

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the formal complaint of)
TDS Metrocom, LLC, LDMI)
Telecommunications, Inc and XO)
Communications Services, Inc against)
Michigan Bell Telephone Company,)
d/b/a AT&T Michigan, or in the alternative,)
an application)
_____)

MPSC Case No. U-14952

**FORMAL COMPLAINT, OR IN THE
ALTERNATIVE, AN APPLICATION**

NOW COMES TDS Metrocom, LLC, LDMI Telecommunications, Inc. and XO Communications Services, Inc. by and through their legal counsel, Fraser Trebilcock Davis & Dunlap, P.C., and for their formal complaint against Michigan Bell Telephone Company, d/b/a AT&T Michigan or in the alternative an application pursuant to Section 204 state:

PARTIES

1. Complainant TDS Metrocom, LLC (“TDS Metrocom”) is a Delaware limited liability company with its principal place in Michigan located at 2525 Jolly Road, Okemos, Michigan 48864.

2. On November 2, 2000, the Michigan Public Service Commission (“Commission”) granted TDS Metrocom a license to provide basic local exchange service in the service territory of AT&T Michigan in Case No. U-12554.

3. TDS Metrocom is a facility-based competitive local exchange carrier (“CLEC”) that offers a variety of local, long distance, and enhanced telecommunication services to residential, business and governmental customers in Michigan.

4. TDS Metrocom has less than 250,000 end users and access lines in the State of Michigan.

5. Complainant LDMI Telecommunications (“LDMI”) is a Michigan corporation.

6. On December 12, 1997, the Commission granted LDMI a license to provide basic local exchange service in the service territory of AT&T Michigan in Case No. U-11510.

7. LDMI is a CLEC that offers a variety of local, long distance, and enhanced telecommunication services to business and governmental customers in Michigan.

8. LDMI has less than 250,000 end users and access lines in the State of Michigan.

9. Complainant XO Communications Services, Inc. (“XO”) is a Delaware corporation.

10. On December 21, 2004, the Commission granted XO a license to provide basic local exchange service in the service territory of AT&T Michigan in Case No. U-14376.¹

11. XO is a facility-based CLEC that offers a variety of local, long distance, and enhanced telecommunication services to business and governmental customers in Michigan.

12. XO has less than 250,000 end users and access lines in the State of Michigan.

13. Respondent, Michigan Bell Telephone Company operates under the assumed name of AT&T Michigan (“AT&T”).

14. AT&T is an incumbent local exchange carrier (“ILEC”) and is a provider of basic local exchange, access and toll service throughout its service territory in Michigan.

15. AT&T serves over 250,000 end users and access lines in the State of Michigan.

¹XO predecessor in interest was granted a license by the Commission in case No. U-11668 on July 13, 1998.

16. AT&T's principal place of business is 444 Michigan Avenue, Detroit, Michigan 48226.

17. AT&T provides certain wholesale services to TDS Metrocom, LDMI, XO and other CLECs.

18. TDS Metrocom, LDMI and XO each have their own interconnection agreement with AT&T.

SUMMARY OF ISSUE

19. This formal complaint involves AT&T's unlawful bundling of unwanted facilities and services with requested facilities and services in violation of the Michigan Telecommunications Act ("MTA"), the federal Telecommunications Act of 1996 and its interconnection agreements with TDS Metrocom, LDMI and XO. When TDS Metrocom, LDMI and XO order a 4-Wire Digital Loop from AT&T, AT&T bundles a cross connect with an unwanted Digital Test Access Unit ("DTAU"), which connects the 4-Wire Digital Loop to TDS Metrocom's LDMI's and XO's networks. The functionalities performed by AT&T's DTAU are not needed by TDS Metrocom, LDMI and XO, because they can and do provide the same testing that is performed by AT&T's DTAU. By bundling the unwanted DTAU with the cross connect that AT&T utilizes with a 4-Wire Digital Loop, AT&T substantially increases the monthly recurring charges imposed upon TDS Metrocom, LDMI and XO for each customer that they serve with a 4-Wire Digital Loop.

JURISDICTION

20. Pursuant to Section 201 of the MTA, the Commission has jurisdiction over this Formal Complaint. Section 201 of the MTA provides the Commission “the jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations delegated to the state.” MCL 484.2202(1).

21. Section 203(1) of the MTA allows the Commission to “conduct an investigation, hold hearings and issue its findings and order under the contested hearing provisions of the administrative procedures act of 1969, 1969 PA 306,” MCL 484.2203(1).

22. Pursuant to Section 203(14), “the Commission shall require the parties to utilize the alternative dispute resolution process set forth under section 203a” because this complaint involves “an interconnection dispute between providers.” MCL 484.2203(14).

23. In the alternative, Section 204 of the MTA provides the Commission the authority to resolve this dispute as an application because it involves a dispute between two providers and relates to a regulated service and a matter prohibited by Section 305. MCL 484.2204.

GENERAL ALLEGATIONS

24. To provide service to end-user customers, TDS Metrocom, LDMI and XO each order an unbundled network element known as a “loop” from AT&T Michigan.

25. To provide customers with certain services, TDS Metrocom, LDMI and XO each order a loop known as the 4-Wire Digital Loop from AT&T.

26. In order for the 4-Wire Digital Loop to be utilized by these CLECs, AT&T must provide a cross connect.

27. The cross connect is the media between the AT&T distribution frame and the CLEC’s designated collocation space.

28. In providing the necessary cross connect for a 4-Wire Digital Loop, AT&T Michigan has begun to bundle the cross connect with a Digital Test Access Unit, which is also referred to as a DTAU.

29. A DTAU is a generic reference to a facility that performs the functions associated with a test assessment of the individual channels within a digital loop.

30. A DTAU is a separate network element from a 4-Wire Digital Loop and the associated cross connect.

31. TDS Metrocom, LDMI and XO each are able to provide, and do provide, the same functionally equivalent testing performed by the DTAU, which AT&T Michigan bundles with its cross connect service for 4-Wire Digital Loops.

32. AT&T Michigan refuses to unbundle its DTAU from cross connects utilized with 4-Wire Digital Loops.

33. When AT&T Michigan's bundles the unwanted DTAU with the needed cross connect for a 4-Wire Digital Loop, AT&T substantially increases the monthly recurring cost incurred by TDS Metrocom, LDMI and XO for each customer they serve through a 4-Wire Digital Loop.

COUNT I

34. TDS Metrocom, LDMI and XO adopt by reference the allegations set forth above.

35. The individual interconnection agreements between TDS Metrocom and AT&T, LDMI and AT&T, and XO and AT&T, each mandate that AT&T provide access to unbundled network elements as required by federal law.

36. From November 20, 2004 to date, AT&T Michigan has refused to provide a cross connect for 4-Wire Digital Loops separate from the DTAU testing unit.

37. AT&T Michigan contends that the Commission's Order in Case No. U-13531 entitled it to combine the DTAU and cross connect services at a rate of \$16.46.

38. AT&T Michigan ignores that the cost docket in Case No U-13531 established a 4-wire cross connect with a monthly recurring charge of 27¢.

39. The 27¢ per month recurring charge is consistent with and generally comparable with the cross connect charge previously charged by AT&T Michigan.

40. The 27¢ per month recurring charge is also consistent with and comparable to other states' cross connect charge.

41. AT&T Michigan should be required to provide 4-wire cross connect without the DTAU and at the monthly recurring charge of 27¢ when TDS Metrocom, LDMI and XO seek a cross connect for 4-Wire Digital Loop.

42. AT&T Michigan should be required to refund to TDS Metrocom, LDMI and XO any and all excessive charges paid for 4-wire cross connects.

COUNT II

43. TDS Metrocom, LDMI and XO adopt by reference the allegations set forth above.

44. Section 305m of the MTA prohibits AT&T from "bundl[ing] unwanted services or products for sale or lease to another provider." MCL 484.2305m

45. AT&T violates Section 305m of the MTA when it bundles its DTAU with cross connects for 4-Wire Digital Loops.

46. AT&T should be required to provide a cross connect for each 4-Wire Digital Loop without the DTAU and without the costs associated with the DTAU.

COUNT III

47. TDS Metrocom, LDMI and XO adopt by reference the allegations set forth above.

48. Sections 251 and 252 of the federal Telecommunications Act of 1996 require AT&T to provide to CLECs certain unbundled network elements, including loops such as 4-Wire Digital Loops.

49. Section 251(c)(3) requires AT&T to provide “access to network elements on an unbundled basis at any technically feasible point . . .”.

50. In particular, 47 C.F.R. §51.307(e) requires AT&T to provide access each network element separately for a separate charge. 47 C.F.R. §51.307(d) provides:

An incumbent LEC shall provide a requesting telecommunications carrier access to the facility or functionality of a requested network element separate from access to the facility or functionality of other network elements, for a separate charge.

51. AT&T Michigan has violated the federal law because it has failed to provide access to 4-Wire Digital Loops through a cross connect separate from the DTAU at a separate charge.

RELIEF REQUESTED

WHEREFORE, TDS Metrocom, LDMI and XO requests this Honorable Commission issue an order that:

A. Finds AT&T Michigan violated the Michigan Telecommunications Act, the federal Telecommunications Act of 1996, and the parties’ interconnection agreements;

B. Requires AT&T Michigan to provide 4-wire cross connects, to be utilized with 4-Wire Digital Loops, without the inclusion of the DTAU;

C. Requires AT&T Michigan to provide 4-wire cross connect without a DTAU at the Commission-approved rate of 27¢ per month for use with 4-Wire Digital Loops;

D. Requires AT&T Michigan to refund to TDS Metrocom, LDMI and XO any and all excessive charges for a 4-wire cross connect;

E. Imposes a fine of \$40,000 per day for each day of AT&T Michigan's violation of Section 305m of the Michigan Telecommunications Act;

F. Requires AT&T make whole TDS Metrocom, LDMI and XO for the economic loss they suffered as a result of AT&T Michigan's violation of the Michigan Telecommunications Act; and

G. Award TDS Metrocom, LDMI and XO its actual attorney fees and costs in pursuing this complaint.

Respectfully submitted,

By:  **Mike Ashton**
Digitally signed by Mike Ashton
DN: CN = Mike Ashton, C = US,
O = Fraser Law Firm
Date: 2006.07.07 13:41:09 -04'00'

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