

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
XO MICHIGAN, INC. , for a limited permanent)	
waiver of the telecommunications service quality)	Case No. U-13842
rules adopted in Case No. U-13013.)	
_____)	

At the March 16, 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 DENYING WAIVER REQUEST

On July 21, 2003, XO Michigan, Inc. (XO), filed a petition for certain waivers and exceptions from the telecommunications service quality rules adopted in Case No. U-13013 as R 484.401 to R 484.471. Specifically, XO requested waivers of R 484.455 [Rule 55], R 484.458(1) [Rule 58(1)], R 484.461(1)(b) [Rule 61(1)(b)], and R 484.61(1)(e) [Rule 61(1)(e)].

On July 29, 2003, the Commission directed XO to issue a notice of opportunity to comment. On August 27, 2003, SBC Michigan (SBC) filed comments.

Rule 55 and 61(1)(b)

Rule 55 pertains to the clearing of out-of-service trouble of a nonemergency nature. It creates timeframes for completing repairs and establishes customer credits for situations where repairs are

not completed in a timely manner. Rule 61(1)(b) requires a provider to compile information on its ability to restore service in a monthly average of 36 hours of the receipt of a trouble report.

XO argues that its responsibility to provide high quality service is dependent on the underlying level of wholesale service quality provided by SBC because SBC is responsible for maintaining and operating its loop plant facilities, which XO uses for the connection to virtually 100% of its customers. XO asserts that there should be exceptions to Rules 55 and 61(1)(b) for problems that can be traced to a loop owned or controlled by SBC until interconnection agreements recognize that SBC must fulfill its responsibility in such a fashion that XO will be able to satisfy the 36-hour requirement. Likewise, XO insists that the credit provisions in Rules 55(2) and 55(3) should be waived whenever the underlying trouble is traceable to SBC.

SBC states that it does not oppose relieving a provider from a particular service quality rule if compliance with that rule is beyond the control of the provider. However, SBC notes that XO's request could encompass a blanket waiver on any access lines that XO provisions using an SBC loop and it questions whether XO should be entitled to such broad relief. Additionally, SBC states that XO could avoid any financial harm if it is required to provide its customers bill credits by agreeing to SBC's performance remedy plan, commonly known as the "Compromise Remedy Plan" (CRP). Under the CRP, SBC will pay remedies to a competitive local exchange carrier (CLEC) when, as a result of an act or omission of SBC, the quality of unbundled network elements provisioned to the CLEC falls below certain performance "floors." Citing an example, SBC states that it would pay liquidated damages if: (a) the mean installation interval for loops is greater than 5 business days; or (b) the mean time to restore loops is greater than 36 hours. SBC maintains that because the CRP was approved as an amendment to an SBC interconnection agreement by the March 26, 2003 order in Case No U-12952, it is immediately available to be added to the

interconnection agreement of any CLEC, including XO, pursuant to Sections 252(a)(1) and 252(i) of the federal Telecommunications Act of 1996, 47 USC 252(a)(1) and 252(i).

In its January 21, 2003 order in Case No. U-13013, the Commission eliminated a recourse provision from an earlier version of the service quality rules. In so doing, the Commission concluded that in light of the decision in Verizon North Inc v Strand, 309 F3d 935 (CA6, 2002), providers should address the matter of recourse in their interconnection agreements, which is consistent with SBC's position on this issue. The Commission finds that, because XO has the option of seeking an interconnection agreement amendment that limits its financial exposure for noncompliance with the timeframes for completing repairs under Rule 55, it is not necessary to approve the waivers requested for Rules 55 and 61(1)(b).

Rules 58(1) and 61(1)(e)

Rule 58(1) requires a provider to install service for a residential or small business customer within a monthly average of five business days of the installation request, or a monthly average of ten business days after a customer is released for a migration, unless a later date is requested or agreed to by the customer or applicant, the customer or applicant misses the appointment, or government permits or right-of-way access are required before installation. Rule 61(1)(e) requires a provider to compile information on its ability to meet new installation commitments within a monthly average of five business days.

XO asserts that its ability to install service within five business days is wholly contingent upon SBC providing a working loop in a timely manner. XO contends that SBC's delay in installing T1 loops, which XO uses to provide service to small business customers, is a primary reason that a waiver is necessary. Therefore, XO requests an exception to Rule 58(1) because compliance with this requirement is currently beyond the control of XO in instances where SBC fails to provision a

working loop facility as needed. According to XO, the Commission should permit XO five business days to install new service after provision of a working loop by SBC. XO also maintains that compliance with the five-day requirement is impossible for installations that require new construction. XO asserts that the Commission should permit XO five business days to install new service after completion of all construction activities. Additionally, XO requests a waiver of the accompanying reporting requirement set forth in Rule 61(1)(e) to the extent it relates to the provision and connection of loops maintained and operated by SBC or if the delay is due to new construction.

SBC contends that XO's argument for a waiver of Rules 58(1) and 61(1)(e) is very broad and lacks supporting documentation. Moreover, SBC notes that Rule 58(1) provides a 10 business day interval for lines installed when a customer migrates from one provider to another, which seems to address XO's concern that it may take longer than five days to complete installation of service for a migrating customer. Indeed, SBC questions whether even a partial waiver is appropriate in these circumstances.

SBC also points out that the rules would not require a waiver if government permits or access to rights-of-way is involved. However, SBC agreed with XO that there may be circumstances where a provider cannot meet a particular requirement of the service quality rules due to the need to construct new facilities or other circumstances entirely out of its control, which should be taken into consideration. Nevertheless, SBC asserts that reliance on its CRP would hold XO harmless for SBC's failures.

The Commission finds that XO's request for waiver of Rules 58(1) and 61(1)(e) should be rejected. The request is open-ended, non-specific, and of unlimited duration. Additionally, these rules do not require a waiver if obtaining government permits or access to rights-of-way is

responsible for construction delays. Further, XO can seek protection from SBC-related delays through amendment of its interconnection agreement.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 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. XO's petition for certain waivers and exceptions from the telecommunications service quality rules adopted in Case No. U-13013 should be denied.

THEREFORE, IT IS ORDERED that the petition filed by XO Michigan, Inc., for certain waivers and exceptions from the telecommunications service quality rules adopted in Case No. U-13013 is denied.

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 March 16, 2004.

/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

Commissioner

Commissioner

By its action of March 16, 2004.

Its Executive Secretary

In the matter of the application of)
XO MICHIGAN, INC., for a limited permanent)
waiver of the telecommunications service quality)
rules adopted in Case No. U-13013.)
_____)

Case No. U-13842

Suggested Minute:

“Adopt and issue order dated March 16, 2004 denying the petition filed by XO Michigan, Inc., for certain waivers and exceptions from the telecommunications service quality rules adopted in Case No. U-13013, as set forth in the order.”