was filed on May 10, 2004, just prior to this Commission granting a motion to dismiss the case as a result of the D.C. Circuit Court ruling. The complete public record was transmitted to the FCC on June 29, 2004 by this Commission. The Michigan Commission will retransmit the record here today with the ALJ's Proposal for Decision attached separately to this filing as a document that represents a summary of the facts in this case (Attachment B). The ALJ's recommendation not only summarizes the facts, but also addresses "which specific network elements" the FCC should require incumbent local exchange carriers to make available as unbundled network elements (UNEs), in "which specific markets." (Par. 11 of Notice). The ALJ found that mass market switching, high-capacity loops, and dedicated transport should continue to be provided as UNEs, except for three locations that meet the DS3 self-provisioning trigger. Further, the ALJ found that wire centers were the appropriate geographic markets for analysis of mass market switching.

This Commission also has been continuing with a docket to study and issue a recommendation related to a batch hot cut process in Case No. U-13891. On June 29, 2004 the Commission issued an order adopting an interim batch hot cut process and directed the parties to participate in collaborative discussions related to developing a test plan and conducting a test prior to the Commission adopting a final order on a batch hot cut process. The order is attached here as a summary of the case (Attachment C). The complete record in Case No. U-13891, containing all of the parties' filings, will also be transmitted as a resource to the underlying information and filings this Commission has relied on. Subsequent orders issued in Case No. U-13891 will be forwarded when they become available.

Finally, the Michigan Commission is resubmitting comments previously submitted in CC Docket No. 01-338.

The Michigan Commission has conducted extensive proceedings in the dockets that were initiated in Michigan pursuant to the FCC's Triennial Review Proceeding and offers this information to the FCC to assist in the development of permanent rules.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

J. Peter Lark, Chair

Robert B. Nelson, Commissioner

Laura Chappelle, Commissioner

Mary Jo Kunkle, Executive Secretary

Dated: October 4, 2004