

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to open a docket and to establish a deadline for)	
telecommunications providers to petition the)	
Commission for a determination to rebut the)	Case No. U-13895
national finding of non-impairment for unbundled)	
local circuit switching in the enterprise market.)	
_____)	

At the October 7, 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 COMMENCING PROCEEDING AND ESTABLISHING DEADLINE

On February 20, 2003, the Federal Communications Commission (FCC) announced that it was adopting rules in its Triennial Review proceeding¹ that will affect how incumbent local exchange carriers (ILECs) meet their statutory obligations to make unbundled network elements available to new entrants.

In an order issued on May 28, 2003 in Case No. U-13796, the Commission commenced a proceeding to facilitate the implementation of the FCC's anticipated Triennial Review Order

¹Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, 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.

(TRO) by soliciting input from stakeholders. In so doing, the Commission requested comments on certain specific issues.

On August 21, 2003, the FCC released the text of its TRO, which was published in the Federal Register on September 2, 2003 and which became effective on October 2, 2003. Among other things, the TRO determined on a national basis whether competitive local exchange carriers (CLECs) are impaired in the market without access to certain elements of an ILEC's network. In so doing, the FCC made a national finding that telecommunications carriers requesting interconnection are not impaired in the enterprise market without access to local circuit switching to serve customers using DS1 capacity and above.

The FCC provided that states may rebut this finding within 90 days of the effective date of the TRO. The FCC gave the states an opportunity to conduct a more granular analysis of the markets subject to their jurisdiction and to determine whether CLECs are impaired competitively without access to those network elements in certain geographic areas or to specific end users. The FCC order also provided that, if a state commission fails to exercise its authority in this regard, a party may petition the FCC to step into the role of the state commission and the FCC may assume responsibility for conducting the proceeding.

To date, the Commission has received no indication of impairment to carriers serving enterprise customers without access to DS1 and above for local circuit switching. However, because such a determination must be made, if at all, within 90 days of the effective date of the TRO (or by January 1, 2004), the Commission is persuaded that it should establish a deadline for parties interested in this issue to file a statement of position, prepared direct testimony, and supporting documentation, including the designation of all geographic areas encompassed by the filing, in this docket by October 20, 2003. A party filing a statement of position, prepared direct testimony,

and supporting documentation shall publish notice of its filing and of the schedule for the proceeding established by this order in newspapers of general circulation throughout the state by October 24, 2003. Such party shall also serve a copy of its filing on all parties to Cases Nos. U-13796 and U-13869 by October 24, 2003. Other participants, if any, shall file statements of position, prepared direct testimony, and supporting documentation by October 30, 2003. If a party makes such a filing, the following deadlines will apply: Rebuttal testimony shall be filed by November 7, 2003. Cross-examination of the witnesses of all parties shall take place on November 13, 2003. Briefs are to be filed by November 26, 2003 with reply briefs being due on December 8, 2003. The Commission will read the record.

The Commission has selected this case for participation in its Electronic Filings Program. Documents filed in this case must be submitted in both paper and electronic versions. An original and four paper copies and an electronic copy in the portable document format (PDF) should be filed with the Commission. Requirements for filing electronic documents can be found in the Electronic Filings Users Manual at: <http://efile.mpsc.cis.state.mi.us/efile/usersmanual.pdf>. You may contact the Staff at 517.241.6170 or by e-mail at mpscefilecases@michigan.gov with any questions and to obtain access privileges prior to filing. If any residential customers seek to participate, but lack access to the computer equipment necessary to make electronic filings, they should contact the Executive Secretary to make alternative arrangements for filing comments.

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.; the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.; and 47 USC 251 and 252.

b. A separate docket should be opened and a deadline should be established for telecommunications providers to petition the Commission for a determination to rebut the national finding of non-impairment for unbundled local circuit switching in the enterprise market.

THEREFORE, IT IS ORDERED that:

A. A separate docket is opened for telecommunications providers to petition the Commission for a determination to rebut the national finding of non-impairment for unbundled local circuit switching in the enterprise market.

B. A party petitioning the Commission for a determination pursuant to this order shall file a statement of position, including the designation of all geographic areas encompassed by the filing, prepared direct testimony, and supporting documentation by October 20, 2003.

C. A party petitioning the Commission for a determination pursuant to this order shall also publish notice of its filing and of the schedule for the proceeding established by this order in newspapers of general circulation throughout the state, and shall serve a copy of its filing on all parties to Cases Nos. U-13796 and U-13869 by October 24, 2003.

D. Other participants shall file statements of position, prepared direct testimony, and supporting documentation by October 30, 2003.

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

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 October 7, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of October 7, 2003.

Its Acting Executive Secretary

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Case No. U-13895

Suggested Minute:

“Adopt and issue order dated October 7, 2003 to open a docket and to establish a deadline for telecommunications providers to petition the Commission for a determination to rebut the national finding of non-impairment for unbundled local circuit switching in the enterprise market, as set forth in the order.”