

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to facilitate the implementation of the Federal)
Communications Commission's Triennial Review)
determinations in Michigan.)

Case No. U-13796

At the June 29, 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 GRANTING MOTION TO DISMISS

On June 18, 2004, SBC Michigan (SBC) filed a motion to dismiss this proceeding and Case No. U-13891, the batch cut migration process proceeding. In so doing, SBC maintained that Michigan law limits the Commission's jurisdiction over federal telecommunications laws, rules, orders, and regulations to matters that have been *lawfully* delegated to the states. MCL 484.2201(1). SBC contends that on June 16, 2004 as a result of USTA II, the Court of Appeals for the District of Columbia issued its mandate to the Federal Communications Commission (FCC) formally vacating the rules regarding the FCC's rules concerning mass market switching, high-capacity loops, and dedicated transport. According to SBC, the basis for the Court's ruling was that the FCC unlawfully subdelegated its responsibilities under Section 251(d)(2) of the federal Telecommunications Act of 1996, Pub L 104-104, 110 Stat 56, codified at 47 USC 151 et seq. (FTA), to state commissions to determine impairment issues.

Specifically, SBC insists that the Commission's ability to conduct further proceedings in Case No. U-13796 depends exclusively on authority delegated to it by the FCC to make market-by-market impairment decisions, which was determined to be unlawful in USTA II.

Responses to the motion to dismiss were filed by MCImetro Access Transmission Services LLC (MCImetro) and AT&T Communications of Michigan and TCG Detroit (AT&T). MCImetro and AT&T argue that the Commission's March 15, 2004 order properly found that the Commission had an independent basis to continue this proceeding under state law. Moreover, they insist that the process of compiling the record is now complete and that it would be waste of resources to simply close the docket at this juncture.

The Commission finds that SBC's motion to dismiss should be granted. In the March 15, 2004 order cited by MCImetro and AT&T, the Commission denied SBC's motion to stay this proceeding due in large measure to "the consensus that there is no legal impediment for these proceedings to continue." March 15, 2004 order, Cases Nos. U-13796 and U-13891, p. 4. However, circumstances have changed. The D.C. Circuit's mandate has been issued. Only reversal of the USTA II decision by the United States Supreme Court would restore the effectiveness of the FCC's rules. At this point, such a ruling by the United States Supreme Court is remote.

While the Commission could continue this proceeding solely on the basis of the state law,¹ it is persuaded not to do so. Today, in a separate minute action, the Commission directed that the entire record of this proceeding be made available to the FCC for its use in formulating telecommunications policy. The Commission anticipates that the FCC will soon react to the D.C.

¹The Michigan Telecommunications Act, 1991 PA 179, as amended, MCL 484.2101 et seq., charges the Commission with oversight of unbundling requirements (MCL 484.2355) and interconnection agreements (MCL 484.2352 and MCL 484.2356).

Circuit's vacatur of its TRO rules. Additionally, the vacatur of the TRO rules, by itself, does not mean that SBC is now entirely free of any unbundling obligations under federal or state law.

However, it does mean that further proceedings in this docket are unlikely.²

For these reasons, the Commission finds that SBC's motion to dismiss should be granted.

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. SBC's motion to dismiss should be granted.

THEREFORE, IT IS ORDERED that SBC Michigan's June 18, 2004 motion to dismiss is granted.

²The Commission's dismissal of this proceeding at this time may be revoked in the event that the United States Supreme Court reverses the USTA II decision.

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 June 29, 2004.

/s/ Mary Jo Kunkle

Its Executive Secretary