

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

CLEAR RATE COMMUNICATIONS, INC.'s )  
Formal Complaint, Application and Request )  
for Emergency Relief Against )  
Local Exchange Carriers of Michigan, Inc. )  
and Internet 123, Inc. )  
\_\_\_\_\_ )

Case No. U-15424

**FORMAL COMPLAINT, APPLICATION AND REQUEST  
FOR EMERGENCY RELIEF OR AN ORDER  
PURSUANT TO SECTION 203(13)**

NOW COMES Complainant, Clear Rate Communications, Inc., by and through its legal counsel Fraser Trebilcock Davis & Dunlap, P.C., and for its formal complaint, application and request for emergency relief or an order pursuant to Section 203(13) against Local Exchange Carriers of Michigan, Inc. and Internet 123, Inc., states:

**PARTIES**

1. Complainant Clear Rate Communications, Inc. ("Clear Rate") is a Michigan corporation with its principal place of business located at 24700 Northwestern Hwy, Suite 340, Southfield, Michigan 48075.

2. Clear Rate is a competitive local exchange carrier ("CLEC") that offers a variety of local, long distance, and enhanced telecommunications services to residential, business and governmental customers in Michigan.

3. Respondent Local Exchange Carriers of Michigan, Inc. ("LECM") is a Michigan corporation and is a provider of basic local exchange service. LECM received its license to provide basic local exchange service in Michigan on April 23, 1999 in Case U-11877.

4. LECM's principal place of business is 50572 Jefferson, New Baltimore, Michigan 48047.

5. Respondent Internet 123, Inc. ("I 123") is a Michigan corporation and is a provider of telecommunications services, including the reselling or wholesaling local exchange service.

6. I 123 is an affiliate of LECM, shares the same corporate president with LECM, shares the same key employees with LECM, shares telecommunication facilities and equipment with LECM and shares the same business locations including their principal place of business at 50572 Jefferson, New Baltimore, Michigan 48047 with LECM.

7. LECM and I 123 are alter egos of each other and hereafter are referred to a LECM/I 123.

8. Both LECM/I 123 provide regulated and unregulated services, including but not limited to local exchange service.

9. LECM/I 123 resells or wholesales telecommunications services, including local exchange service to Clear Rate, and are interconnected with Clear Rate.

#### **SUMMARY OF ISSUE**

10. This formal complaint, application and request for emergency relief or order pursuant to Section 203(13) is being filed as a result of the unlawful, discriminatory and retaliatory treatment LECM/I 123 have imposed upon Clear Rate which threatens to immediately disrupt Clear Rate's ability to serve its retail customers, including local exchange service and emergency 911 service.

## **JURISDICTION**

11. Pursuant to Section 201 of the Michigan Telecommunications Act ("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).

12. Section 203(1) of the MTA allows the Commission, upon the filing of a complaint, to "conduct an investigation, hold hearings and issue its findings and order under the contested hearing provisions of the administrative procedures act of 1969." MCL 484.2203(1).

13. Section 205(1) provides this Commission with the authority to investigate and resolve complaints. MCL 484.2205(1).

14. In addition, Section 204 of the MTA provides the Commission with 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.

15. This dispute involves an interconnection dispute between providers.

## **GENERAL ALLEGATIONS**

16. Over three years ago, Clear Rate entered into an agreement with LECM/I 123 to purchase wholesale basic local exchange and other telecommunications services for the provision of retail telecommunications services by Clear Rate. The services Clear Rate purchases from LECM/I 123, include, but are not limited to:

- a. Collocation
- b. 24/7 unescorted Access to all Clear Rate Equipment
- c. 24/7 unescorted Access to the collocation room
- d. 24/7 unescorted access to all Cabinets
- e. Uninterrupted AC/DC Power
- f. Uninterrupted transport and cross-connect services

- g. Uninterrupted unrestricted Internet Bandwidth & Connectivity
- h. Maintenance of current Cabinet & Rack locations
- i. Maintenance of current security level of Cabinet & Rack locations
- j. ISDN PRI T-1 Service
- k. Local Exchange Service
- l. Intralata & Interlata Access Services
- m. EMERGENCY E911 services for all end-users currently served by E911
- n. CAS T-1 Service
- o. SS7 Interconnection & Trunking
- p. D-users currently served by E911
- q. Local Number Portability
- r. "Port-In" & "Port-Out" of Clear Rate telephone numbers or End-User Telephone numbers
- s. Interoffice transport & ILEC Facilities
- t. DS-3 Multiplexer Units
- u. Interoffice transport
- v. Leased T-1 Services
- w. High-Speed Internet & Bandwidth
- x. 100 Megabit per second Internet Access

17. Clear Rate uses these services purchased from LECM/I 123 to provide retail telecommunications service, including local exchange service and E911 service, to numerous businesses and governmental entities, including a police department, medical facilities, public & private schools, government offices, banks and credit unions, colleges, car dealerships, television stations, hotels, churches, propane supply companies, manufacturing facilities, non-profit organizations, and numerous other private businesses.

18. Since entering into the agreement with LECM/I 123, Clear Rate purchased its wholesale and telecommunications services from them, including wholesale local exchange service.

19. Clear Rate and LECM/I 123 have a billing dispute relating to intercarrier compensation billings. Since June 22, 2005, Clear Rate has been billing LECM/I 123 for intercarrier compensation and to date LECM/I 123 have not made any payment.

20. Clear Rate had received a backbill for various services from LECM/I 123, and Clear Rate offered to offset the intercarrier compensation billing against the backbilled amount. This offer was refused and Clear Rate made a full payment of the backbilled amount without resolution of the intercarrier compensation billing dispute.

21. In September 2007, Clear Rate began purchasing some of its services from a different provider.

22. As a result of Clear Rate's decision to not purchase certain services from LECM/ I 123, LECM/ I 123 have retaliated and discriminated against Clear Rate by unilaterally changing their long-standing billing practices, by unilaterally attempting to increase the rates agreed upon between LECM/I 123 and Clear Rate, by threatening to immediately cut off service to Clear Rate and not providing a reasonable time for Clear Rate to migrate its services from LECM/I 123's network.

23. In some cases LECM/ I 123 is attempting to charge 100 times more for services. An example is porting out numbers off of the LEC/ I 123's network. Prior to this dispute Clear Rate was charged \$5 for each port out order which could include 100 Telephone numbers. Now, Clear Rate is being charged \$5 per telephone number, which would cost Clear Rate \$500 for an order that in the past cost \$5. Currently Clear Rate Communications, Inc. has over 2,200 Telephone Numbers with LECM/I 123 and they are attempting to charge Clear Rate \$40,000 just to migrate the telephone numbers from their network.

24. Prior to September 2007, LECM/I 123 invoiced Clear Rate on a monthly basis for the services that were used by Clear Rate in the prior month. Clear Rate was given 30 days in which to pay the invoice. (See, e.g. Exhibit C-1 attached to Mr. Namy's pre-filed direct testimony, September 2007 invoice.)

25. However, on September 11, 2007 LECM/I 123, due to Clear Rate's decision to not purchase certain services from LECM/I 123, suddenly and unilaterally changed its billing method for Clear Rate.

26. On that day, LECM/I 123 notified Clear Rate that it was, effective immediately, requiring Clear Rate to pay in advance for its telecommunication services. Consequently, LECM/I 123 advised Clear Rate that Clear Rate was required to pay its September 1, 2007 invoice – which is not due until September 30, 2007 – by 5:00 pm on September 13, 2007, otherwise LECM/I 123 would suspend service to Clear Rate and thus shut off Clear Rate's customers, including access to local exchange service and E911 services.

27. In addition, LECM/I 123 advised Clear Rate that Clear Rate also needed to pre-pay its October services – even though LECM/I 123 have not yet invoiced Clear Rate for those services – by 5:00 pm on September 13, 2007, otherwise LECM/I 123 would terminate service to Clear Rate and thus shut off Clear Rate's customers, including access to local exchange service and E911 services.

28. Furthermore, on September 11, 2007, LECM/I 123 not only unilaterally attempted to increase the agreed upon rates it was charging to Clear Rate for providing telecommunications services, it also notified Clear Rate that they would be permanently terminating service to Clear Rate in 30 days, which is not a reasonable time period for Clear Rate to migrate its services from LECM/I 123 network to another network. For example, LECM/I 123 required 56 days to port in all of the telephone numbers from Verizon for a PRI T-1 for one of Clear Rate's customers. Since it took LECM/I 123 fifty-six days to migrate just one of Clear Rate's customers, this demonstrates that it is not reasonable or even possible to migrate all customers within 30 days. If

LECM/I 123 are allowed to carry through on this retaliatory threat, then local exchange and E911 service to Clear Rate's retail customers will be disrupted.

29. Furthermore, on September 11, 2007, LECM/I 123 demanded that Clear Rate withdraw its intercarrier compensation billing dispute and agree to a bill and keep arrangement, or LECM/I 123 would immediately disrupt service to Clear Rate.

30. Moreover, on September 13, 2007, LECM/I 123 did, in fact, follow through on their threats to disrupt service. At about 5:00 pm that day, LECM/I 123 violated a temporary restraining order that was issued by the Macomb County Circuit Court earlier that day, and temporarily suspended service to Clear Rate because Clear Rate did not accede to their outrageous and illegal demands.

**COUNT I**  
**VIOLATION OF SECTION 301 OF THE MTA**

31. Clear Rate adopts by reference the allegations set forth above.

32. I 123 is a basic local exchange service provider despite the fact that it does not have license to provide such service from the Commission.

33. LECM and I 123 are alter egos of each other. I 123 shares the same corporate president with LECM, shares the same key employees with LECM, shares telecommunication facilities and equipment with LECM and shares the same business locations at 50572 Jefferson, New Baltimore, Michigan 48047 and 24700 Northwestern Highway, Suite 50, Southfield, Michigan, 48075 with LECM.

34. While Clear Rate's switch is interconnected and collocated with LECM, it is billed by I 123 for local exchange service, including E911 service and collocation service.

35. Further proof of the alter ego relationship is that I 123 requested a DS-3 circuit to be purchased by Clear Rate to be connected to LECM facilities with a LECM circuit ID. Clear Rate will bill and expects to be paid by I 123 for this service.

36. Further, I 123 bills wholesale local exchange service to Clear Rate, which includes local dial tone, local calling, directory assistance and E-911 service. Exhibit C-1 of Mr. Namy's testimony clearly shows that the services are for local services, including local switched telephone service.

37. As a result, I 123, has violated Section 301 of the MTA by "provid[ing] or resell[ing] basic local exchange service" without a license.

**COUNT II**  
**VIOLATION OF SECTION 305 OF THE MTA**

38. Clear Rate adopts by reference the allegations set forth above.

39. In unilaterally tripling the rates charged to Clear Rate, unilaterally changing its billing practices, threatening to suspend - and actually suspending - services to Clear Rate, and threatening to permanently terminate services to Clear Rate and not allowing Clear Rate a reasonable opportunity to migrate off of LECM/I 123's network as a result of Clear Rate's decision to not purchase certain wholesale and telecommunications services from LECM/I 123, LECM/I 123 have violated Section 305 of the MTA, including, but not limited to, Sections 305(a),(b),(d) and (m).

40. Section 305(m) specifically prohibits a provider from bundling unwanted services for sale or lease to another provider. When Clear Rate decided to purchase certain services from another provider, LECM/I 123's retaliatory conduct clearly violates this provision.

41. In addition, LECM/I 123 threats to shut off service and to not allow a reasonable time to migrate from LECM/I 123's network violates Sections 305(a), (b) and (d) of the MTA.



42. LECM/I 123 also violated Section 305(n) of the MTA, which prohibits a provider of basic local exchange service from “[p]erforming any act that has been prohibited by [the MTA] or an order of the commission,” when it violated Sections 301, 352(2), 305(a), (b),(d) and (m), 403 and 502.

**COUNT III  
VIOLATION OF SECTION 403 OF THE MTA**

43. Clear Rate adopts by reference the allegations set forth above.

44. In addition to being providers of regulated services, LECM/I 123 also provide unregulated services.

45. LECM/I 123 erroneously assert that they only provide unregulated services.

46. Even if LECM/I 123 erroneous assertion were true, which it is not, Section 403 of the MTA states: "A provider of unregulated telecommunication services shall not at any time refuse, charge, delay, or impair the speed of the connecting of a person to a telecommunication emergency service."

47. In threatening to shut-off services to Clear Rate and depriving Clear Rate a reasonable time to migrate from LECM/I 123's network, LECM/I 123 will violate Section 403 of the MTA by interfering with Clear Rate's customers of access to E911 service. These customers include a police department, medical facilities, public & private schools, government offices, banks and credit unions, colleges, car dealerships, television stations, hotels, churches, propane supply companies, manufacturing facilities, non-profit organizations, and numerous other private businesses.

**COUNT IV  
VIOLATION OF SECTION 502 OF THE MTA**

48. Clear Rate adopts by reference the allegations set forth above.

49. In unilaterally attempting to triple the rates charged to Clear Rate, unilaterally changing its billing practices, threatening to suspend - and actually suspending - services to Clear Rate, and threatening to permanently terminate services to Clear Rate as a result of Clear Rate's decision to not purchase certain wholesale and telecommunications services from LECM/I 123, LECM/I 123 have violated Section 502 of the MTA, including, but not limited to, Sections 502(1).

**COUNT V  
VIOLATION OF SECTION 352 OF THE MTA**

50. Clear Rate adopts by reference the allegations set forth above.

51. In unilaterally tripling the rates they charge to Clear Rate, LECM/I 123 have violated the Michigan Telecommunications Act ("MTA").

52. Section 355 of the MTA places requirements on unbundling of local service and Section 352(2) of the MTA requires that the “rates for network elements and combinations of network elements, unbundled loops, number portability, and the termination of local traffic shall be the rates established by the commission.” MCL 484.2352(2).

53. LECM/I 123 therefore violated Section 352(2) in unilaterally tripling its rates to Clear Rate because said rate increase was not established or approved by the Commission.

**REQUEST FOR EMERGENCY RELIEF OR ISSUE AN ORDER  
PURSUANT TO SECTION 203(13)**

54. An order for emergency relief may be granted if the commission finds all of the following:

- (a) That the party has demonstrated exigent circumstances that warrant emergency relief;

(b) That the party seeking relief will likely succeed on the merits;

(c) That the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted; and

(d) That the order is not adverse to the public interest.

55. The harm from LECM's/I 123's conduct is ongoing and continuing and constitutes exigent circumstances that warrant emergency relief.

56. Clear Rate will likely succeed on the merits.

57. Clear Rate will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, as LECM/I 123 are threatening to terminate, and have already temporarily terminated, service to Clear Rate, which would in turn prevent Clear Rate from providing telecommunications services to its customers.

58. The grant of emergency relief will not be adverse to the public interest. In fact, granting emergency relief will promote the public interest because it will prevent LECM/I 123 from terminating telecommunication services to a number of governmental entities that **must have** access to basic local exchange service and E911 service, such as police departments, medical facilities and public and private schools. If emergency relief is not granted to Clear Rate, many citizens may be left without access to emergency response teams.

59. Since a circuit court has already issued a TRO, the Commission may wish to instead issue an order pursuant to Section 203(13) of the MTA, which provides: "If a complaint is filed under this section by a provider against another provider, the provider of service shall not discontinue service during the period of the contested case, including the alternative dispute process, if the provider receiving the service has posted a surety bond, provided an irrevocable

letter of credit, or provided other adequate security in an amount and on a form as determined by the commission."

60. Clear Rate is seeking with all deliberate speed to remove its services from LECM/I 123's network.

61. Clear Rate is willing to begin to pay for services at the previously agreed upon rates between the parties a month in advance while this migration occurs. Clear Rate has already paid the 9/1/07 invoice due on 9/30/07 on Friday 9/14/07 and has paid for an invoice received on 9/16/07 for services through 9/30/07 on 9/17/07.

62. Instead of issuing an emergency order, the Commission could issue, pursuant to Section 203(13), an order preventing discontinuous of service and require Clear Rate to post a bond with the Commission in the amount of \$26,791.28, which is the amount of the last monthly invoice.

### **RELIEF REQUESTED**

WHEREFORE Clear Rate requests that this Honorable Commission:

- A. Grant emergency relief by requiring LECM/ I 123 to reinstate their pre-September 11, 2007 billing practices and rates for Clear Rate;
- B. Grant emergency relief by ordering LECM/ I 123 to not discontinue service to Clear Rate until Clear Rate has migrated off of LECM/I 123's network;
- C. Provide Clear Rate a reasonable time to migrate from LECM/ I 123's network;
- D. Grant any an all other emergency relief the Commission deems just and appropriate;
- E. Impose a fine for each day LECM/ I 123 have violated, and continue to violate, a provision of the Michigan Telecommunications Act;

- F. Issue a cease and desist order preventing LECM/ I 123 from any further violation of the Michigan Telecommunications Act;
- G. Award Clear Rate all of its damages and make Clear Rate whole from the harm suffered as a result of LECM/ I 123's violation of the Michigan Telecommunications Act;
- H. Award Clear Rate its attorney fees pursuant to Section 601 of the Michigan Telecommunications Act;
- I. Issue an order pursuant to Section 2013(13) preventing LCM/I 123 from disconnecting service from Clear Rate pending the resolution of this case, and ordering Clear Rate to post a bond with the Commission in the amount of \$26,791.28; and
- J. Award all other remedies and impose all other penalties as permitted under Michigan law.

Respectfully submitted,

**Fraser Trebilcock Davis & Dunlap, P.C.**  
Attorneys for Clear Rate Communications, Inc.

September 17, 2007

By: \_\_\_\_\_  
Michael S. Ashton (P40474)  
Nicole L. Proulx (P67550)  
Business Address:  
124 W. Allegan St., Suite 1000  
Lansing, Michigan 48933  
(517) 482-5800