

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to review the costs of telecommunication services)
provided by **SBC AMERITECH MICHIGAN**.)
_____)

Case No. U-13531

At the August 18, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
 Hon. Robert B. Nelson, Commissioner
 Hon. Laura Chappelle, Commissioner

ORDER

On August 30, 2002, SBC Ameritech Michigan (SBC) filed an application in Case No. U-13518 for approval of total service long run incremental cost (TSLRIC) studies related to unbundled network elements (UNEs) and certain other services, including retail services. SBC alleged that its UNE costs were higher than those previously authorized by the Commission. Because the filed studies relate to many services, but not all services, such as collocation and switched and special access services (and do not include a calculation of the resale discount), it requested that the Commission waive, to the extent necessary, the requirements imposed in Case No. U-11831 with respect to future TSLRIC filings.

On September 11, 2002, AT&T Communications of Michigan, Inc., and TCG Detroit (collectively, AT&T) filed a motion to dismiss the application. They argued that the application did not comply with the Commission's prior orders because it did not include an extended

TSLRIC study and SBC did not explain any cost increases of more than 10%. They also argued that the cost studies inappropriately substituted a new methodology rather than updating the prior studies and departed from the Commission's prior findings. In the alternative, they asked the Commission to conduct a pilot proceeding in which SBC would be required to demonstrate the magnitude of the cost changes that occurred over the last three years before requiring the industry to commit the resources to an element-by-element review of UNE costs.

Also on September 11, 2002, MCImetro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Brooks Fiber Communications of Michigan, Inc., (collectively, MCI) filed a motion to dismiss. They argued that the application was frivolous as demonstrated by SBC's voluntary decision to reduce retail rates (which must be no less than cost) for unlimited local calling while claiming that costs had suddenly increased. They also argued that the application amounts to a collateral attack on the Commission's rulings in Case No. U-11831 and a challenge to the rulings in Case No. U-12540, which had been appealed. They further argued that the application was incomplete because it did not cover the entirety of the network and did not include an extended TSLRIC analysis. If there was to be a proceeding on SBC's costs, they suggested that it should be through an investigation rather than the filing of an application.

In an order issued on September 16, 2002, the Commission dismissed SBC's August 30, 2002 application with prejudice. The Commission reasoned that the cost studies filed in Case No. U-13518 did not comply with the directives in Case No. U-11831, wherein the Commission stated:

The Commission concludes that Ameritech Michigan should not be required to file TSLRIC studies every two years as the order in Case No. U-10620 provided, but also should not be permitted to file in less than two years unless it can demonstrate that there has been a fundamental change in circumstances. Rather, Ameritech Michigan should be permitted to file revised costs studies as it deems appropriate, although the Commission will not permit it to file cost studies for individual or a few services

(except new services). It must perform and file TSLRIC studies for its entire network. Furthermore, the Commission, acting on its own motion or at the request of another party, retains the authority to require Ameritech Michigan to file as well.

November 16, 1999 order, Case No. U-11831, pp. 42-43.

Although dismissing Case No. U-13518 with prejudice, the Commission recognized that SBC's costs may have changed since the Commission last examined them. Therefore, the Commission commenced this proceeding, on its own motion, to consider cost studies for services provided by SBC. In so doing, the Commission directed SBC to identify cost changes attributable to increases or decreases in costs, changes attributable to changes in the cost methodology, and changes attributable to a decision to seek a modification of a prior Commission determination on an issue.

On May 2, 2003, SBC filed an application in this docket seeking approval of its cost studies. Petitions to intervene were filed by the Competitive Local Exchange Carriers Association of Michigan (CLECA), Sage Telecom, Inc. (Sage), Covad Communications Company (Covad), McLeodUSA Telecommunications Services, Inc. (McLeod), Comcast Telecommunications of Michigan, LLC, (Comcast), Sprint Communications Company, L.P. (Sprint), the Association of Communications Enterprises (ASCENT), Borderland Communications, LLC (Borderland), Attorney General Michael A. Cox (Attorney General), MCI, AT&T, LDMI Telecommunications, Inc. (LDMI), XO Michigan, Inc. (XO), Talk America, Inc., TDS Metrocom, Inc.(TDS), Z-Tel Communications, Inc. (Z-Tel), TelNet Worldwide, Inc., (TelNet), and Climax Telephone Company (Climax). The Commission Staff (Staff) also participated in the proceedings.

On June 11, 2003, AT&T filed a motion to dismiss SBC's application on the ground that it violated the Commission's prior orders in Cases Nos. U-13518 and U-11831. In the alternative, AT&T urged the Commission not to consider SBC's application on an expedited basis or to afford

it treatment as a contested case. Rather, AT&T argued that the Commission should follow a “phased” approach, which would permit the Commission and the parties sufficient time to consider the myriad issues involved in the proceeding.

On June 16, 2003, a prehearing conference was conducted by Administrative Law Judge James N. Rigas (ALJ). The prehearing conference was attended by SBC, AT&T, the Attorney General, the CELCA, LDMI, Sage, Comcast, Sprint, McLeod, MCI, Covad, TelNet, Z-Tel, XO, TDS, Talk America, and the Staff. After listening to suggestion by the parties on how to proceed, the ALJ determined that the issue should be briefed and the determination placed before the Commission. Toward that end, the ALJ gave all parties except SBC until June 25, 2003 to file written comments regarding AT&T’s proposed schedule. SBC was given until July 3, 2003 to submit its comments on the issue.

On June 25, 2003, written comments were filed by Sage, Covad, MCI, the Attorney General, the CELCA, LDMI, the Staff, Talk America, TDS, XO, and Z-Tel. On July 3, 2003, SBC filed its response.

In varying degrees, Sage, Covad, MCI, the Attorney General, the CELCA, LDMI, Talk America, TDS, XO, and Z-Tel insist that SBC’s application is premature due to uncertainty regarding the content of the Federal Communications Commission’s (FCC) failure to release of a written decision in its Triennial Review proceeding¹, which has been eagerly awaited by all concerned since the FCC’s February 20, 2003 announcement that it would adopt rules affecting how incumbent local exchange carriers (ILEC) meet their statutory obligations to make UNEs available to new entrants. Some of these parties also suggest that SBC’s application should be

¹Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-388 [or 338??], Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147.

dismissed due to its failure to adhere to the requirements set forth in the Commission's orders in Cases Nos. U-11831, U-13518, and U-13531. Finally, they generally express support for AT&T's phased approach to review of SBC's application.

The Staff opposed AT&T's motion to dismiss. However, the Staff also opposed SBC's contention that its application should be given expedited treatment. According to the Staff, because the Commission commenced this proceeding on its own motion, the 180-day and 210-day case processing limitations set forth in Section 203 of the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2203, are not applicable. The Staff urged the Commission to follow the same approach used in SBC's two prior cost cases, Cases Nos. U-11280 and U-11831.

SBC contends that AT&T's motion to dismiss should be denied. According to SBC, the merits of AT&T's objections to SBC's May 2, 2003 filing should be discussed and resolved through the filing of briefs. Moreover, SBC insists that its filing fully complies with the Commission's September 16, 2002 order in Case No. U-13518.

SBC also contends that the Commission should process this case according to the contested case provisions of the Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq., and Section 203 of the MTA. However, SBC concedes that its previous cost cases were not processed as contested cases. It also concedes that proceeding this case in accordance with the Staff's recommendations might be reasonable as long as the comment periods are short, factual representations are supported by affidavit (not the signature of counsel), and the Commission's final order is issued by December 1, 2003.

The Commission finds that the Staff's proposal for the scheduling and processing of this application is reasonable and in the public interest, and should be adopted. In so doing, the

Commission rejects SBC's argument that the case processing deadlines set forth in Section 203 of the MTA apply to this proceeding. Given that this proceeding was initiated on the Commission's own motion rather than by application, the Commission agrees with the Staff that it is not required to adhere to the case processing deadlines set forth in Section 203. Additionally, the Staff's proposals for the use of three rounds of comments and reliance on factual allegations supported by the signature of counsel (not affidavits) are remarkably similar to the schedule and methodology adhered to in SBC's previous cost cases. More importantly, the Commission finds that the schedule suggested by SBC is simply too compressed to allow the Commission to arrive at a reasoned determination of the important issues presented by this application by December 1, 2003, as proposed by SBC. Accordingly, the ALJ is directed to follow the schedule and case processing suggestions proposed by the Staff, with one modification. The Commission finds that the second round of comments should be lengthened by two weeks due to the timing of the winter holiday season.

An obvious wild card that will eventually be played by the FCC is the release of a written decision in its Triennial Review proceeding. After the FCC issues its final order in that proceeding, any party may propose a schedule amendment to the ALJ. In the event that the ALJ is persuaded that a schedule amendment is necessary, he may revise the schedule set forth on Exhibit A accordingly.

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, 1992 AACS, R 460.17101 et seq.
- b. AT&T's motion to dismiss the application should be denied.

c. The Staff's proposal for the scheduling and processing of this proceeding, as modified by this order, should be adopted.

THEREFORE, IT IS ORDERED that:

A. The motion to dismiss SBC Ameritech Michigan's May 2, 2003 application, which was filed by AT&T Communications of Michigan, Inc., and TCG Detroit, is denied.

B. The Commission Staff's proposal for the scheduling and processing of this proceeding, attached to the order as Exhibit A, as modified by this order, is adopted.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of August 18, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

c. The Staff's proposal for the scheduling and processing of this proceeding, as modified by this order, should be adopted.

THEREFORE, IT IS ORDERED that:

A. The motion to dismiss SBC Ameritech Michigan's May 2, 2003 application, which was filed by AT&T Communications of Michigan, Inc., and TCG Detroit, is denied.

B. The Commission Staff's proposal for the scheduling and processing of this proceeding, attached to the order as Exhibit A, as modified by this order, is adopted.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

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By its action of August 18, 2003.

Its Acting Executive Secretary

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Suggested Minute:

“Adopt and issue order dated August 18, 2003 denying the motion to dismiss filed by AT&T Communications of Michigan, Inc., and TCG Detroit, and approving the Commission Staff's proposal for the scheduling and processing of this proceeding, as set forth in the order.”

EXHIBIT A

A. Comment Schedule for Case No. U-13531:

1. Initial Comments by Parties 12 weeks from Commission order or November 10, 2003
2. Response Comments by Parties 10 weeks from date Initial Comments filed or January 19, 2004
3. Final Reply Comments by Parties 3 weeks from date Response Comments filed or February 9, 2004

B. Other Case Processing Procedures:

A party's comments need not be accompanied by an affidavit, but may signed only by a party's legal counsel.

All depositions are to be conducted in Lansing.