

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of competitive local exchange carriers to initiate a Commission investigation of issues related to the obligation of incumbent local exchange carriers in Michigan to maintain terms and conditions for access to unbundled network elements or other facilities used to provide basic local exchange and other telecommunications services in tariffs and interconnection agreements approved by the Commission, pursuant to the Michigan Telecommunications Act, the Telecommunications Act of 1996, and other relevant authority.

Case No. U-14303

In the matter of the application of **SBC MICHIGAN** for a consolidated change of law proceeding to conform 251/252 interconnection agreements to governing law pursuant to Section 252 of the Communications Act of 1934, as amended.

Case No. U-14305

In the matter of the application of **VERIZON NORTH INC. and CONTEL OF THE SOUTH, INC., d/b/a VERIZON NORTH SYSTEMS**, for a consolidated change-of-law proceeding to conform interconnection agreements to governing law.

Case No. U-14327

At the November 9, 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 AND NOTICE OF OPPORTUNITY TO COMMENT

On September 30, 2004, the Competitive Local Exchange Carriers Association of Michigan, LDMI Telecommunications, Inc., MCImetro Access Transmission Services LLC, XO Michigan,

Inc., AT&T Communications of Michigan, Inc., TCG Detroit, TDS Metrocom LLC, Talk America Inc., TelNet Worldwide, Inc., Quick Communications, Inc., d/b/a Quick Connect USA, Superior Technologies, Inc., d/b/a Superior Spectrum, Inc., Grid 4 Communications, Inc., CMC Telecom, Inc., C.L.Y.K Inc., d/b/a Affinity Telecom, Inc., JAS Networks, Inc., Climax Telephone Company, and ACD Telecom, Inc. (collectively, the CLEC coalition), petitioned the Commission to conduct an investigation pursuant to its authority under the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2101 et seq., to investigate the effect, if any, in Michigan of the vacatur of the rules promulgated by the Federal Communications Commission (FCC) in its Triennial Review Order¹ and the effect of the FCC's August 20, 2004 interim order on remand.² To the extent that these developments are determined by the Commission to constitute a change of law, then the CLEC coalition seeks a decision from the Commission on the appropriate procedures for modification of the terms in current tariffs and interconnection agreements. The CLEC coalition also requested the Commission to order SBC Michigan (SBC) and Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon), to show cause why the Commission should not order them to continue to provide competitive local exchange carriers (CLECs) with nondiscriminatory access to network elements and facilities as currently required by tariffs and interconnection agreements approved by the Commission pursuant to the MTA and Sections 251 and 252 of the federal Telecommunications Act of 1996 (FTA) at total service long run incremental cost (TSLRIC) rates.

¹Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, 16984 (2003) (TRO), vacated in part, United States Telcom Assn v FCC, 359 F3d 554 (DC Cir 2004) (USTA II).

²In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (Rel August 20, 2004).

On the same day, SBC filed an application requesting that the Commission convene a proceeding to ensure that SBC's interconnection agreements adopted under Sections 251 and 252 of the FTA remain consistent with federal law. In so doing, SBC alleged that its existing interconnection agreements continue to include network elements that the FCC previously required incumbent local exchange carriers (ILECs) to provide on an unbundled basis, but those network elements are no longer required to be unbundled by FCC order or judicial decision. SBC asserted that, by addressing all out-of-compliance interconnection agreements in a single proceeding, the Commission could fulfill the FCC's goal of a speedy transition, while preserving the scarce resources of the Commission, SBC, and the CLECs.

On October 26, 2004, Verizon petitioned the Commission to approve amendments to the interconnection agreements between itself and a number of CLECs. According to Verizon, the agreements of these CLECs could be interpreted to require amendment before Verizon may cease providing unbundled network elements (UNEs) eliminated by the Triennial Review Order or the USTA II decision. Verizon insisted that absent the Commission's intervention, "the CLECs will not conform their agreements to governing law, despite the FCC's directives to do so and contractual requirements to undertake good faith negotiation of contract amendments." Verizon application, ¶ 16, p. 7. Verizon also maintained that a number of CLECs have sought to impede and delay the process by asking this Commission to investigate the legal effect of the USTA II mandate and the FCC's interim order. Verizon contended that its proposed interconnection amendment makes clear that Verizon's unbundling obligations will be governed exclusively by Section 251(c)(3) of the FTA, 47 CFR Part 51, and the FCC's interim order. Further, the proposed language indicates that, when federal law no longer requires unbundled access to particular elements, Verizon may cease providing such access upon appropriate notice.

Given the commonality of the issues raised by these three applications, the Commission finds that these matters should be consolidated. Further, because the issues are of extreme importance to the telephony industry and to the citizens of this state, the Commission is persuaded that it should adopt a schedule for the conduct of these proceedings at this time.

By November 22, 2004, interested persons shall file a notice of intent to participate with service on all applicants and known participants.

A prehearing conference shall be conducted at 9:00 am on December 2, 2004 at the Commission's Lansing offices. At the prehearing conference, the administrative law judge shall address all preliminary motions and issues, including adoption of a protective order.

The deadline for initial comments shall be December 22, 2004.

Reply comments shall be filed no later than January 18, 2005.

The Commission has selected this case for participation in its Electronic Filings Program. The Commission recognizes that all filers may not have the computer equipment or access to the Internet necessary to submit documents electronically. Therefore, filers may submit documents in the traditional paper format and mail them to the: Executive 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. Interested persons should be directed to file a notice of intent to participate with service on all applicants and known participants by November 22, 2004.

c. A prehearing conference should be conducted at 9:00 am on December 2, 2004 at the Commission's Lansing offices.

d. The deadline for initial comments should be December 22, 2004.

e. The deadline for reply comments should be January 18, 2005.

THEREFORE, IT IS ORDERED that:

A. Interested persons shall file a notice of intent to participate with service on all applicants and known participants by November 22, 2004.

B. A prehearing conference shall be conducted at 9:00 am on December 2, 2004 at the Commission's Lansing offices.

C. The deadline for initial comments shall be December 22, 2004.

D. The deadline for reply comments shall be January 18, 2005.

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 November 9, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of November 9, 2004.

Its Executive Secretary