

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter, on the Commission's own motion,	)	
to implement the provisions of Section 304 of	)	Case No. U-14731
2005 PA 235.	)	
_____	)	

At the June 15, 2006 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**

On December 20, 2005, the Commission issued an order (December 20 order) to facilitate implementation of Section 304(1) of the Michigan Telecommunications Act (MTA), MCL 484.2101, *et seq.*, as amended by 2005 PA 235. As amended, Section 304(1) of the MTA reads as follows:

The rates for primary basic local exchange service shall be just and reasonable. Each provider shall set the initial rates for primary basic local exchange service to be effective no later than April 1, 2006. Except as provided under section 310a or a higher rate approved by the commission under subsection (2)(d), the initial rates may not exceed the rates for the lowest cost calling plan that includes a limited number of outgoing calls of the provider in place before the rates are set under this subsection. If a provider does not offer a calling plan with a limited number of outgoing calls, the provider shall set the initial rate for primary basic local exchange service which shall be just and reasonable and may be subject to commission review.

MCL 484.2304(1).

The December 20 order noted the statutory requirement that each licensed provider of residential basic local exchange services in this state offer and have a tariff for primary basic local exchange service (PBLES) effective no later than April 1, 2006. Therefore, the Commission ordered all providers of residential basic local exchange service to file tariffs for PBLES no later than January 19, 2006.<sup>1</sup> The Commission directed that the tariffs be filed in the normal manner of filing tariffs, reflecting an effective date no later than April 1, 2006. Further, the order required that each provider indicate how it set the PBLES rate and provide an evidentiary basis for a finding that the rate is just and reasonable. Finally, the Commission ordered that each filing should be conspicuously identified as being submitted in response to that order (including the date and case number). The Commission has received and processed tariff filings from numerous providers.<sup>2</sup>

On March 17, 2006, Attorney General Michael A. Cox (Attorney General) filed a “notice of appearance and intervention and a request for hearing on PBLES rate increases.” In that notice, the Attorney General argued that the initial rates for PBLES may not exceed the rates for the lowest cost calling plan that includes a limited number of outgoing calls of the provider in place before the rates are set under Section 304(1). He stated that, after reviewing the proposed tariffs filed by various companies, he was concerned that those filings reflect rates in excess of the statutory maximum. He argued that the statute requires Commission approval of such rates as just

---

<sup>1</sup>That date was extended to February 21, 2006 for certain companies by the Commission’s January 10, 2006 order in this case.

<sup>2</sup>Subsequently, the Commission became concerned that some providers may not be adequately preparing their systems and personnel to offer PBLES, even to customers who have specifically inquired about it. Therefore, the Commission required each provider of basic local exchange service in Michigan to demonstrate that it has adequately trained its personnel and has made necessary technical adjustments to offer PBLES to customers. *See*, the May 25, 2006 order in Case No. U-14899.

and reasonable under MCL 484.304(2)(d) before they may be implemented. He also argued that the determination of reasonableness may not be delegated to the Commission Staff. The Attorney General requested that the Commission hold a separate public hearing pursuant to Sections 203 and 304 of the MTA, MCL 484.2203 and MCL 484.2304, to review any proposed PBLES rate increase submitted, and that the Commission require sufficient documentation to support a finding that the proposed rates are just and reasonable. Further, the Attorney General requested that the Commission require that each telecommunications provider indicate which of the statutory provisions it used to set its PBLES rate.

Without addressing the merits of the Attorney General's filing, the Commission noted that his proof of service indicated that the Telecommunications Association of Michigan was the sole recipient of that notice. In light of the generalized allegations and broad relief sought by the Attorney General, the Commission found that all providers that filed PBLES tariffs should be made aware of the Attorney General's filing and have an opportunity to respond. To that end, on March 23, 2006, the Commission issued an order notifying all Michigan telecommunications providers of the Attorney General's filing and providing them with an opportunity to respond no later than March 31, 2006 to the Attorney General's arguments and to propose any appropriate procedures to address those arguments.

AARP Michigan, AT&T Michigan and AT&T Communications of Michigan, Inc. (collectively, AT&T Michigan), Talk America Inc., Verizon Access, CenturyTel of Upper Michigan, Inc. and CenturyTel Midwest-Michigan, Inc. (collectively, CenturyTel), Communication Corporation of Michigan and Shiawassee Telephone Company (collectively, CCM & Shiawassee), Verizon North Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (Verizon), and the Michigan Consumer Federation (MiCF), submitted timely responses to the March 23 order.

AARP Michigan maintains that in light of the Legislature's deregulation of all but one standard calling plan, Commission should take seriously its charge to regulate the PBLES rate. According to AARP Michigan, the Commission should hold public proceedings on any proposal to increase rates for the PBLES rate. For this reason, AARP Michigan insists that the Commission should grant the Attorney General's request for a hearing. Further, AARP Michigan represents that at least two providers have filed PBLES tariffs with rates that exceed the rates charged for their 50-call plans.

AT&T Michigan insists that the Attorney General's request is contrary to the explicit statutory process created by the Legislature for establishing rates for PBLES, inconsistent with contested case hearing procedures of the MTA, inconsistent with the Commission's Rules of Practice and Procedure, and factually unsupported. According to AT&T Michigan, the Attorney General has submitted no factual grounds or legal bases justifying his proposed intervention in this proceeding, let alone justifying the substantial expense, use of resources, and time that the requested evidentiary hearings for each affected provider would entail. AT&T Michigan asserts that the Attorney General improperly waited until the eve of the legislatively mandated effective date of providers' filings to bring a belated challenge to PBLES tariffs, which will only serve to defeat the Legislature's goal of bringing low cost, high quality PBLES services to Michigan residents.

Talk America contends that it has fully complied with the Commission's effective and unchallenged December 20, 2005 order. In doing so, Talk America maintains that it has established a rate for PBLES which is lower than that required by Section 304(1) of the MTA. Because the Attorney General's pleading did not make any specific mention of Talk America and because Talk America has complied with Commission's December 20, 2005 order, Talk America requests that this docket be closed with respect to itself.

In its comments, CenturyTel expresses support for AT&T Michigan's positions. In addition, CenturyTel believe that the Attorney General's notice is objectionable because it fails to identify any of the providers whose rates the Attorney General seeks to challenge. According to CenturyTel, the only clue to the Attorney General's intended targets is that it discusses providers who set their initial PBLES rates in accordance with their current lowest cost calling plan that limits the number of outgoing calls. Further, CenturyTel argues that it has set initial PBLES rates that are lower than their existing lowest cost limited calling plans.

CCM & Shiawassee also agree with AT&T Michigan's arguments and urge the Commission to deny the Attorney General's request for a hearing. Specifically, they argue that the Attorney General's filing is defective because it fails to identify any of the providers whose rates the Attorney General desires to challenge. Further, CCM & Shiawassee state that in two of the three CCM exchanges, CCM did not offer a limited call plan, which means that CCM could set "just and reasonable" initial PBLES rates in those exchanges in accordance with the last sentence of Section 304(1) that are not implicated by the Attorney General's filing. Likewise, CCM & Shiawassee state that in CCM's Hickory Corners exchange and in Shiawassee's exchanges, their PBLES rates are below the monthly charges that would be applied to a customer on one of their limited residential plans (RM1 plans) who makes 100 calls in a month.

Verizon and Verizon Access insist that the Attorney General's intervention and request for relief in this matter are improper. According to them, Section 304 of the MTA clearly provides that the initial PBLES rate is set by a provider and there is no provision for the Attorney General to intervene in the setting of such initial rates or to request a public hearing regarding them. Further, Verizon and Verizon Access insist that the Attorney General's action comes too late, is

inconsistent with the Commission's rules of practice and procedure, and has no basis in the new law.

MiCF observes that there is no vagueness or ambiguity in the wording of Section 304. According to MiCF, the plain reading of that provision of the MTA indicates that there should be no rates increases associated with implementation of the PBLES rates. For that reason, MiCF insists that absent a finding that the PBLES rates are "just and reasonable" as required under Section 304(2)(d) of 2005 PA 235, the statute clearly directs the Commission to reject any new tariff that requires a customer making 100 calls to pay more than the customer would have previously been required to pay for a fewer number of calls under a prior calling plan.

### Discussion

Section 203 of the MTA, which authorizes the Commission to conduct investigations following the filing of applications and complaints, requires the applicant or complainant to file all of its supporting documentation, testimony, exhibits at the time of the filing of the application or complaint. The Attorney General's March 17, 2006 filing failed to provide specific information in regard to the allegations he raised and also failed to identify any provider against whom he was raising the allegations. Ordinarily, such defects would require dismissal or suspension of the application or complaint. However, despite the procedural infirmities associated with the Attorney General's March 17, 2006 filing, the Commission is persuaded by the filings submitted by AARP Michigan and MiCF that the public interest requires an investigation into the legality of PBLES rates. In addition, the Commission notes that on June 14, 2006, the Attorney General filed a complaint in Case No. U-14917 against Verizon that addresses the same issues regarding the legality of Verizon's PBLES rate that were the subject of his March 17, 2006 filing. At first blush the Attorney General's June 14, 2006 complaint appears to be devoid of procedural defects that

would require dismissal or suspension of that complaint.<sup>3</sup> Accordingly, the Commission finds that the approach taken in Case No. U-14917 provides the Commission with a more appropriate method for the investigation proposed in the Attorney General's March 17, 2006 filing.

Moreover, because the issues presented by the Attorney General's filings in Case Nos. U-14731 and U-14917 are allegedly applicable to many other providers, in the interest of the wise use of the Commission's scarce resources, the Commission encourages the Attorney General to identify all of the other telecommunications providers against whom he desires to pursue these allegations and file similar actions by July 13, 2006, which will provide the Commission an opportunity to simultaneously decide Case No. U-14917 and all similar dockets, if any, at the same time.

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.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The Commission will investigate the merits of the Attorney General's March 17, 2006 PBLES rate allegations in Case No. U-14917.

THEREFORE, IT IS ORDERED that:

A. The merits of Attorney General Michael A. Cox's primary basic local exchange service rate allegations shall be investigated in Case No. U-14917.

---

<sup>3</sup>On June 15, 2006, a preliminary determination was made on behalf of the Commission pursuant to R 460.17507 that the Attorney General's June 14, 2006 complaint states a prima facie case.

B. Attorney General Michael A. Cox shall be encouraged to identify additional telecommunications providers of primary basic local exchange service against whom he desires to pursue allegations regarding violations of the Michigan Telecommunications Act, as amended, MCL 484.2101 *et seq.*, and to file similar actions by July 13, 2006 in separate dockets to be processed and decided by the Commission simultaneously with Case No. U-14917.

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

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 June 15, 2006.

/s/ Mary Jo Kunkle

Its Executive Secretary

B. Attorney General Michael A. Cox shall be encouraged to identify additional telecommunications providers of primary basic local exchange service against whom he desires to pursue allegations regarding violations of the Michigan Telecommunications Act, as amended, MCL 484.2101 *et seq.*, and to file similar actions by July 13, 2006 in separate dockets to be processed and decided by the Commission simultaneously with Case No. U-14917.

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

MICHIGAN PUBLIC SERVICE COMMISSION

---

Chairman

---

Commissioner

---

Commissioner

By its action of June 15, 2006.

---

Its Executive Secretary