

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\*\*\*\*\*

In the matter of the application and complaint of )  
**BROOKS FIBER COMMUNICATIONS OF** )  
**MICHIGAN, INC.,** (an MCI WorldCom company) )  
against **GTE NORTH INCORPORATED** and )  
**CONTEL OF THE SOUTH, INC., d/b/a GTE** )  
**SYSTEMS OF MICHIGAN,** regarding local )  
termination. )  
\_\_\_\_\_ )

Case No. U-12376

At the September 18, 2000 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**OPINION AND ORDER**

**I.**

**HISTORY OF PROCEEDINGS**

On April 10, 2000, Brooks Fiber Communications of Michigan, Inc., a WorldCom<sup>1</sup> company,  
(Brooks) filed an application and complaint alleging that GTE North Incorporated and Contel of  
the South, Inc., d/b/a GTE Systems of Michigan, were refusing to pay charges for local termination  
of calls to Internet service providers (ISPs). On June 30, 2000, Bell Atlantic merged with GTE  
Incorporated to form Verizon Communications. Verizon Communications has changed the legal

\_\_\_\_\_  
<sup>1</sup> At the time of filing the complaint, WorldCom was named MCI WorldCom.  
Subsequently, MCI WorldCom changed its name.

name of GTE North Incorporated to Verizon North Incorporated. Contel of the South, Inc., has adopted a new assumed name, Verizon North Systems. The two will be referred to as “Verizon” in this order.

On April 11, 2000, Brooks filed a motion for summary disposition. In so doing, Brooks argued that this matter is controlled by the Commission’s February 22, 2000 order in Case No. U-12090, which determined that Verizon was required to pay the local termination charges billed by another competitive local exchange carrier (CLEC) for calls terminated to ISPs.

On May 8, 2000, Verizon filed an answer to the application and complaint.

In a letter dated May 11, 2000, counsel for Brooks outlined an agreement reached between Brooks, Verizon, and the Commission Staff (Staff) to expedite the resolution of this proceeding. In the letter, it was explained that Verizon had agreed to pay the amount that Brooks claimed that Verizon owed for the local termination charges at issue in this proceeding. The parties agreed that all issues in this proceeding should be resolved through the filing of cross-motions for summary disposition. In the event that the Commission or an appellate court determined that Brooks was not entitled to charge Verizon for local termination of calls to ISPs, Brooks agreed to return all monies to Verizon.

On May 15, 2000, Verizon filed a motion for summary disposition. On June 5, 2000, answers to Verizon’s motion for summary disposition were filed by Brooks and the Staff. On June 21, 2000, Verizon filed a response to the Staff’s answer.

On August 7, 2000, Administrative Law Judge George Schankler (ALJ) issued a Proposal for Decision (PFD) concluding that Verizon was obligated to pay reciprocal compensation for the disputed calls.

On August 21, 2000, Verizon filed its exceptions to the PFD. On August 28, 2000, Brooks and the Staff filed their replies to exceptions.

## II.

### BACKGROUND INFORMATION

This dispute involves a contention by Brooks that Verizon has improperly refused to compensate Brooks for certain local termination charges.<sup>2</sup> Brooks is a CLEC that provides service within Verizon's service territory. Verizon is an incumbent local exchange carrier (ILEC) that provides basic local exchange service at various locations in Michigan.

The facilities of Brooks and Verizon are not physically interconnected. When a Verizon customer dials up a customer served by Brooks, the call is transferred to Ameritech Michigan before being handed off to the Brooks switch that serves the NPA/NXX<sup>3</sup> code for further routing to the ISP. Verizon's local calling rates apply when one of its customers makes a call to an ISP with an NPA/NXX code included within a Verizon exchange's extended area service (EAS) calling area.

Relying upon previous Commission orders, Brooks maintains that the disputed ISP calls should be treated as local and not as toll calls. According to Brooks, all calls from Verizon's basic local exchange customers made to an NPA/NXX assigned to their exchange are properly rated as

---

<sup>2</sup> More specifically, the dispute involves calls made by Verizon's customers to ISPs served by Brooks. To simplify matters, the parties have proceeded under the assumption that all calls made to Brooks by Verizon's customers involve ISPs.

<sup>3</sup> NPA refers to Numbering Plan Area, which is the area code used in dialing 10-digit interexchange calls. NXX refers to the first three digits in a 7-digit local dialing pattern. Each combination of NPA/NXX codes references telephone service within the boundaries of a local exchange.

local calls under Verizon's tariffs and are properly being billed by Brooks to Verizon as local calls for the purpose of determining reciprocal compensation for the termination of local calls.

Under Brooks' Tariff M.P.S.C. No. 5 R, Section 10.8, which was in effect from March 28, 1995 through December 31, 1999, Brooks maintains that Verizon is obligated to compensate Brooks at a rate of \$0.015 per minute of use for the termination of local calls on its network. Brooks also stresses that Verizon and Brooks entered into a memorandum of understanding<sup>4</sup>, which Brooks maintains reaffirms the rate of \$0.015 per minute of use for local termination. Under the terms of the memorandum, the rate of \$0.015 was to remain in place until Brooks and Verizon sign an interconnection agreement.<sup>5</sup>

On the basis of the Commission's February 22, 2000 order in Case No. U-12090, Brooks maintains that, as of January 1, 2000, its rate for termination of local traffic must be cost based. To that end, Brooks indicates that it has proxied the Ameritech Michigan total service long run incremental cost (TSLRIC) study. According to Brooks, the applicable tariff charge for local call termination from January 1, 2000 to February 15, 2000 mirrors the Ameritech Michigan tariffed rate of \$0.004053 per minute of use. Brooks states that the applicable tariffed rate after February 16, 2000 is \$0.002357 per minute of use.

It is Verizon's position that calls to ISPs are not local calls. Accordingly, Verizon disputes its obligation to pay the monthly bills from Brooks associated with the termination of local calls.<sup>6</sup>

---

<sup>4</sup> The memorandum was approved by the Commission in a December 7, 1998 order in Case No. U-11580.

<sup>5</sup> To date, Brooks and Verizon have not signed an interconnection agreement.

<sup>6</sup> The parties agree that there is presently no method to establish whether a local call involves a call to an ISP. It appears that Verizon would be willing to pay compensation for the termination of non-ISP local calls if such calls could be distinguished from ISP calls.

Verizon insists that calls to ISPs are not local because the vast majority of ISP calls follow transmission paths that terminate at locations outside of the originating state. According to Verizon, a call placed from the computer modem of an end-user customer does not terminate within the local calling area at the local aggregation modem, but continues instead to a distant point where data bases are accessed. Further, Verizon insists that the rates for local termination do not contemplate ISP-bound traffic. Based on data demonstrating that a typical residential customer's ISP call is significantly longer than a non-ISP call, Verizon argues that its obligation to pay reciprocal compensation for ISP-bound traffic could exceed the amount that Verizon is legally allowed to charge a residential customer for unlimited local exchange service in Michigan.

Finally, Verizon insists that the reciprocal compensation rates sought by Brooks will stifle competition by discouraging entry into the marketplace. According to Verizon, any carrier that could be required to pay out more in intercompany compensation than it expects to receive in payments from an end-user has very little incentive to enter the marketplace. For that reason, Verizon contends that the application and complaint filed by Brooks should be rejected.

### III.

#### DISCUSSION

Verizon's 12 exceptions can be separated into three general topics. Verizon's second, third, fifth, and sixth exceptions are related to Brooks' efforts to collect reciprocal compensation for the termination of local calls that occurred prior to August 26, 1998.<sup>7</sup> Verizon argues that the Commission lacks jurisdiction over the subject matter of Brooks' complaint because Brooks and

---

<sup>7</sup> Prior to August 26, 1998, Brooks charged Verizon at the local call termination rate of \$0.015 per minute of use pursuant to its Tariff M.P.S.C. No. 5 R, Section 10.8.

Verizon have not entered into a interconnection agreement and because calls to ISPs are interstate, not local calls. However, Verizon's arguments regarding the Commission's jurisdiction have repeatedly been rejected by the Commission. In its February 22, 2000 order in Case No. U-12090, the Commission specifically rejected Verizon's jurisdiction arguments. In so doing, the Commission found that it did have jurisdiction over such disputes even in the absence of an interconnection agreement. Moreover, in the January 28, 1998 order in Case No. U-11178 et al., the Commission determined that ISP-bound calls constitute local traffic and give rise to the obligation to pay reciprocal compensation. Accordingly, the Commission is persuaded that Verizon's second, third, fifth, and sixth exceptions should be rejected.

Verizon's first, fourth, seventh, eighth, ninth, tenth, and eleventh exceptions involve arguments that the memorandum between Verizon and Brooks does not support the payment of reciprocal compensation for the termination of ISP-bound traffic. Among other arguments, Verizon insists that it did not intend the memorandum to include ISP-bound traffic within the definition of local calls. However, in an order that predated the memorandum by seven months, the Commission indicated that if an agreement does "not distinguish between calls based on the nature of the customer receiving the call," the agreement should be considered to support the conclusion that a call made through use of a local seven-digit telephone number that terminates within a local calling area constitutes local traffic. January 28, 1998 order, Case No. U-11178 et al., p. 7. An examination of the memorandum reveals that the parties to the memorandum did not distinguish between ISP-bound traffic and non-ISP-bound traffic for the purpose of establishing the right to reciprocal compensation. Accordingly, the Commission finds that the ALJ correctly determined that the language of the memorandum supports Brooks' application and complaint.

The Commission also finds that Verizon's insistence that the Commission lacks jurisdiction to review the applicability of the memorandum to Brooks' claim for reciprocal compensation should be rejected. Having submitted the memorandum for the Commission's approval in Case No. U-11580, Verizon has no basis for contending in this proceeding that the Commission lacks authority to rule on the applicability of the memorandum to this dispute.

The Commission also finds that its decisions regarding reciprocal compensation for ISP-bound traffic that have been issued both before and subsequent to the execution of the memorandum by Brooks and Verizon clearly establish that the ALJ properly concluded that the introduction of extrinsic evidence of intent is not appropriate in light of the absence of an ambiguity in the memorandum. Indeed, the Commission observes that, in arriving at his recommendation, the ALJ specifically noted that Verizon had argued that the language of the memorandum was plain and unambiguous. Accordingly, the Commission finds that Verizon's arguments that the ALJ improperly rejected Verizon's position regarding the use of extrinsic evidence are without merit.

Finally, in its twelfth exception, Verizon argues that Brooks' rates for the termination of local traffic are excessive. However, the Commission finds that this argument should not be addressed because it is not germane to the application and complaint. As stated in the February 22, 2000 order in Case No. U-12090, "relief from an allegedly excessive local termination rate is outside of the scope of a complaint brought by a terminating provider to challenge the originating provider's non-payment." Order, Case No. U-12090, p. 8. For this reason, the Commission finds that Verizon's twelfth exception should be rejected.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.

b. Verizon should be ordered to pay the local termination charges billed by Brooks for ISP calls terminated for the periods covered by the application and complaint as well as for subsequent periods in a manner that is consistent with this order.

THEREFORE, IT IS ORDERED that Verizon North Incorporated, f/k/a GTE North Incorporated, and Contel of the South, Inc., d/b/a Verizon North Systems, shall pay the local termination charges billed by Brooks Fiber Communications of Michigan, Inc., for all billings covered by the application and complaint as well as for subsequent periods in a manner that is consistent with this order.

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; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

( S E A L )

/s/ David A. Svanda

Commissioner

/s/ Robert B. Nelson

Commissioner

By its action of September 18, 2000.

/s/ Dorothy Wideman

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; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

---

Chairman

---

Commissioner

---

Commissioner

By its action of September 18, 2000.

---

Its Executive Secretary

In the matter of the application and complaint of )  
**BROOKS FIBER COMMUNICATIONS OF** )  
**MICHIGAN, INC.,** (an MCI WorldCom company) )  
against **GTE NORTH INCORPORATED** and )  
**CONTEL OF THE SOUTH, INC., d/b/a GTE** )  
**SYSTEMS OF MICHIGAN,** regarding local )  
termination. )  
\_\_\_\_\_ )

Case No. U-12376

Suggested Minute:

“Adopt and issue order dated September 18, 2000 ordering Verizon North Incorporated, f/k/a GTE North Incorporated, and Contel of the South, Inc., d/b/a Verizon North Systems, to pay the local termination charges billed by Brooks Fiber Communications of Michigan, Inc., as set forth in the order.”