

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to)
consider Ameritech Michigan's compliance with)
the competitive checklist in Section 271 of the) Case No. U-12320
federal Telecommunications Act of 1996.)
_____)

At the August 31, 2004 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 VACATING RULINGS

In its December 20, 2001 and March 29 and October 3, 2002 orders in this proceeding, the Commission, among other things, addressed the issue of the migration from line sharing¹ to line splitting.² Pursuant to these orders SBC Michigan (SBC) was directed to permit line splitting through use of unbundled network element-platform (UNE-P). In so doing, the Commission relied

¹ Line sharing is an arrangement in which an incumbent local exchange carrier (ILEC) uses the low-frequency portion of the loop to provide voice service to a customer while a competitive local exchange carrier providing data services (data CLEC) uses the high-frequency portion of the loop to provide high-speed data services such as digital subscriber line (DSL) services to the same customer.

² Line splitting is an arrangement in which a CLEC, rather than an ILEC, provides voice services over the low-frequency portion of the loop while a data CLEC (which may also be the voice service CLEC) provides data services over the high-frequency portion of the loop.

on the Federal Communications Commission's (FCC) Line Sharing Reconsideration order.³

However, in United States Telecom Assn v FCC, 351 US App DC 329; 290 F3d 415 (2002) [USTA I], the United States Court of Appeals for the District of Columbia Circuit vacated the FCC's determinations regarding line sharing.

On remand, which was consolidated with its Triennial Review proceeding,⁴ the FCC decided to reverse its earlier position and eliminate this unbundling mandate. In United States Telecom Assn v FCC, 360 US App DC 202; 359 F3d 554 (2004) [USTA II], the Court of Appeals upheld the FCC as follows:

[W]e find that even if the CLECs are right that there is some impairment with respect to the elimination of mandatory line sharing, the Commission reasonably found that other considerations outweighed any impairment. And again we note the ambiguous state of the record on the price-constraining effect of CLEC DSL service. We read the Commission as concluding that, at least in the future, line sharing is not essential to maintain robust competition in this market, a conclusion based on permissible considerations and supported by evidence in the record.

The USTA II decision has been appealed to the United States Supreme Court. The Commission filed a response to the petition for certiorari filed by the National Association of Regulatory Utility Commissioners. In doing so, the Commission addressed the issue of the legality of the FCC's subdelegation of impairment determinations to state regulatory commissions, but does not specifically address any line sharing issues. The interim rules issued by the FCC in response to USTA II did not address line sharing issues. (See, FCC Docket No. 04-179).

³ FCC Order 01-26, In the matter of Deployment of Wireline Services Offering Advanced Telecommunication Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98, rel'd January 19, 2001.

⁴ Review 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).

In light of the USTA I, TRO, and USTA II decisions, the Commission is persuaded that it should vacate the provisions of the December 20, 2001 and March 29 and October 3, 2002 orders in this proceeding that address the migration from line sharing to line splitting and SBC's responsibility to provision line splitting through use of UNE-P. However, the Commission reserves the right to revisit this issue (1) in the event that the United States Supreme Court grants certiorari and the USTA II decision is reversed in a manner favorable to the Commission on line sharing and line splitting issues, or (2) if the FCC takes action to breathe new life into line sharing and line splitting in a new proceeding.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. The provisions in the December 20, 2001 and March 29 and October 3, 2002 orders in this proceeding that address the migration from line sharing to line splitting and SBC's responsibility to provision line splitting through use of UNE-P should be vacated.

THEREFORE, IT IS ORDERED that the provisions in the December 20, 2001 and March 29 and October 3, 2002 orders in this proceeding that address the migration from line sharing to line splitting and SBC Michigan's responsibility to provision line splitting through use of unbundled network element-platform are vacated.

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
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 31, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chair

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By its action of August 31, 2004.

Its Executive Secretary