

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
DOBSON CELLULAR SYSTEMS, INC. , for)	
issuance of an order directing the Michigan)	
Exchange Carriers Association, Inc., to show)	Case No. U-15111
cause why its Tariff MPSC No. 24R should not)	
be void and cancelled under federal law.)	
_____)	

At the November 21, 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 DISMISSING APPLICATION

On October 23, 2006, Dobson Cellular Systems, Inc. (Dobson), filed an application¹ pursuant to Sections 101, 201, 305a, and 359 of the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2101 *et seq.*; and Sections 24 and 25 of 1909 PA 300, MCL 462.24 and 462.25, seeking to have the Commission order the Michigan Exchange Carriers Association, Inc. (MECA), to show cause why its Tariff MPSC No. 24R – CMRS² End Office Termination Service Regulations, Rates, and Charges (Tariff 24R) should not be declared void and

¹ On October 26, 2006, the Commission Staff construed this matter to be a complaint and determined that it stated a *prima facie* case. The Commission sets that determination aside because the Commission is not persuaded that this matter should have been construed as a complaint. Therefore, the Commission finds that the *prima facie* determination was improvidently entered.

² CMRS is the acronym for Commercial Mobile Radio Service.

unenforceable under federal law and to show cause why Tariff 24R should not be suspended and canceled.

The crux of Dobson's application is its allegation that Tariff 24R is null and void because, based on the holdings of *Verizon North, Inc v Strand*, 140 F Supp 2d 803 (WD Mich 2000),³ *Verizon North, Inc v Coast to Coast Telecom, Inc*, No. 00-71442 (ED Mich October 3, 2002),⁴ the Federal Communications Commission's (FCC) February 24, 2005 Declaratory Ruling and Report and Order,⁵ and 47 CFR 20.11(d),⁶ a carrier may "not bill another carrier for reciprocal compensation for the transport and termination of telephone calls based on a unilaterally filed tariff." Application, ¶ 22, p. 6. Dobson's application requests that, on its own motion, the Commission order MECA to show cause why Tariff 24R is not void and unreasonable under federal law and to show cause why Tariff 24R should not be suspended and canceled. Another key consideration, which was pled in ¶ 37 of Dobson's application, is the fact that on September 8, 2005, Baraga Telephone Company, Chippewa County Telephone Company, Hiawatha Telephone Company, Kaleva Telephone Company, Midway Telephone Company, Ontonagon County Telephone Company, and Pigeon Telephone Company filed a complaint in the 11th Judicial Circuit for the County of Alger seeking compensation from Dobson and American Cellular Systems, Inc., for the transport and termination of telecommunications pursuant to the Tariff 24R.

³Affirmed at 309 F3d 935 (6th Cir 2002).

⁴ Affirmed *sub nom Verizon North, Inc v Strand*, at 367 F3d 577 (6th Cir 2004).

⁵ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-42, 20 FCC Rcd. 4855 (2005).

⁶ 47 CFR 20.11(d) provides: "Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs."

The Commission finds that Dobson's application should be dismissed without prejudice to (1) Dobson's or MECA's filing of an application seeking arbitration of an interconnection agreement(s) between Dobson and the MECA companies regarding future dealings between these parties, or (2) a request from the 11th Judicial Court for assistance under the doctrine of primary jurisdiction.⁷ Because the dispute is currently pending in a court of law, the Commission declines to be drawn into the fray at the insistence of only one party. Under the doctrine of primary jurisdiction, the Commission could be requested to determine an issue to assist in the resolution of a dispute over which both the court and the Commission share jurisdiction.

At this time, there is no indication that the trial judge has any intention to invoke the judicial doctrine of primary jurisdiction. Absent invocation of the judicial doctrine of primary jurisdiction, which will presumably keep Dobson and the MECA companies on the same footing that they have in the pending judicial action, or commencement of a federal arbitration proceedings, the Commission declines to order MECA to show cause why Tariff 24R should not be declared void and unenforceable.

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

⁷ Primary jurisdiction is a concept of judicial deference and discretion. *Travelers Insurance Co v Detroit Edison Co*, 465 Mich 185, 201; 631 NW2d 733 (2001); *Rinaldo's Construction Corp v Michigan Bell Telephone Co*, 454 Mich 65, 70; 559 NW2d 647 (1997). It exists to recognize the need for orderly and sensible coordination of the work of administrative agencies and courts. Courts of general jurisdiction consider the doctrine of primary jurisdiction whenever there is concurrent original subject matter jurisdiction regarding disputed issues in both the court and an administrative agency. *Id.* The doctrine of primary jurisdiction does not preclude civil litigation; it merely suspends court action in favor of an initial decision from the administrative agency.

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. Dobson's application should be dismissed without prejudice.

THEREFORE, IT IS ORDERED that the application filed by Dobson Cellular Systems, Inc., seeking to have the Commission order the Michigan Exchange Carriers Association, Inc., to show cause why its Tariff MPSC No. 24R – CMRS End Office Termination Service Regulations, Rates, and Charges should not be declared void and unenforceable under federal law and to show cause why Tariff 24R should not be suspended and canceled is dismissed without prejudice to the filing of an application seeking arbitration of an interconnection agreement, or a request from the 11th Judicial Circuit Court for assistance under the doctrine of primary jurisdiction.

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

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

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 November 21, 2006.

/s/ Mary Jo Kunkle

Its Executive Secretary

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of November 21, 2006.

Its Executive Secretary