

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
UPPER PENINSULA TELEPHONE COMPANY)	
and MICHIGAN CENTRAL BROADBAND)	Case No. U-16171
COMPANY, LLC , for approval of its total service)	
long run incremental cost study.)	
_____)	

At the February 8, 2010 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

OPINION AND ORDER

On January 29, 2010, Upper Peninsula Telephone Company and Michigan Central Broadband Company, LLC (UPTel & MCBC),¹ filed a joint application seeking approval of their individual total service long run incremental cost (TSLRIC) studies.

Section 304 of the Michigan Telecommunications Act (MTA), 1991 PA 179, MCL 484.2101 *et seq.*, allows UPTel & MCBC to determine their TSLRIC through either preparation of their own TSLRIC studies or through reliance on a TSLRIC study of a provider with more than 250,000 end-

¹UPTel established MCBC in February 2009 as part of a corporate reorganization whereby MCBC, as UPTel's wholly-owned subsidiary, would provide local exchange service in UPTel's four exchange areas located in the Lower Peninsula, and UPTel would continue to provide local exchange service in its fifteen exchanges located in the Upper Peninsula. MCBC began providing service to the four Lower Peninsula exchanges on January 8, 2010.

users.² In their application, UPTel & MCBC state that they have opted to prepare their own TSLRIC studies.³

UPTel & MCBC acknowledge that UPTel's last TSLRIC study was approved by the Commission on March 18, 2008 in Case No. U-14781, which is less than two years ago. UPTel & MCBC raise this point because the Commission has previously ruled in the May 28, 2003 order in Case No. U-13756 and the October 23, 2003 order in Case No. U-13531 that a local exchange company (LEC) may not file a new TSLRIC study within two years of the final order approving its prior TSLRIC study. However, despite the fact that fewer than two years have passed since approval of UPTel's previous TSLRIC study, UPTel & MCBC insist that Case Nos. U-13756 and U-13531 provide an exception to the two-year limitation for situations in which there has been a fundamental change in circumstances. In this case, UPTel & MCBC contend that the reorganization of UPTel, and the transfer of exchanges and assets from UPTel to MCBC is a fundamental change in UPTel's operations that should permit them to file this application for approval of new TSLRIC studies at this time.

According to the application, UPTel's TSLRIC study covers UPTel's TSLRIC to provide service in its 15 exchanges located in the Upper Peninsula,⁴ and MCBC's TSLRIC study covers the MCBC's TSLRIC to provide service in the 4 exchanges located in the Lower Peninsula.⁵

²The Commission's September 8, 1994 order in Case No. U-10620 indicates that a telecommunications provider may prepare its own TSLRIC study.

³The Commission expressed a preference in the September 8, 1994 order in Case No. U-10620 for each company to perform its own TSLRIC study rather than relying on proxy TSLRIC studies.

⁴The Upper Peninsula exchanges are Carney, Donken, Drummond Island, Faithorn, Felch, Fence River, Lake Gogebic, Marenisco, Michigamme Forest, North Land O'Lakes, Rexton, Scott Point, Smoky Lake, Wallace, and Watson.

⁵The Lower Peninsula exchanges are Amble, Chester, Grace Harbor, and Manistee River.

UPTel & MCBC maintain that the preparation of the TSLRIC studies is consistent with the methods set forth in UPTel's prior TSLRIC study proceeding, Case No. U-14781 because the two studies were developed by using "established total company costs for all 19 UPTel exchanges, and then assigned expenses based on the underlying investments in UPTel & MCBC's respective service areas." Application, p. 3. UPTel & MCBC also assert that their TSLRIC studies are designed to conform to both the MTA and the Commission's TSLRIC principles.

Because of the confidential nature of their TSLRIC studies, UPTel & MCBC filed a CD-ROM with the Commission's Executive Secretary in accordance with Section 210 of the MTA to maintain its confidentiality. They also filed a motion for a protective order.

Because neither the Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*; nor the MTA require the Commission to conduct a contested case proceeding in order to review and approve a TSLRIC study, the Commission finds that this matter should be processed pursuant to Section 203(10) of the MTA, which states that "[e]xcept as otherwise provided in this section, the commission shall issue a final order in a case filed under this section within 90 days from the date the application or complaint is filed." Therefore, this matter will be reviewed by the Commission without the time and expense of a hearing according to the following schedule:

- A. The Commission's Executive Secretary is ordered to serve a copy of this order on Attorney General Michael A. Cox and on all licensed local exchange providers and facilities-based interexchange providers currently operating in Michigan.
- B. Any interested person seeking to participate in this proceeding shall file a notice of intent to participate in this docket by February 16, 2010.
- C. A prehearing conference has been scheduled to be conducted on February 18, 2010 at 9:00 a.m. at the Commission's offices, 6545 Mercantile Way, Lansing, MI 48911. At the prehearing conference, the Administrative Law Judge assigned to preside over this matter shall rule on the protective order requested by applicant.

- D. On or before March 15, 2010, parties shall file their initial comments in this docket.
- E. On or before April 5, 2010, parties shall file their reply comments.
- F. At this time, the Commission anticipates that its final order in this proceeding will be issued on April 27, 2010.

The pleadings required by this order and any comments filed by interested persons shall be submitted electronically through the Commission's E-Dockets Website at:

michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an e-mail sent to mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 241-6170 or by e-mail at mpscedockets@michigan.gov.

THEREFORE, IT IS ORDERED that:

- A. The Commission's Executive Secretary shall serve a copy of this order on Attorney General Michael A. Cox and on all licensed local exchange providers and facilities-based interexchange providers currently operating in Michigan.
- B. Any interested person seeking to participate in this proceeding shall file a notice of intent to participate in this docket by February 16, 2010.
- C. A prehearing conference shall be conducted on February 18, 2010 at 9:00 a.m. at the Commission's offices, 6545 Mercantile Way, Lansing, MI 48911. At the prehearing conference, the Administrative Law Judge assigned to preside over this matter shall rule on the protective order requested by applicant.
- D. On or before March 15, 2010, parties shall file their initial comments in this docket.
- E. On or before April 5, 2010, parties shall file their reply comments.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of February 8, 2010.

Mary Jo Kunkle, Executive Secretary