

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)
LUCRE, INC., against SBC MICHIGAN.) Case No. U-14374
_____)

In the matter of the complaint of SBC)
MICHIGAN against LUCRE, INC., for refusal)
to pay certain charges lawfully assessed and) Case No. U-14384
for other violations of duties under law.)
_____)

At the August 1, 2005 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER

Background Information

SBC Michigan (SBC) and Lucre, Inc., have an interconnection agreement (ICA), approved by the Commission’s May 27, 1999 order in Case No. U-11974. Lucre, a competitive local exchange carrier (CLEC), has contracted for the use of various facilities provided by SBC, the incumbent local exchange carrier (ILEC). The Commission has decided two previous disputes over amounts sought pursuant to the ICA. In Case No. U-13785, Lucre’s complaint was dismissed. In Case No. U-14374, the Commission adopted the mediator’s recommended settlement. The parties continue to have disputes concerning attorney fees and costs in Case No. U-13785, and concerning escrowed funds in Case No. U-14374.

The current dispute, Case No. U-14384, arose when Lucre failed to pay certain charges for access, Signaling System Seven (SS7), and 911 facilities. After attempts to collect payment proved unsuccessful, SBC sought to terminate Lucre's use of those facilities, pending payment. On October 28, 2004, Lucre filed an action against SBC in Kent County Circuit Court (Case No. 04-07026-CH) seeking a preliminary injunction to block SBC's proposed termination of service. SBC subsequently filed a counterclaim against Lucre seeking payment for its provision to Lucre of intrastate access, SS7, and 911 facilities. Lucre moved to refer that counterclaim to the Commission on the grounds of primary jurisdiction. The Circuit Court granted Lucre's motion and ordered that the counterclaim be brought before the Commission.

The parties selected Cheryl L. Parrino to mediate Case Nos. U-14374 and U-14384. Her recommendation was accepted in Case No. U-14374, and rejected in Case No. U-14384. Although the two matters are unrelated, each involves disputed amounts claimed to be owed by one party to the other, and part of the mediator's decision in Case No. U-14374 is to be carried out after resolution of Case No. U-14384. Therefore, all outstanding issues in the two cases are decided together herein.

Case No. U-14374

On December 1, 2004, Lucre filed a complaint against SBC to resolve a dispute over payment of termination charges for both local and intraLATA¹ toll termination. Pursuant to Section 203a of the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2203a, the parties submitted the complaint to mediation. At the conclusion of the mediation process, notices of acceptance of the mediator's recommendation were timely submitted by both Lucre and SBC. The settlement, dated January 17, 2005, awarded to Lucre a fixed sum of dollars, plus SBC's

¹LATA refers to local access transport area.

payment of all undisputed amounts and one-half of all disputed amounts, on an ongoing basis. These payments are to be made to a neutral third party, to be held for payment to Lucre after resolution of Case No. U-14384. On March 29, 2005, the Commission adopted the settlement as its final order in this proceeding.

On May 18, 2005, Lucre filed a motion for enforcement of the March 29 order. On May 19, 2005, SBC filed a response to Lucre's motion. Lucre filed a reply brief on May 24, 2005.

In its motion, Lucre contends that the amounts that should have been paid to a neutral third party by SBC as of March total \$404,967.71. Lucre contends that SBC has denied any obligation to provide even rudimentary information to verify its compliance with the payment terms of the settlement, other than to indicate that some funds have been deposited at U.S. Bank. Because the funds are intended to be in escrow for Lucre, Lucre contends that it is entitled to know the name and address of the custodian of the funds; the account number; the dates and amounts of deposits; the dates and amounts of future deposits as they occur; and how to access account information. Without this information, Lucre argues, there is no proof that SBC has complied with the Commission's March 29 order adopting the settlement. Lucre requests an order requiring SBC to provide this information and to pay Lucre's reasonable attorney fees in bringing this motion.

SBC responds that Lucre's motion is unsubstantiated and frivolous. SBC argues that it is not obligated to demonstrate or verify its compliance with the Commission's order adopting the recommended settlement of the mediator. SBC points out that Lucre cites no authority for the proposition that such an obligation exists. SBC argues that Lucre's motion is meant only to harass SBC or to seek access to the escrowed funds. SBC also contends that no authority exists for the imposition of attorney fees. SBC requests that the Commission award it the costs and fees attendant to its response to Lucre's frivolous motion.

In its reply brief, Lucre argues that SBC no longer has title to the funds to be deposited in escrow. Lucre further points out that, under Michigan law, an escrow is a writing, deed, money, stock, or other property delivered by the grantor, promisor, or obligor into the hands of a third person, to be held by that third person until the happening of a contingency or performance of a condition, and then to be delivered by the third person to the grantee, promisee, or obligee. Lucre argues that the third party escrow agent is the agent of both parties, not just SBC. Lucre contends that, under Michigan escrow law, Lucre is as much entitled to statements of the escrow account as SBC is, and Lucre seeks proof that the escrow exists and in what amount.

The Commission agrees that Lucre is entitled to more than simply the name of the third party bank that is apparently holding funds in escrow for Lucre. The settlement in this case specifically requires SBC to pay certain amounts to a neutral third party (and some of these payments are ongoing obligations), and further provides that when Case No. U-14384 is resolved and payments in that case are to be made to SBC, then SBC must direct the third party to pay out the escrowed funds to Lucre. Thus, the parties have clearly set up an escrow, and an escrow agent is the agent of both parties to the escrow. *Laurentide Leasing Co v Schomisch*, 382 Mich 155 (1969). As a party to the escrow, the Commission finds that Lucre is entitled to know the name and address of the custodian of the funds, the account number, and the dates and amounts of past and future deposits (when made). The Commission notes that, because Case No. U-14384 is also being resolved by this order, this issue is partially moot, as the condition requiring payment of the escrowed funds to Lucre has now occurred with the issuance of this order. However, the Commission finds that Lucre was entitled to this information throughout the history of the escrowed funds, and the information should be provided forthwith. If it is necessary for the parties

to continue the use of the escrow account, Lucre should be provided with all relevant account information on the same basis as SBC.

Case No. U-14384

1. History of the Proceedings

SBC filed its complaint against Lucre, along with supporting testimony and exhibits, on December 17, 2004. As set forth in that complaint, SBC sought recovery of approximately \$1.2 million in past due charges. SBC subsequently filed an amended complaint increasing its demand for payment to over \$1.3 million.

Following the parties' unsuccessful mediation of this dispute, a prehearing conference was held on February 1, 2005 before Administrative Law Judge Mark E. Cummins (ALJ). SBC, Lucre, and the Commission Staff (Staff) participated in the proceedings. On March 1, 2005, Lucre filed a third-party complaint in the present docket against Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon). Verizon filed a motion to dismiss that complaint on March 22, 2005, and Lucre filed a response to that motion on March 28, 2005. After hearing argument regarding this issue on March 29, 2005, the ALJ granted Verizon's motion and issued an oral proposal for decision (PFD) recommending dismissal of Lucre's third-party complaint. The parties agreed that briefing on that PFD would follow the same schedule as was established for the rest of the case.

An evidentiary hearing was conducted on April 13, 2005. Four witnesses sponsored direct and/or rebuttal testimony on behalf of SBC, and three witnesses offered direct testimony on behalf of Lucre. No witnesses were offered by the Staff. The Staff took no position and did not participate in any post-hearing briefing. The resulting record consists of 331 pages of transcript

and 33 exhibits. In accordance with the previously-established schedule, SBC and Lucre filed briefs and reply briefs on April 28 and May 9, 2005, respectively.

The ALJ issued a written PFD on June 9, 2005. Lucre and SBC filed exceptions to the PFD on June 23, 2005, and Verizon filed exceptions to the March 29, 2005 oral PFD only. Lucre and SBC filed replies to exceptions on June 30, 2005.

2. Positions of the Parties

SBC argues that Lucre ordered the specific facilities from it, SBC provided them under the terms and conditions established in their governing tariffs, Lucre was billed in accordance with SBC's usual and customary business practices, and Lucre has refused to pay. According to SBC, Lucre is merely casting about for any excuse to avoid paying for facilities it validly ordered and received from SBC. In so doing, SBC contends, Lucre has employed various strategies including asserting that, because these items were intended to be purchased through the parties' ICA, SBC should re-rate those charges at the lower prices generally applied to unbundled network elements (UNEs).

SBC witnesses presented testimony refuting Lucre's assertion that the facilities at issue in this proceeding are somehow covered by the SBC/Lucre ICA, either as transiting services or interconnection traffic. According to SBC's testimony, the ICA only covers services that connect Lucre customers to SBC customers, and the services at issue were used solely to connect Lucre customers to Verizon customers. Facilities used in this type of arrangement are not covered by the ICA, according to SBC. SBC contends that it is not possible for it to provide transiting/routing service for Lucre when there is no local traffic originated from Lucre's end users, because the traffic in question is originating from a third party ILEC, namely Verizon. In this type of

arrangement, SBC contends, SBC is not the router of the traffic, therefore, transiting pursuant to the ICA does not apply to the access facilities in this proceeding.

According to SBC, further evidence that these facilities are not covered by the ICA is Lucre's placement of its purchase orders via an Access Service Request (ASR), instead of through use of a local service request. In this regard, SBC contends, ASRs are the appropriate vehicle for ordering access facilities pursuant to SBC's access tariffs. SBC provided testimony that, as of February 10, 2005, Lucre was indebted on its open accounts with SBC in the amount of \$1,336,561.57, inclusive of carrying charges. That total consisted of \$1,191,757.08 for access facilities, \$137,748.06 for SS7 signaling, and \$7,056.43 for 911 facilities.

The ASRs presented by SBC show that Lucre ordered direct end office trunks (DEOTs), which directly connect Lucre's end office switch to Verizon's switch. SBC contends that it provides no switching with respect to the DEOTs, because they bypass SBC's tandem switch. Indeed, SBC points out, DEOTs are established in order to preserve tandem switching resources. SBC contends that, because tandem switches are very expensive, carriers routinely require that as soon as call volumes exchanged between two specific end office switches reach a significant level, then those two end office switches must establish special access dedicated transport, such as DEOTs, between themselves, in order to bypass tandem switching and thereby preserve tandem resources. SBC maintains that this is exactly what Section 4.4.2 of the SBC/Lucre ICA provides. That section of the ICA provides that when traffic between two switches reaches the DS1 level,² a DEOT must be established within 60 days. According to SBC, the rate for establishing a DEOT, such as the type ordered by Lucre in the ASRs, is set by SBC's tariff.

²DSI refers to digital signed level 1.

Lucre contends that SBC is attempting to change its prior practice and thereby escape obligations imposed by the SBC/Lucre ICA, state and federal statutes, and applicable rules. According to Lucre, the calls flowing between it and Verizon have in the past, and should in the future, be viewed as transiting traffic for which it bears no financial responsibility. Specifically, Lucre asserts that when a CLEC and an ILEC share a service territory, the ILEC is responsible for transiting calls from third-party providers through the ILEC's tandem switch to the CLEC's customers, at no charge to the CLEC, whatever the volume. Lucre asserts that, because the traffic in question is originated by Verizon's end-use customers, the long-recognized "originator pays principle" would make Verizon (and not Lucre) the correct party for SBC to bill should any charges arise from this traffic. Lucre accepts responsibility for the SS7 and 911 charges, but argues that SBC's access charges are in breach of the ICA. In the alternative, Lucre contends that if it is found to bear some financial responsibility for use of the access facilities in question, its use of these DEOTs must be billed under UNE-based rates instead of SBC's access tariff.

Lucre argues that the SBC/Lucre ICA specifies that each party is responsible for facilities on its own side of the synchronous optical network (SONET), which is where these two parties' networks physically connect. Here, Lucre contends, the trunking in question is on SBC's side of the SONET, thus excusing Lucre from any financial responsibility for those facilities. Lucre further contends that, should Lucre somehow be assigned a portion of the costs for the DEOTs in question, its ICA with Verizon would require Verizon to reimburse Lucre for nearly all of those charges, which is why Lucre sought to bring Verizon into this case. Lucre presented evidence that over 99.9% of the traffic over these DEOTs is Verizon-originated local traffic. Lucre presented testimony indicating that at no time did Lucre understand that the word 'access' in the acronym ASR meant special access circuits, rather than interconnection circuits. Lucre contends that it was

forced by SBC to order the DEOTs, and was never told by SBC that the DEOTs would be billed at SBC's access tariff rates. Lucre argues that it has the right to purchase UNE-priced direct or dedicated transport for the purpose of interconnecting with other carriers such as Verizon, under the Commission's October 14, 2004 order in Case No. U-13931 and the Federal Communications Commission's (FCC) July 17, 2002 ruling in *In re Petitions of WorldCom, Inc. et al*, CC Docket Nos. 00-218, 00-249, and 00-251, DA No. 02-1731 (the Verizon Virginia order).

3. Proposals for Decision

In his oral PFD, the ALJ found that Verizon's motion to dismiss Lucre's third-party complaint should be granted, because the Commission's rules of practice and procedure do not allow for third-party practice. Citing the Commission's July 10, 2002 order in Case No. U-13253, p. 14, the ALJ found that the Commission's rules do not provide for impleading third parties. The ALJ further noted that the case had already been mediated and was over 100 days old when Verizon was brought into it, severely prejudicing Verizon's ability to investigate the claims. The ALJ found that Lucre's attempt to bring Verizon into the case was not frivolous, and ordered the parties to pay their own costs and attorney fees. The ALJ dismissed the third party complaint without prejudice to any later direct claim.

In his written PFD, in light of Lucre's concessions regarding its SS7 and 911 bills, the ALJ found that this case came down to the simple question of whether SBC correctly billed Lucre under its access tariffs for the exclusive use of DEOTs running from Lucre to Verizon. The ALJ found in favor of SBC, holding that Lucre owes SBC the full amount billed for tariff-based intrastate access fees incurred due to Lucre's use of SBC-provided DEOTs that directly connect Lucre's end offices with those of Verizon. The ALJ found that the record clearly reflected that Lucre placed orders for dedicated access lines via SBC's access tariffs, and the lines were

provided as ordered. The ALJ found that the DEOTs provided a direct, dedicated connection between Lucre and Verizon, and are not switched through SBC's tandem.

The ALJ found that the DEOTs in question do not fall within the scope of the SBC/Lucre ICA, as they do not constitute the type of interconnection facilities covered by the ICA. The ALJ found that Section 251(c)(2) of the Telecommunications Act of 1996 (the Act), as well as language contained in the recitals and the description of facilities contained in the ICA, indicate that the ICA is intended to cover the interconnection of SBC's switched network with Lucre, and that the DEOTs are separate from the switched network. For this reason, the ALJ also found that Section 3.2.4 of the ICA does not apply to this situation, because that section addresses the obligations of the interconnecting parties on each side of the SONET, whereas the DEOTs are not switched through SBC's tandem. The ALJ likewise found that Section 7.3.3(b) of the ICA does not apply to this situation, because that section provides that transit service shall be provided only at SBC's tandem switches, and the DEOTs in question do not pass through SBC's tandem switches.

The ALJ rejected Lucre's argument that the 'originator pays principle' must be adhered to, because Lucre placed the order with SBC for the DEOTs, and made use of the DEOTs. The ALJ also found Lucre's reference to Commission orders and the Verizon Virginia order to be unpersuasive, since Lucre has entered into a direct ICA with Verizon and thus does not need SBC's network to ensure traffic completion between its end users and those of Verizon.

Finally, the ALJ rejected Lucre's claim that the DEOTs in question constitute unbundled dedicated transport such that they should be charged at UNE prices. The ALJ noted that this argument does not comport with the definition of unbundled transport contained in Schedule 9.2.4 of the ICA. The ALJ found that unbundled transport does not include the connection of Lucre's

switch with Verizon's central office. The ALJ held that the DEOTs are access-related products available only under the ILEC's access tariffs.

The ALJ concluded that uncontroverted testimony provided in this case indicates that, when combined with the SS7 and 911 charges that Lucre previously conceded to owing, Lucre's total debt to SBC was (as of February 10, 2005) \$1,336,561.67, including late fees and all other carrying charges. The ALJ recommended that the Commission: (1) issue a declaratory ruling to the effect that the SBC/Lucre ICA does not obviate Lucre's obligation to pay the access charges invoiced by SBC for the DEOTs at issue; (2) direct Lucre to pay the total amount of the above-stated indebtedness to SBC, including all unpaid access, SS7, and 911 charges; and (3) order Lucre to cease and desist from failing to comply with SBC's tariffs on file with the Commission. The ALJ further found that insufficient basis existed for imposing fines or assessing costs and attorney fees against either party, as each party's position held merit.

4. Exceptions and Replies to Exceptions

In its exceptions, Verizon asserts that the ALJ erred in refusing to grant Verizon's request for attorney fees and costs. Verizon argues that Section 209 of the MTA, MCL 484.2209, requires the Commission to award costs and fees if a party takes a legal position that is "devoid of arguable legal merit," and that Lucre's attempted third-party complaint constituted such an argument. Verizon points to the fact that the Commission's Rules of Practice and Procedure do not mention third-party complaints, and cites the July 10, 2002 order in Case No. U-13253 wherein the Commission dismissed a third-party complaint for that reason. Verizon contends that such sanctions are appropriate in this case, because the attorney who filed the third-party complaint herein is the same one that filed it in Case No. U-13253.

SBC excepts only to the ALJ's decision not to impose a fine. SBC argues that Lucre's misconduct in this matter justifies the imposition of a fine under Section 601 of the MTA, MCL 484.2601. SBC also excepts to the extent, if any, that the PFD is not to be read as requiring Lucre to pay all tariff charges, including those that postdate February 10.

Lucre excepts to most aspects of the written PFD. Lucre contends that this case involves a breach of the ICA, which requires SBC to transit the traffic from Verizon, whatever the scale of the traffic, at no cost to Lucre. Lucre contends that, although it ordered the DEOTs, SBC should look to Verizon for transiting fees. Lucre asserts that SBC had an obligation under the ICA to augment its tandem if the amount of the traffic presented a tandem exhaust issue. Lucre argues that SBC used "sheer power" to force Lucre into this position. Lucre contends that it ordered the direct trunking to Verizon from SBC in the belief that it would not have to pay for it because the trunking was a cost-saving alternative to tandem transiting by SBC, and was required to be provided by SBC under Section 7.3.3(b) of the ICA. Lucre asserts that the ALJ misread the ICA.

Lucre also contends that the ALJ made several errors of fact. Lucre maintains that it pointed out flaws in SBC's evidence regarding the fact that the DEOTs are outside SBC's switched network. Lucre avers that SBC never established in its evidence that this traffic actually bypasses its tandem. Lucre further argues that the manner in which Case No. U-14374 was settled indicates that the DEOTs should have been provided without charge.

Lucre maintains that Sections 7.3.2 and 7.3.3 of the ICA govern this situation, and show that SBC breached the ICA by imposing these charges when it should have provided the transiting for free. Lucre argues that the PFD ignores SBC's clear duty of tandem transiting of all Verizon traffic. Lucre maintains that the definition of transit traffic for purposes of Section 7.3.3(b) is not the one found at Section 7.3.2, but rather the one found in the "other party transit agreement."

Further, Lucre maintains that Section 7.3.4 of the ICA gives substance to the originator pays principle, by providing an end date for SBC's tandem transit service, which is "the earlier of (i) the date on which either Party has entered into an arrangement with such third party LEC . . . to deliver . . . Traffic to Lucre and (ii) the termination of this Agreement." Lucre argues that an ICA between Lucre and Verizon constitutes such an arrangement, only if Verizon was the one that ordered the dedicated transport, not Lucre. Thus, Lucre argues, the ICA contemplates the potential replacement of SBC's duty to transit through its tandem only by Verizon's arrangement to do so, and not by Lucre's arrangement to do so. Lucre points out that an adverse consequence of SBC's proffered interpretation of the ICA is that there is no incentive for an ILEC such as Verizon to extend its network to a CLEC beyond its meetpoint with SBC; thus thrusting the cost of such traffic on CLECs by forcing them to order access facilities when the traffic originates with another ILEC.

Lucre argues that the ALJ should not have relied on the recitals in the ICA as they are general and not meant to override transiting obligations. Lucre maintains that Section 4.4.2 only references direct interconnection between Lucre and SBC and does not address transiting obligations and so is irrelevant. Lucre contends that SBC manufactured an arrangement to end its transiting obligation by refusing to augment its tandem and then forcing Lucre to order direct transport to Verizon.

In its replies to exceptions, Lucre responds to Verizon by stating that the basis of Lucre's third party complaint was Rule 103, R 460.17103, and MCR 2.204, which, together, allow for the possibility of third party impleading. Lucre further points out that in Case No. U-13253, p. 14, the Commission merely found the practice "questionable."

In response to SBC's exceptions, Lucre points out that the ALJ found that each party's position held merit, and under those circumstances sanctions are not appropriate. Lucre maintains that the ALJ correctly found that its positions do not meet the criteria for frivolousness set out in Section 209 of the MTA.

In its replies to exceptions, SBC maintains that it and Lucre entered into an arrangement – the ICA – which gave SBC the right to ask Lucre to make other arrangements to transport traffic between its customers and Verizon's customers once that traffic reached levels that threatened SBC's tandem capacity; and, although Lucre had the option of providing its own facilities, ordering them from another facilities provider, or ordering them from SBC, Lucre chose to do the latter. SBC maintains that the ICA does not require SBC to bear the cost of building Lucre's network. SBC points out that the logical conclusion of Lucre's argument is that Lucre could have taken either of the other two options and charged SBC for the cost, an obviously absurd result. SBC contends that the Act does not contemplate that ILECs must enter into agreements with CLECs that govern interconnection between that CLEC and a third party. SBC points out that its testimony indicating that SBC does not switch the Lucre/Verizon traffic through its tandem switch was un rebutted by Lucre's witnesses.

SBC points to the evidence showing that the DEOTs and associated direct transport facilities between Lucre and Verizon merely pass through the SBC premises but do not touch the SBC switching infrastructure, and the transport facility path used for the direct trunking between Lucre and Verizon is dedicated between Lucre and Verizon. SBC maintains that it does not switch the DEOT traffic. SBC points out that it is undisputed that the facilities ordered by Lucre are not used for traffic that is originated or terminated by SBC customers. SBC points out that Lucre has

offered no legal authority to support the notion that SBC is under a continuing obligation to augment its facilities to accommodate Lucre's traffic as Lucre's business grows.

SBC argues that Sections 4.4.2 and 7.3.4 of the ICA require Lucre to transition from transit traffic service to DEOT under these circumstances. SBC argues that Section 4.4.2 requires Lucre to make this transition and establish DEOT to any end office for which there is more than one DS1 of traffic and to do so within 60 days. Section 7.3.4 sets the limitations on SBC's provision of transit traffic service. That section provides that this obligation is "an interim arrangement" that terminates when either party has entered into an arrangement with a third party local exchange carrier (LEC) to deliver local traffic and intraLATA toll traffic to Lucre. SBC contends that its obligation to provide transit service ended when Lucre and Verizon entered into a direct interconnection agreement. SBC maintains that Lucre's interpretation of Sections 7.3.2 and 7.3.3 is mistaken, because those sections, by definition, govern transit traffic switched through SBC's tandem, and the traffic at issue here is not transit traffic.

SBC further asserts that the ALJ properly rejected the argument that, simply because SBC has issued credits for previous DEOT orders involving a different network configuration, Lucre should not have to pay for the DEOT orders at issue here. SBC also contends that the PFD correctly found that the facilities at issue here do not constitute unbundled transport, as that term is defined by the FCC, previous Commission orders, and Section 9.2.4 of the ICA. SBC contends that federal law does not contemplate a situation wherein a provider can order, as UNEs, facilities that are used solely for the termination of traffic from a third-party's end users. SBC argues that Lucre has failed to establish that the DEOTs constitute either unbundled local transport or fit within the definition of another UNE. Finally, SBC notes that the Verizon Virginia order, *supra*, is merely an arbitrator's recommendation from another state, and, in fact, supports SBC's position, since the

order found one DS1 to be the appropriate threshold at which a CLEC must transition from transit traffic service to direct interconnection (para. 115), and concludes that transit service need not be provided at UNE rates (paras. 117, 119).

5. Discussion

The Commission finds that the SBC/ Lucre ICA and SBC's tariff govern the outcome of this dispute. The Commission agrees with the ALJ and finds that Lucre's proffered interpretation of the ICA is not persuasive.

Section 4.4.2 provides that if the traffic volume between any two central office switches exceeds one DS1, SBC and Lucre shall, within 60 days thereafter, establish new direct trunk groups to the applicable end office. Nowhere in Section 7.3 does the ICA indicate that such trunks are part of SBC's transit service. Section 7.3.3(b) provides that, where SBC has a transiting arrangement with a third party LEC to deliver traffic to Lucre, then the traffic shall be delivered to Lucre in accordance with that agreement, and the third party LEC is responsible for paying SBC its transit service charge. This does not mean, however, that Lucre need not pay for trunk lines that it orders from SBC in order to establish a direct connection with another LEC.

Section 7.3.3(b) addresses the issue of transit service, not DEOTs and who pays for them. The same is true of Section 7.3.4, which provides that until Lucre has made permanent arrangements with third party LECs, the interim arrangement will involve SBC providing Lucre with transit service. Lucre entered into such a permanent arrangement with Verizon in 2001, and SBC's temporary transit obligation ended at that point. However, Section 7.3.4 operates independent of Section 4.4.2, and if traffic volumes exceeded the limit set in Section 4.4.2, then trunks would have to be installed prior to the date of any arrangement being made with the third party LEC.

The Commission finds that the ALJ relied upon competent evidence showing that Lucre placed orders via ASRs for DEOTs to directly connect with Verizon. The Commission finds that such connections do not fall under the transit service provided for in the ICA, but rather are taken pursuant to terms and conditions of SBC's tariff. The Commission further finds that the DEOTs, by definition, are not UNEs. Lucre is responsible for the tariff-based cost of the access facilities it ordered from SBC.

The Commission further finds that Verizon was properly dismissed from the case, without prejudice to any future action Lucre may wish to bring against Verizon directly, under the same set of facts.

When combined with the SS7 and 911 charges that Lucre has conceded to owing, Lucre's total debt to SBC was (as of February 10, 2005) \$1,336,561.67, including late fees and all other carrying charges. The Commission finds that Lucre should be directed to pay the total amount of the above-stated indebtedness to SBC, including all unpaid access, SS7, and 911 charges up to the date of this order; and Lucre should cease and desist from failing to comply with SBC's tariffs on file with the Commission. The Commission further finds that insufficient basis exists for imposing fines or assessing costs and attorney fees against either party.

Any arguments not specifically addressed herein were deemed to be irrelevant to the Commission's findings and conclusions.

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. Lucre should be provided with the name and address of the custodian of the funds, the account number, and the dates and amounts of past and future deposits to the escrow account referenced in the settlement of Case No. U-14374.

c. Lucre should pay the total amount of its indebtedness to SBC for all unpaid access, SS7, and 911 charges up to the date of this order.

d. Lucre should cease and desist from failing to comply with SBC's tariffs on file with the Commission.

THEREFORE, IT IS ORDERED that:

A. Lucre, Inc. shall be provided with the name and address of the custodian of the funds, the account number, and the dates and amounts of past and future deposits to the escrow account referenced in the settlement of Case No. U-14374.

B. Lucre, Inc. shall pay the total amount of its indebtedness to SBC Michigan for all unpaid access, SS7, and 911 charges up to the date of this order.

C. Lucre, Inc. shall cease and desist from failing to comply with SBC Michigan's tariffs on file with the Commission.

D. Within 10 days of the date of this order, both Lucre, Inc. and SBC Michigan shall provide to the Commission's Executive Secretary proof of payment in full to the mediator, Cheryl L. Parrino.

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
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of August 1, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

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

Chairman

Commissioner

Commissioner

By its action of August 1, 2005.

Its Executive Secretary