

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to )  
investigate and to implement, if necessary, a batch ) Case No. U-13891  
cut migration process. )  
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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

**ORDER DENYING PETITION FOR REHEARING OR CLARIFICATION**

On June 29, 2004, the Commission issued an order in this proceeding approving a temporary batch cut migration process. The order also commenced a collaborative process for all interested parties to participate in the establishment of specific modifications to the batch cut migration process.

On July 6, 2004, the Commission Staff (Staff) issued a notice for the first collaborative teleconference, which was held on July 7, 2004. Representatives of the Staff, SBC Michigan (SBC), and a variety of competitive local exchange carriers (CLECs), including MCImetro Access Transmission Services LLC (MCImetro), AT&T Communications of Michigan, Inc. (AT&T), TCG Detroit (TCG), Covad Communications Company (Covad), and Talk America, Inc., participated in the collaborative process.

On August 10, 2004, the collaborators filed one submission that presented three joint test plan proposals for the Commission's consideration. One testing proposal was drafted by SBC. A second was drafted by the CLECs. The final version was drafted by the Staff.

The Staff posted a copy of the entire August 10 joint filing on the Commission's website. Pursuant to the directive contained in the June 29, 2004 order, timely supplemental comments on the three proposals were filed by the Staff, SBC, and MCImetro, AT&T, TCG, and Covad.

On October 4, 2004, the Commission issued an order approving a joint test plan that addresses appropriate procedures for testing to ensure the successful operation of SBC's batch cut migration process.

On October 25, 2004, MCImetro and LDMI Telecommunications, Inc. (LDMI), filed a petition for rehearing or clarification. In so doing, MCImetro and LDMI stated that the Commission's failure to explicitly mention the August 24, 2004 supplemental comments filed by MCImetro, AT&T, TCG, and Covad justifies rehearing of the October 4 order. According to MCImetro and LDMI, because the Commission apparently overlooked MCImetro's, AT&T's, TCG's, and Covad's supplemental comments, rehearing should be granted so that the Commission may consider their positions before approving or implementing any joint test plan.

On November 12, 2004, SBC filed a response to the petition filed by MCImetro and LDMI. In so doing, SBC argues that MCImetro and LDMI have not met the standard for rehearing required by Rule 403 because they have failed to demonstrate that the Commission's October 4 order is incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, based on the grounds asserted in their petition. Moreover, SBC asserts that the October 4 order plainly reveals that the Commission fully considered the arguments made by MCImetro, AT&T, TCG, and Covad in their supplemental filing. In any

event, SBC contends that LDMI has no standing to assert error because, prior to filing the petition for rehearing, LDMI had not participated in the proceeding.

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 the petition for rehearing or clarification filed by MCImetro and LDMI should be denied. Although the Commission inadvertently failed to mention the supplemental comments filed by MCImetro, AT&T, TCG, and Covad, an examination of the October 4 order demonstrates that the Commission gave appropriate consideration to the positions taken by the CLECs. For example, on the issue of forecasting requirements, the Commission observed that “the CLECs do not support the use of binding forecasts.” October 4, order p. 2. With regard to pseudo testing, the Commission stated that “many of the CLECs contend that, while SBC’s [managed introduction plan] may be an appropriate step in the testing process, it is not a substitute for a complete test plan that ensures that the process works as designed without putting customers in jeopardy.” October 4, order p. 3. Regarding testing of various scenarios, the Commission observed that “several CLECs maintain that the joint test plan should incorporate specific terms and procedures for addressing these issues and, ultimately, testing SBC’s performance in these migration scenarios.” October 4, order p. 5.

Based on the foregoing, the Commission finds the CLECs were not harmed by the inadvertent failure to explicitly mention their August 24 supplemental filing in the Commission's October 4, 2004 order. Accordingly, the October 25, 2004 petition for rehearing filed by MCImetro and LDMI should be denied.

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 October 25, 2004 petition for rehearing or clarification filed by MCImetro and LDMI should be denied.

THEREFORE, IT IS ORDERED that the October 25, 2004 petition for rehearing or clarification filed by MCImetro Access Transmission Services LLC and LDMI Telecommunications, Inc., 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 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

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated December 21, 2004 denying the petition for rehearing or clarification filed by MCImetro Access Transmission Services LLC and LDMI Telecommunications, Inc., as set forth in the order.”