

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Emergency Petition of)	
LDMI Telecommunications, Inc., MCImetro)	
Access Transmission Service, LLC, and)	
CoreComm Newco, Inc. for a Declaratory)	
Ruling Prohibiting SBC Ohio from)	Case No. 05-298-TP-UNC
Breaching its Existing Interconnection)	
Agreements and Preserving the Status Quo)	
with Respect to Unbundled Network)	
Element Orders.)	
In the Matter of the Petition of XO)	
Communications Services, Inc., for an)	
Emergency Order Preserving the Status)	
Quo and Prohibiting Discontinuance of)	Case No. 05-299-TP-UNC
Certain Unbundled Network Element)	
Services.)	

ENTRY

The Commission finds:

- (1) On February 4, 2005, the Federal Communications Commission (FCC) released its Order on Remand (TRRO) in CC Docket No. 01-338 in response to certain issues that had been vacated and remanded in part back to the FCC by the D.C. Circuit Court in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) cert. denied, 125 S.Ct. 313, 316, 345 (2004). Among other things, the FCC in the TRRO put into place new rules applicable to incumbent local exchange carriers' (ILECs') unbundling obligations with regard to mass market local circuit switching, high-capacity loops and dedicated interoffice transport.

Recognizing that it had removed significant unbundling obligations, the FCC directed that, for the embedded customer base, a transition period and transition pricing would apply during which the impacted competitive local exchange carriers (CLECs) would be able to continue purchasing the involved unbundled network elements. During the transition period, the ILECs and the CLECs were directed to modify their interconnection agreements, including completing any change of law processes to perform the tasks necessary for an orderly

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transition to alternative facilities or arrangements. The FCC determined the effective date of these new rules to be March 11, 2005.

- (2) On February 11, 2005, SBC made available on its CLEC website five accessible letters through which the company outlined the manner in which each of the SBC ILECs would implement the provisions of the FCC's new rules adopted in the TRRO.
- (3) On March 4, 2005, MCImetro Access Transmission Services, LLC, LDMI Telecommunications, Inc. and CoreComm Newco, Inc. filed a petition (Case No. 05-298-TP-UNC) and a motion for emergency relief seeking a declaratory ruling prohibiting SBC Ohio from breaching its existing interconnection agreements and preserving the status quo with respect to unbundled network element orders. Similarly, on that same day, XO Communications Services, Inc. filed its own petition (Case No. 05-299-TP-UNC) seeking an emergency order preserving the status quo and prohibiting discontinuance of certain unbundled element (UNE) services.

The joint petitioners assert that, in order to avoid suffering irreparable damage to their businesses, the Commission must issue a directive no later than March 10, 2005, requiring SBC Ohio to continue accepting and processing the joint petitioners' orders for the UNE-platform, including moves and adds, to the joint petitioners' existing embedded customer base, as well as orders for DS1 and DS3 loops or transport, and dark fiber pursuant to the rates, terms and conditions of their respective interconnection agreements. The joint petitioners further request that SBC Ohio be directed to comply with the change of law provisions of the respective interconnection agreements regarding implementation of the TRRO. As a final matter, the joint petitioners request that the negotiation process contemplated as part of the change of law provisions in the interconnection agreements include the provisions of the TRRO and of the Triennial Review Order that are more favorable to the joint applicants.

- (4) SBC Ohio filed responses opposing the joint petitioners' petitions for emergency relief and preserving the status quo on March 8, 2005.

- (5) The Commission finds that the petitions filed by the joint applicants should be granted in part and denied in part. The FCC very clearly determined that, effective March 11, 2005, the ILECs unbundling obligations with regard to mass market local circuit switching, certain high-capacity loops, and certain dedicated interoffice transport would no longer apply to serve new customers. Just as clearly, however, the FCC also envisioned that, for the embedded customer base, a transition period would apply during which the FCC expected the parties to negotiate and adopt modifications to their interconnection agreements. In addition, the FCC recognized that access to certain UNEs addressed in the TRRO would still be necessary in order to serve the CLECs' embedded base of end-user customers.

In paragraph 233 of the TRRO, the FCC stated that:

We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. *We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.* (Emphasis added).

Paragraph 233 clearly indicates that the FCC did not contemplate that ILECs would unilaterally dictate to CLECs the changes to their interconnection agreements necessary to implement the FCC's findings in the TRRO. Just as clearly, this Commission was afforded an important role in the process by which ILECs and CLECs resolve their differences through good faith negotiations. Moreover, the Commission was specifically

encouraged by the FCC to monitor implementation of the accessible letters issued by SBC to ensure that the parties do not engage in unnecessary delay.

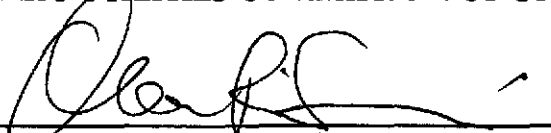

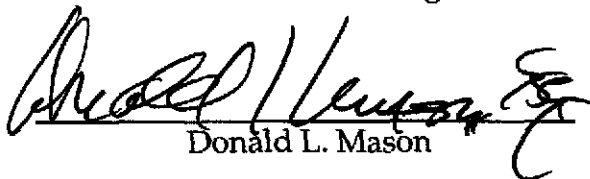
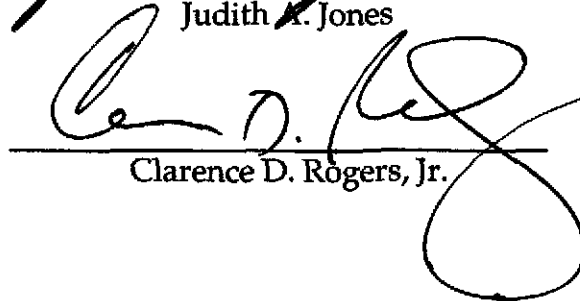
The centerpiece of the FCC's TRRO is the negotiation process envisioned to take place during the transition period to move the CLECs embedded customer base onto alternative facilities or arrangements. To date there have been few negotiations between SBC Ohio and the joint petitioners that would lead to interconnection agreement amendments that conform to the FCC's TRRO. Therefore, in order to afford the parties additional time to negotiate the applicable interconnection agreement amendments necessary to transition the CLECs embedded customer base as contemplated by the TRRO, SBC Ohio is directed to continue processing CLEC orders for the embedded base of unbundled local circuit switching used to serve mass market customers until no later than May 1, 2005. Accordingly, SBC Ohio is directed to not unilaterally impose those provisions of the accessible letters that involve the embedded customer base until the company has negotiated and executed the applicable interconnection agreements with the involved CLECs. During this negotiation window, all parties, both ILECs and CLECs, are instructed to negotiate in good faith interconnection agreement amendments to implement the FCC-ordered rule changes. Staff is empowered to work with the parties to ensure that meaningful negotiations take place consistent with the FCC's directive to monitor the negotiation process to ensure that the parties do not engage in unnecessary delay.

It is, therefore,

ORDERED, That the petitions filed on March 4, 2005, are granted in part and denied in part in accordance with finding 5. It is, further,

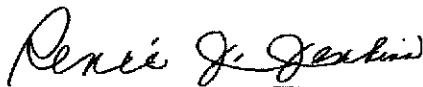
ORDERED, That a copy of this entry shall be served upon MCImetro Access Transmission Services, LLC, LDMI Telecommunications, Inc., CoreComm Newco, Inc., XO Communications Services, Inc., SBC Ohio, their respective counsel and upon all other parties of interest in this matter.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman
Ronda Hartman Fergus
Judith A. Jones
Donald L. Mason
Clarence D. Rogers, Jr.

JRJ/ct

Entered in the Journal

MAR 09 2005Renee J. Jenkins
Secretary