

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) Case No. U-13531
provided by **SBC MICHIGAN**.)
_____)

At the January 25, 2005 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

OPINION AND ORDER

On September 21, 2004, the Commission approved a total element long-run incremental cost (TELRIC) study for SBC Michigan (SBC) with certain modifications. The September 21 order required SBC to file cost studies and tariffs reflecting the determinations made by the Commission within 45 days. SBC was also directed to show the resulting unbundled network element (UNE) and interconnection prices resulting from the cost studies in summary form as an illustrative pricing schedule amendment to interconnection agreements. The order further provided that the revised prices resulting from approval of the cost studies would be effective the day after filing the compliance cost studies.

Under the compliance process approved by the order, parties were permitted 45 days to file comments objecting to SBC's compliance filing, limited to the issue of whether SBC's compliance

filing properly implemented the changes required by the order. SBC was given 21 days to file responses to any timely objections.

By October 21, 2004, timely petitions for rehearing of the September 21, 2004 order were filed by SBC, Talk America Inc., AT&T Communications of Michigan, Inc. (AT&T), TCG Detroit (TCG), MCImetro Access Transmission Services LLC (MCImetro), TDS Metrocom, LLC (TDS), and XO Michigan, Inc. (XO). On December 21, 2004, the Commission entered an order denying all petitions for rehearing, except as set forth therein.

On November 5, 2004, SBC filed its compliance filing, including revised cost studies, revised tariffs, and an illustrative interconnection amendment with a summary of UNE and interconnection prices resulting from the approved cost studies.¹ On December 20, 2004, timely objections were filed by Talk America. A group of competitive local exchange carriers (the Joint CLECs)² also filed objections to SBC's compliance filing. On January 10, 2005, SBC responded to the objections.

According to the Joint CLECs, proper implementation of the order should result in an approximate 12% average reduction in SBC's current UNE loop and UNE-platform (UNE-P) rates, whereas SBC's compliance filing reflects average UNE loop and UNE-P rate increases of approximately 15%.³ The Commission has reviewed SBC's compliance filing and has carefully

¹ On November 16, 2004, SBC filed an errata to its compliance filing reflecting lower DS-1 and DS-3 loop prices.

² AT&T, TCG, MCImetro, TelNet Worldwide, Inc., Quick Communications, Inc., d/b/a Quick Connect USA, Superior Spectrum, Inc., CMC Telecom, Inc., Zenk Group, Ltd, d/b/a Planet Access, JAS Networks, Inc., CTS Communications Corporation, XO, McLeodUSA Telecommunications Services, Inc., Covad Communications Company, LDMI Telecommunications, Inc., and TDS.

³ Talk America's objections supported those of the Joint CLECs.

considered the objections of Talk America and the Joint CLECs and SBC's response thereto. Except as set forth herein, the objections are overruled.

The Joint CLECs' Objections

The Joint CLECs' comments include more than 40 specific objections to SBC's compliance filing, as well as a number of more general objections. While the Commission has carefully considered each objection and response, the Commission does not find it necessary to specifically discuss every objection in this order. As the Commission clearly stated in its September 21 order, the sole basis for objection is SBC's failure to properly implement the order in its compliance filing. Except as set forth below, the Commission finds that SBC's compliance filing, as corrected by its November 16, 2004 errata filing, properly implements the September 21 and December 21, 2004 orders.⁴ Accordingly, except as set forth herein, all objections are overruled, and SBC's compliance filing is approved.

Non-Zero Rates

The Joint CLECs complain that SBC improperly included a non-zero rate for several non-recurring rate elements in its compliance filing even though AT&T and SBC recommended a zero rate.⁵ Specifically, the Joint CLECs contend that the rates for enhanced extended loops (EELs) – Clear Channel Capability Disconnect; Line Connection Charge – Design Layout Report Date; and Line Connection Charge – Records Issue Date should be set at zero. According to the Joint CLECs, both AT&T and SBC either explicitly recommended a zero rate for these elements or did

⁴ In its January 10, 2005 response to the objections filed by the Joint CLECs, SBC proposed revising non-recurring rates that were established using the proposed AT&T rate plus 20%. SBC proposed to adjust the AT&T rate by using the shared and common factor established in the order. The Commission rejects this change as inconsistent with the order.

⁵ Objection VIII.6.

not recommend any rate. In its response, SBC concedes that the rate for these elements should have been set at zero. Accordingly, the Joint CLECs' objection is granted and SBC shall make the appropriate revisions in its tariff. The approved interconnection agreement price schedule reflects this change.

Errors in Due Date Change

The Joint CLECs contend that SBC made errors in the Due Date Change Section of its non-recurring cost (NRC) compliance filing.⁶ Among other things, the Joint CLECs contend that SBC inadvertently described the rates for this element as a "Disconnect" charge, rather than a "Connect" charge. SBC acknowledges this error in its response. Accordingly, the Joint CLECs' objection is granted and SBC shall make the appropriate revisions in its tariff. The approved interconnection agreement price schedule reflects this change.

Failure to Produce NRC Rate Outputs

The Joint CLECs complain that SBC failed to provide NRC rate outputs for several elements that should have rates associated with them.⁷ SBC acknowledges that it inadvertently failed to include a rate for DS1 Tandem Trunk Port Change in its pricing schedule. Accordingly, to that extent the Joint CLECs' objection is granted and SBC shall make the appropriate revisions in its tariff. The approved interconnection agreement price schedule reflects this change.

Zero Rates for Certain Elements

The Joint CLECs contend that in certain instances, both SBC and AT&T proposed zero rates for elements, even though the rates resulting from the costs approved in Case No. U-11831 are

⁶ Objection VIII.8.

⁷ Objection VIII.14.

greater than zero.⁸ SBC concedes this objection. Accordingly, the Joint CLECs' objection is granted and SBC shall make the appropriate revisions in its tariff. The approved interconnection agreement price schedule reflects this change.

Optional Charge for Directory Assistance Lists (DAL) Tape Distribution

The Joint CLECs maintain that SBC's compliance filing failed to include a separate optional charge for providing DAL via tape, as required by the order.⁹ SBC's response acknowledges this error and includes a revised DAL cost study that removes the cost of providing DAL tapes from its DAL costs and provides for a separate optional tape charge. Accordingly, the Joint CLECs' objection is granted and SBC shall make the appropriate revisions in its tariff. The approved interconnection agreement price schedule reflects this change.

Corrected AT&T Proposed NRCs

The Joint CLEC's contend that SBC used an incorrect value for AT&T's proposed rate which resulted in an incorrect application of the NRC rules for the dark fiber cross connect elements.¹⁰ This portion of the Joint CLEC's objection is granted and SBC Michigan shall make the appropriate revisions in its tariff to reflect this change. The approved interconnection agreement price schedule reflects this change.

⁸ Objection VIII.15.

⁹ Objection IX.1.

¹⁰ Objection VIII.9.

Structure for EEL Rates

The Joint CLECs argue that SBC's compliance filing utilizes a rate structure that is inconsistent with Case No. U-11831 and inconsistent with AT&T's proposal adopted with modification in the Commission's September 21, 2004 order in this case. Specifically, the Joint CLECs argue that there is no need for a collocated and non-collocated rate differentiation. Further, they argue, SBC's filed rate structure's limited set of offerings, limiting the manner in which CLECs may use EELs, did not exist with the prior tariff and should not be permitted to be effective now.

SBC responds that its price structure is compliant with the Federal Communication Commission's Triennial Review Order (TRO),¹¹ which was issued after this case was commenced. It argues that the only rate elements required for EELs are those for collocated EELs. It argues that its current rate structure should be maintained.

The Commission finds that the Joint CLECs' objection has merit and rejects SBC's argument that the TRO justifies its altering the approved costs and rates in this case.¹² The Commission notes that SBC had an opportunity to amend its cost proposals after the issuance of the TRO. On August 21, 2003, the FCC issued its TRO. Thereafter, on September 11, 2003, the Commission issued an order in which it directed SBC to notify the Commission if SBC determined that alterations to its cost studies would be necessary in light of the TRO. If SBC chose to amend its

¹¹ 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, issued August 21, 2003, effective October 2, 2003.

¹² Subsequent vacatur of portions of the TRO by the D.C. Circuit Court of Appeals did not affect the rate structure for EELs.

cost studies, it was to file those studies by October 9, 2003. SBC did not file amended cost studies. The compliance phase of this case is not the time to unilaterally determine that changes are needed.

The Commission finds that SBC must eliminate its collocated and non collocated rate structure for EELs, and instead implement the rate structure proposed by AT&T, which is consistent with the structure inherent in the tariff extant prior to the September 21, 2004 order. That structure uses standard EEL elements, including interoffice transport, entrance facilities, line connection charges, and multiplexing contained in the AT&T filing. These elements may then be combined by CLECs as necessary to provide for EEL arrangements.

Incorporation of TELRIC-Compliant Rates in Tariffs

On November 5, 2004, SBC filed tariffs incorporating the revised costs approved by the Commission in its September 21 order. As set forth in that order, those tariffs became effective 24 hours after filing, or November 6, 2004. In so doing, the Commission found that,

If a subsequent order revises the costs and a new pricing schedule results, the tariffs applied are to be replaced with any revised tariffs, which shall apply retroactively to the effective date of the initial compliance filing. SBC shall perform a true-up of any amounts billed under the tariffs.

September 21 order, p. 92.

In the December 21, 2004 rehearing order, the Commission reaffirmed its finding as to the effective date of new wholesale rates. Accordingly, SBC is directed to revise its tariffs in accordance with this order. The revised tariffs shall have an effective date of November 6, 2004 and SBC shall perform a true-up of any amounts billed under its tariff since that date to reflect price changes resulting from this order.

Approval of Interconnection Agreement Price Schedule

In its September 21 and December 21 orders, the Commission stated that the TELRIC-compliant wholesale rates determined by the Commission would be effective as of November 6, 2004 (24 hours after SBC's compliance filing). In order to effectuate its order, the Commission finds that it is appropriate to establish a procedure whereby the approved rates may be incorporated into existing interconnection agreements approved by the Commission.

In its compliance filing, SBC proposed a process for incorporating new rates into its interconnection agreements. The Commission finds that the process proposed by SBC is generally reasonable, and should be adopted, as modified herein. In so doing, the Commission rejects the Joint CLECs' position that incorporating the revised rates approved by the Commission in its September 21, 2004 order requires further negotiations and dispute resolution.

The Commission has both the authority and the responsibility to establish TELRIC-based rates for interconnection and UNEs. The Commission ordered these rates to be effective November 6, 2004. This proceeding has afforded all parties ample opportunity to dispute SBC's proposed TELRIC rates. Indeed, based upon the testimony and comments filed by the Joint CLECs, the Commission has substantially revised the costs proposed by SBC. Accordingly, there is no basis for further dispute resolution, negotiation, or delay.

Therefore, SBC and all CLECs with which it has approved interconnection agreements shall file joint applications for approval of an amendment to their current interconnection agreements, incorporating the revised pricing schedule approved by the Commission, as set forth in Exhibit A.

Unless otherwise agreed by the parties, the pricing amendment shall be substantially in the form of Exhibit B.¹³

SBC is directed to prepare and submit a CLEC-specific joint application and amendment, including the pricing schedule approved herein, to each CLEC with which it has a pending or approved interconnection agreement consistent with the September 21 order. Each CLEC shall be required to execute and return to SBC a joint application and amendment within 21 days of receipt. SBC shall immediately file the executed joint application and amendment with the Commission for approval.

SBC shall perform a true-up of all charges billed under its interconnection agreements and tariffs subsequent to the November 6, 2004 effective date of the new wholesale rates.

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. Except as provided herein, SBC's compliance filing accurately implements the TELRIC and total service long run incremental costs approved by the Commission in its September 21, 2004 order. SBC shall make the required tariff changes and interconnection agreement pricing schedule changes required by this order.

c. The pricing schedule, attached to this order as Exhibit A, and the pricing amendment, attached to this order as Exhibit B, should be approved.

¹³ SBC and any CLEC that has an application for approval of an interconnection agreement pricing amendment pending before the Commission (or which the Commission has previously approved) shall also file a revised pricing schedule amendment.

d. SBC and the CLECs should amend their interconnection agreements as set forth in this order.

e. SBC should perform a true-up of all charges billed under its tariffs and interconnection agreements subsequent to November 6, 2004 in accordance with this order.

THEREFORE, IT IS ORDERED that:

A. SBC Michigan's compliance filing is approved, as modified.

B. SBC Michigan shall make the required tariff changes and interconnection agreement pricing schedule changes required by this order.

C. The pricing schedule, attached as Exhibit A, and the interconnection agreement amendment, attached as Exhibit B, are approved.

D. SBC Michigan and the competitive local exchange carriers shall amend their interconnection agreements as set forth in this order.

E. SBC Michigan shall perform a true-up of all charges billed under its tariffs and interconnection agreements subsequent to November 6, 2004 in accordance 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.

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 January 25, 2005.

/s/ Mary Jo Kunkle
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.

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

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Commissioner

By its action of January 25, 2005.

Its Executive Secretary

In the matter, on the Commission's own motion,)
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Case No. U-13531

Suggested Minute:

“Adopt and issue order dated January 25, 2005 approving, with modifications, SBC Michigan’s November 5, 2004 compliance filing and establishing a procedure for the amendment of interconnection agreements between SBC Michigan and competitive local exchange carriers, as set forth in the order.”