

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
COMMUNICATIONS CORPORATION OF)
MICHIGAN, d/b/a TDS TELECOM, for arbitration)
of interconnection rates, terms, and conditions with)
COMCAST PHONE OF MICHIGAN, LLC, d/b/a)
COMCAST DIGITAL PHONE.)
_____)

Case No. U-15725

In the matter of the petition of)
COMCAST PHONE OF MICHIGAN, LLC, d/b/a)
COMCAST DIGITAL PHONE, for arbitration of)
interconnection rates, terms, and conditions with)
COMMUNICATIONS CORPORATION OF)
MICHIGAN, d/b/a TDS TELECOM.)
_____)

Case No. U-15730

At the March 5, 2009 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On November 12, 2008, Communications Corporation of Michigan, d/b/a TDS Telecom (TDS), and Comcast Phone of Michigan, LLC, d/b/a Comcast Digital Phone (Comcast Phone), each filed a petition for arbitration of terms and conditions of interconnection under Sections 251 and 252 of the federal Communications Act of 1996, 47 USC 151 *et seq.* (federal Act), the Michigan Telecommunications Act, MCL 484.2101 *et seq.* (Michigan Act), and the Commission's arbitration procedure orders in Case Nos. U-11134 and U-13774. These petitions were docketed

separately in Case Nos. U-15725 and U-15730, respectively, but have proceeded through the arbitration process together. The sole issue in these matters is whether Comcast Phone is a telecommunications carrier entitled to arbitration under the federal Act. The parties have negotiated an agreement for interconnection. TDS proposes language that specifically limits the effectiveness of the agreement to after a Commission determination that Comcast Phone is a telecommunications carrier as that term is used in Sections 251 and 252 of the federal Act. Comcast Phone proposes that if the Commission determines Comcast Phone to be a telecommunications carrier, it should approve the interconnection agreement as negotiated by the parties without the language requiring a Commission determination that Comcast Phone is a telecommunications carrier in Michigan. It is undisputed that Comcast Phone withdrew from providing regulated basic local exchange and toll service in Michigan in September 2007.

By letter dated November 25, 2008, the parties received notice that Mark E. Cummins had been assigned to arbitrate these cases. On January 28, 2009, the arbitrator issued his Decision of the Arbitration Panel (DAP), in which he found Comcast Phone's arguments more persuasive than TDS's arguments, and concluded that Comcast Phone is a telecommunications carrier as that term is used in Sections 251 and 252 of the federal Act. On February 9, 2009, the parties filed objections to the DAP.

After reviewing the petitions for arbitration, arguments of the parties, and the DAP, the Commission is persuaded that the arbitrator reached the correct conclusion, and that the conclusion should be affirmed, albeit for more reasons than stated in the DAP.

Comcast Phone is a licensed local exchange carrier (LEC) in Michigan. Whether it currently provides regulated basic local exchange service is not dispositive of its right to negotiate an interconnection agreement with another telecommunications provider in the state. Many

telecommunications providers first receive a license from the Commission and then negotiate interconnection agreements. Indeed, it is rarely if ever, that a provider will negotiate with a company that does not currently hold a LEC license. To hold that a LEC has no right to negotiation and arbitration of an interconnection agreement unless it is serving customers currently would effectively end adding new entrants to the telecommunications market. Before a carrier can offer basic local exchange service, it must be licensed and it must have negotiated appropriate interconnection or other commercial agreements. Otherwise, it could hardly market its services as a telecommunications carrier. As noted by Comcast Phone, although it did submit a discontinuance of service for regulated basic local exchange service in Michigan, it did not surrender its license.

TDS argues that if Comcast Phone is not providing regulated toll or basic local exchange service in Michigan, it should no longer retain its license. Therefore, it argues, the Commission should find that Comcast Phone does not have the right to an interconnection agreement under Sections 251 or 252 of the federal Act.

The Commission finds that an arbitration proceeding is not the appropriate forum for attacking the validity of a license to provide basic local exchange service in Michigan. Rather, that challenge could be made in a complaint proceeding, in which Comcast Phone would have notice that its CLEC license is in jeopardy. Moreover, rescission of Comcast Phone's license in this proceeding would violate the state constitution and the Michigan Administrative Procedures Act, which has specific requirements to be met before a license once granted is rescinded. *See, e.g.,* MCL 24.292. As a licensee, Comcast Phone has the right to due process before its license is rescinded or revoked.

A review of the applicable statutory provisions does not require the Commission to reach a contrary result. Section 251(a), 47 USC 251, provides in part:

- (a) Each telecommunications carrier has the duty –
 - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . .

* * * * *

- (c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS – In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
 - (1) DUTY TO NEGOTIATE – The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of these subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

Section 3(b), 47 USC 153, provides in part:

(43) TELECOMMUNICATIONS. – The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

(44) TELECOMMUNICATIONS CARRIER. – The term “telecommunications carrier” means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). . . .

(46) TELECOMMUNICATIONS SERVICE. The term “telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

The arbitrator determined that TDS had read too much into Comcast Phone’s notice of discontinuance filed in Case No. U-15370 and the Section 63.71 application filed with the FCC. Rather, he determined that Comcast Phone is a telecommunications carrier with full rights to interconnection. This finding led the arbitrator to recommend that the Commission adopt the language proposed by Comcast Phone for Section 3.1. For the reasons stated above, we agree with

the arbitrator. However, Comcast Phone's current license to provide basic local exchange service is dispositive of its right to negotiate or arbitrate an interconnection agreement.

Comcast Phone objects to the arbitrator's description of a document in footnote 6 in the DAP. The Commission agrees that footnote 6 is not necessary to the decision reached in this case and forms no part of the basis for the Commission's decision.

THEREFORE, IT IS ORDERED that the arbitrator's recommendation to find in favor of Comcast Phone of Michigan, LLC, d/b/a Comcast Digital Phone, is adopted. The parties shall file an executed copy of their interconnection agreement for Commission approval within 30 days of the date of this order.

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

Any party aggrieved by this order may file an action in the appropriate federal District Court under 47 USC 252(e)(6).

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

By its action of March 5, 2009.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner