

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
to examine the total service long run incremental )  
costs of the **MICHIGAN EXCHANGE CARRIERS** )  
**ASSOCIATION COMPANIES**, including **ACE** )  
**TELEPHONE COMPANY, BARRY COUNTY** )  
**TELEPHONE COMPANY, DEERFIELD** )  
**FARMERS' TELEPHONE COMPANY, KALEVA** )  
**TELEPHONE COMPANY, LENNON TELEPHONE** )  
**COMPANY, OGDEN TELEPHONE COMPANY,** )  
**PIGEON TELEPHONE COMPANY, the UPPER** )  
**PENINSULA TELEPHONE COMPANY,** )  
and **WALDRON TELEPHONE COMPANY.** )

Case No. U-14781

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In the matter of the Commission's own motion )  
to examine the total service long run incremental )  
costs of **BLOOMINGDALE TELEPHONE** )  
**COMPANY, CHIPPEWA COUNTY TELEPHONE** )  
**COMPANY, HIAWATHA TELEPHONE** )  
**COMPANY, MIDWAY TELEPHONE COMPANY,** )  
**ONTONAGON TELEPHONE COMPANY, WINN** )  
**TELEPHONE COMPANY, BARAGA TELEPHONE** )  
**COMPANY, CHAPIN TELEPHONE COMPANY,** )  
**SAND CREEK TELEPHONE COMPANY,** )  
**SPRINGPORT TELEPHONE COMPANY, and** )  
**WESTPHALIA TELEPHONE COMPANY.** )

Case No. U-15035

At the July 1, 2008 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman  
Hon. Monica Martinez, Commissioner  
Hon. Steven A. Transeth, Commissioner

## ORDER

On June 4, 2008, AT&T Michigan, the Michigan Exchange Carriers Association, Inc. (MECA) on behalf of 19 member companies participating in these cases<sup>1</sup>, Verizon North Inc., and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon), and New Par, d/b/a Verizon Wireless, Cellco Partnership d/b/a Verizon Wireless, and Muskegon Cellular Partnership, d/b/a Verizon Wireless (collectively, Verizon Wireless) submitted a settlement agreement in which the signing parties agreed that further Commission proceedings are unnecessary if the Commission approves the settlement.<sup>2</sup>

The settlement reflects that MECA filed in each of these cases a confidential CD-ROM containing cost studies for approval. The resulting company-specific reciprocal compensation rates per minute of use are reflected on Exhibits A (Case No. U-14781 companies) and B (Case No. U-15035 companies) attached to the settlement agreement. The parties agree that the rates for companies in Case No. U-14781 should be retroactive to July 5, 2007, for any carrier that has an interconnection agreement with provisions entitling the ILEC to retroactivity. The rates in Case No. U-15035 are to become effective on the date of this order.

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<sup>1</sup>MECA signed this agreement on behalf of the following rural incumbent local exchange carriers (ILECs): Case No. U-14781: Ace Telephone Company, Barry County Telephone Company, Deerfield Farmers' Telephone Company, Kaleva Telephone Company, Lennon Telephone Company, Ogden Telephone Company, Pigeon Telephone Company, Waldron Telephone Company, Allendale Telephone Company, Blanchard Telephone Company, Carr Telephone Company, and Drenthe Telephone Company. Case No. U-15035: Bloomingdale Telephone Company, Winn Telephone Company, Baraga Telephone Company, Chapin Telephone Company, Sand Creek Telephone Company, Springport Telephone Company, and Westphalia Telephone Company.

<sup>2</sup>The settlement does not pertain to any issues regarding Upper Peninsula Telephone Company in Case No. U-14781, nor to the following companies from Case No. U-15035: Chippewa County Telephone Company, Hiawatha Telephone Company, Ontonagon County Telephone Company, and Midway Telephone Company (the Hiawatha companies). The excluded companies filed their own cost studies separately from those filed by MECA on behalf of the named member companies.

The parties further agree to a rate cap for switched access rates, which may not be greater than rates in effect as of April 1, 2008. The rate cap is to remain in place through June 4, 2010, unless one of the following occurs: 1) a Commission order issues approving a new cost study for reciprocal compensation for any of the named rural ILECs (which would remove the cap only for that particular carrier); 2) a federal or state law, regulation, or order requires changing the intrastate switched access rates listed in the agreement; or 3) a federal or state law, regulation, or order requires changing the reciprocal compensation rates agreed to in the settlement.

The parties request that the Commission approve the settlement, the cost studies contained on the CD-ROM, and the reciprocal compensation rates contained in the exhibits attached to the settlement.

On June 18, 2008, Alltel Communications, LLC, (Alltel) filed a statement of objection to the settlement agreement. Although Alltel was a party to Case No. U-14781, it was not a party to Case No. U-15035, and it did not sign the settlement agreement. Alltel argues that the settlement is “illegal, unlawful, and against the public interest.” Alltel objections, p. 1. Alltel argues that the Commission cannot find any of the three factors required by R 460.17333(5) before the Commission may approve a contested settlement agreement. It argues that neither of these cases were contested case proceedings and therefore, the record contains no evidence to support approving the settlement.

Alltel argues further that it has appealed the Commission’s decision in Case No. U-14889, an arbitration matter in which the Commission directed the ILECs to file cost cases. Alltel states that its appeal raises issues for which a favorable decision would invalidate the settlement in Case No. U-14781 and Case No. U-15035. It argues that the Commission cannot settle a proceeding to

which it is an appellate party without the consent of other appellate parties. Alltel argues that the settlement agreement would be invalid from its inception if the Commission should approve it.

Alltel further argues that the rates contained in the settlement agreement have not been proven to be the forward-looking economic costs of providing the included services in a contested case proceeding. It argues that the settlement agreement does not require that the MECA companies prove that the rates for each element they offer do not exceed the forward-looking economic cost per unit of providing the element. Alltel further objects to the lack of a “written, factual, evidentiary record sufficient for purposes of review.” Moreover, it argues that the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, requires the Commission to hold a contested case hearing before altering rates for interconnection. MCL 484.2352(5). On June 27, 2008, MECA filed a response opposing Alltel’s statement of objection.

Rule 333 of the Commission’s Rules of Practice and Procedure provides:

- (1) All parties to proceedings before the commission are encouraged to enter into settlements when possible and the provisions of these rules shall not be construed in any way to prohibit settlements.
- (2) The parties to a proceeding may agree upon some or all of the facts. The agreement shall be evidenced by a written stipulation filed with the commission or entered upon the record. The stipulation shall be regarded and used as evidence in the proceeding.
- (3) When a written settlement agreement is proposed by some of the parties, it shall be served on all parties to the proceeding. Each party shall file and serve on all parties, within 14 days after being served, its agreement, objection, or nonobjection to the settlement agreement. Failure to respond in writing within 14 days, unless a different time is set by the presiding officer for good cause, shall constitute nonobjection to the settlement agreement. A party who objects to a settlement agreement shall state those objections with particularity and shall specify how it would be adversely affected by the settlement agreement.
- (4) In every proceeding, the parties to the settlement agreement shall, upon request, submit a proposed order to the presiding officer.

- (5) The commission may approve a settlement agreement if all of the following conditions are met:
- (a) Any party that has not agreed to the settlement has signed a statement of nonobjection or has failed to object within the 14 days provided in subrule (3) of this rule, or such other time established by the presiding officer, or the objecting party or parties under subrule (3) have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement.
  - (b) The commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement.
  - (c) The commission finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and, if the settlement is contested, is supported by substantial evidence on the record as a whole.
- (6) The nature and extent of the precedential value accorded an order approving a settlement agreement shall be as specified by the parties in the settlement agreement.

R 450.17333.

The Commission finds that the elements of Rule 333(5) have been met and the settlement may be approved. First, the Commission finds that Alltel's objections do not constitute a proper objection to the settlement. The rule requires that an objecting party must state its objections with particularity and shall specify how it would be adversely affected by the settlement agreement. Alltel objects on procedural grounds and asserts that there has been too little oversight. It does not state with particularity any fault in the settlement, how its position differs from the results of the settlement, or how it would be adversely affected by adoption of the settlement. Nor has Alltel suggested that it has evidence it desires to submit to challenge the settlement agreement.

The Commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement. Those parties include the Commission Staff, commercial mobile radio service (CMRS) providers, small rural ILECs, and large ILECs. Alltel has had the

same opportunity as all parties to participate in Case No. U-14781 and to submit testimony or arguments concerning these cases. Alltel's claim that the end-user is not represented is of no avail to Alltel. First, the Staff is responsible to see to the public interest of any unrepresented party. Second, permitting Alltel to intervene or obstruct the settlement does not afford end-users the representation that Alltel claims is missing. The Commission concludes that Rule 333(5)(b) is satisfied.

The Commission finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and is supported by the substantial evidence on the record. Therefore, all requirements of Rule 333(5) have been met.

Further, the Commission finds that the arguments Alltel does offer against adoption of the settlement agreement unpersuasive. These two cases arise out of arbitration proceedings in which it became apparent that certain rural ILECs were charging rates based on cost studies that were outdated. The Commission issued an order on February 24, 2006 ordering the ILECs in Case No. U-14678 to file new cost studies. In another arbitration proceeding, Case No. U-14889, similar issues arose with additional rural ILECs. The Commission issued an order on August 31, 2006 directing those rural ILECs not already involved in Case No. U-14781 to file cost studies in Case No. U-15035. These cost study proceedings have involved filing the studies and supporting documents, providing the parties an opportunity to file comments, reply comments, and final comments as well as a Commission order in Case No. U-14781. All but the reply comments and final reply comments had been submitted in Case No. U-15035.

As noted above, Alltel was not a party to Case No. U-15035. Despite being on the service list for the order initiating the case, Alltel did not participate or file anything that indicated its intention to participate in that matter until after settlement negotiations were going on – approximately

eight months into the proceeding. At that time, Alltel sought to intervene. MECA objected to Alltel's petition to intervene, and the ALJ denied Alltel's petition at a hearing on May 8, 2008. Alltel failed to appeal the ALJ's May 8, 2008 ruling. Accordingly, the Commission finds that Alltel is without standing to object to the settlement in Case No. U-15035. Moreover, the Commission finds that intervening late merely to frustrate the settlement efforts of all other parties to the case is not in the public interest.

The Commission is not persuaded by Alltel's arguments that its appeal that is currently pending in the federal courts limits the Commission's ability to settle a case in which it is a party on appeal. Alltel appealed the Commission's decision in Case No. U-14889, the arbitration order underlying Case No. U-15035, not either of the present cases. Therefore, the Commission finds that Alltel's appeal is no barrier to adopting the settlement without Alltel's agreement. There is nothing in the settlement agreement that purports to settle Alltel's appeal of the Commission's order in Case No. U-14889. And, as noted above, Alltel has no standing in Case No. U-15035. The Commission hereafter addresses only those arguments related to Case No. U-14781.

Alltel's complaint that the Commission has not properly processed the cost case through a contested case proceeding is also unpersuasive. The Commission generally establishes the procedures for cost cases in an order initiating the case. *See, e.g.*, the November 9, 1999 order in Case No. U-11831. The Commission has consistently set up a notice and comment proceeding in which the carrier whose costs are to be studied submits its proposed studies. Interested parties are permitted to review those filings pursuant to an appropriate confidentiality order and file comments on the studies. Parties have submitted testimony, affidavits, work papers, and briefs in testing the studies. The carrier is then permitted to respond and final reply comments are received. This procedure permits the parties to test the filed cost study information and make arguments

concerning the factual and legal issues. The Commission then issues an order resolving the disputes and ordering the carrier to file a compliant cost study. This procedure reduces the amount of time necessary to issue a cost case order, without truncating the parties' ability to challenge the filing. Moreover, discovery is generally permitted in these proceedings, so parties may ask clarifying questions of the carrier's study authors. The record created is sufficient for review. The Commission is not persuaded that this process violates either federal or state law or forms any reason to reject the settlement agreement.

The Commission is specifically unpersuaded that the reciprocal compensation rates that will be approved as part of the settlement are too high because they exceed those rates charged by Verizon and AT&T Michigan. Those large companies have different costs than small rural carriers. Had the costs been similar for the large and small companies, the MECA companies could have merely adopted the cost study of one of the larger carriers under MCL 484.2304(14). They chose instead to incur significant costs to establish their own cost studies. The Commission notes that Verizon and AT&T Michigan have signed the settlement as reasonable, despite the fact that the reciprocal compensation rates may be higher than their own.

The Commission concludes that Alltel's objections to the settlement agreement are without merit and should not prevent the Commission's approval of that agreement. The Commission finds that the settlement agreement is reasonable and in the public interest and should be approved.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement is approved.
- B. The cost studies contained on the CD-ROMs submitted in these cases are approved.
- C. The reciprocal compensation rates set out on Exhibits A and B to the settlement agreement are approved.

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, under MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

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Orjiakor N. Isiogu, Chairman

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Monica Martinez, Commissioner

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Steven A. Transeth, Commissioner

By its action of July 1, 2008.

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Its Executive Secretary