

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

**CLEAR RATE COMMUNICATIONS, INC.'S BRIEF
IN SUPPORT OF ITS REQUEST FOR EMERGENCY RELIEF
OR ISSUANCE OF AN ORDER PURSUANT TO SECTION 203(13)**

Dated: September 17, 2007

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I. FACTS

A. Background

Complainant Clear Rate Communications, Inc. ("Clear Rate") files this brief in support of its request for emergency relief or for an order pursuant to Section 203(13) as a result of the unlawful, discriminatory and retaliatory treatment Respondents Local Exchange Carriers of Michigan, Inc. ("LECM") and Internet 123, Inc. ("I 123") have imposed upon Clear Rate which threatens to immediately disrupt Clear Rate's ability to serve its retail customers, including local and emergency 911 service. A circuit court has already issued a temporary restraining order preventing LECM and I 123 from suspending service to Clear Rate to allow the Commission time to act on this matter. While Clear Rate is entitled to emergency relief, the Commission may wish to simply issue an order pursuant to Section 203(13) preventing the discontinuous of service pending the resolution of this case upon the posting of a bond by Clear Rate in the amount discussed herein.

Clear Rate is a competitive local exchange carrier ("CLEC") that offers a variety of local, long distance, and enhanced telecommunications to residential, business and governmental customers in Michigan. LECM is a provider of basic local exchange service, and I 123 is a provider of telecommunications services, including the reselling or wholesaling of local exchange service.

I 123 is an affiliate of LECM. I 123 and LECM share the same corporate president, share the same key employees, share telecommunication facilities and equipment, and share the same business locations at 50572 Jefferson, New Baltimore, Michigan 48047 and 24700 Northwestern Highway, Suite 50, Southfield, MI 48075. Indeed, LECM and I 123 are alter egos of one another. This is further evidenced by the fact that Clear Rate is actually collocated with LECM,

but is billed for its collocation services through I 123. As a result, LECM and I 123 both provide regulated and unregulated services to Clear Rate, including but not limited to local exchange service. For this reason, LECM and I 123 are hereafter referred to as LECM/I 123.

B. The Agreement

In September 2004, 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 purchased 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

Clear Rate uses these services purchased from LECM/I 123 to provide retail telecommunications service, including local and E911 service, to numerous businesses and

governmental entities, including a police department, medical facilities, public and 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.

C. The Prior Dispute

Since entering into the agreement with LECM/I 123, Clear Rate purchased its wholesale and telecommunications services from them, including wholesale local exchange service. Additionally, beginning in June 22, 2005, Clear Rate also began billing LECM/I 123 intercarrier compensation billings. However, to date, LECM/I 123 has not made any intercarrier compensation payments to Clear Rate.

On March 5, 2007, Clear Rate 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 by LECM/I 123, who instead threatened to suspend services to Clear Rate if Clear Rate did not make full payment of the backbilled amount. To avoid a suspension in services, Clear Rate did pay in full the entire backbilled amount without resolution of the intercarrier compensation billing dispute.

D. The Current Dispute

Due to LECM/I 123's bullying of Clear Rate and threatening to suspend Clear Rates' services, Clear Rate decided to begin diversifying the sources of some of its wholesale basic local exchange and telecommunications services to prevent a complete shutdown of its services in the event LECM/I 123 again threatened to suspend Clear Rates' services. Consequently, on September 7, 2007, Clear Rate began obtaining some of its services from another provider.

As a result of Clear Rate's decision to not purchase certain telecommunication services from LECM/I 123, LECM/I 123 retaliated and discriminated against Clear Rate by unilaterally changing their long-standing billing practices, by unilaterally attempting to increase the agreed-upon rates to be charged to Clear Rate, by threatening to immediately cut off service to Clear Rate, and threatening to terminate services before allowing Clear Rate a reasonable time to migrate from LECM/I 123's network. LECM/I 123's actions imminently harm Clear Rate and its ability to provide local exchange and E 911 service to its retail customers.

E. The Shutdown

Because LCEM/I 123 had threatened to immediately shut off services which impact Clear Rate's ability to provide local and E911 services, Clear Rate filed a complaint and a motion for a temporary restraining in the Macomb County Circuit Court seeking a court order that would prevent LCEM/I 123 from suspending service to Clear Rate. The Macomb County Circuit Court issued Clear Rate's requested temporary restraining order ("TRO") to provide this Commission time to resolve the pending dispute. Despite actual notice of the TRO, LECM/I 123 violated the TRO and temporarily suspended service to Clear Rate on September 13, 2007 because Clear Rate did not accede to their outrageous and illegal demands.

II. LEGAL ANALYSIS

A Standard for Granting Emergency Relief

Section 203(3) of the Michigan Telecommunications Act ("MTA") sets forth the standard for granting emergency relief. The subsection states:

An order for emergency relief may be granted under subsection (2) 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.

(d) That the order is not adverse to the public interest. MCL 484.2203(3).

As discussed below, each of these requirements have been met by Clear Rate, and emergency relief should therefore be granted in its favor.

B. Clear Rate Has Demonstrated Exigent Circumstances Warranting Emergency Relief

As set forth in the facts section of this brief and as supported by Clear Rate's pre-filed testimony, Clear Rate has demonstrated exigent circumstances that warrant emergency relief. LECM/I 123's conduct is causing substantial harm to Clear Rate and its customers. LECM/I 123 is placing Clear Rate's ability to provide local and E911 services to its customers at immediate risk. 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. While the circuit court issued a TRO, it did so to provide the Commission the ability to resolve this dispute. Without Commission intervention, LECM/I 123 are likely to continue to threaten immediate shut-off or refuse to provide Clear Rate a reasonable opportunity to migrate off LECM/I 123's 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 Clear Rate's customers within 30 days. If LECM/I 123 are allowed

to carry through on their retaliatory threats, then local exchange and E911 service to Clear Rate's retail customers will be disrupted.

C. Clear Rate Will Likely Succeed on the Merits

The facts clearly show that LECM/I 123 has violated Section 305 of the MTA. LECM/I 123 has bundled unwanted services with all the services LECM/ I 123 currently provides. When Clear Rate sought a DS 3 MUX transport from another provider, LECM/I 123, in clear violation of Section 305(m), retaliated by attempting to unilaterally increase the agreed upon rates, threatening to immediately cancel all service if Clear Rate did not concede to LECM/ I123's unlawful demands, and by threatening to terminate service without allowing Clear Rate a reasonable time to migrate services to another network. This retaliatory threat to shut-off service is a clear violation of Section 305(m) and would also result in other violations. By not allowing a reasonable time to migrate from its network, LECM/I 123 is violating Section 305, including but not limited to Section 305(a) (b) and (c) of the MTA. LECM/I 123 should not be allowed to disrupt service through its violation of Section 305. While Clear Rate wishes to migrate all of its services from LECM/I 123, the Commission needs to require a reasonable time for this migration to occur.

In addition to being regulated providers of local exchange service as discussed in Clear Rate's pre-filed testimony, LECM/I123 are also providers of unregulated services. Section 403 prohibits LECM/I 123 from disrupting E911 service. Yet, if the Commission fails to action LECM/I 123 will disrupt E911 service to Michigan customers.

D. Clear Rate Will Suffer Irreparable Harm if Emergency Relief is Not Granted

If LECM/I 123 are not enjoined from shutting off service to Clear Rate as LECM/I 123 have threatened to do, Clear Rate will suffer irreparable harm. While Clear Rate is anxious to

migrate from LECM/I 123's network, Clear Rate needs sufficient time to move their customers from LECM/I 123's network because Clear Rate is heavily interconnected to LECM/I 123's switch and moving T-1 loops, and transport will require coordination and provisioning. If sufficient time is not provided, LECM/I 123 will shut off a large portion of Clear Rate's customers because they will not be moved in the compressed timeframe. Obviously, shutting off service to Clear Rate's customers will jeopardize Clear Rate's customer base and cause it irreparable harm in the form of lost customers, damage to its reputation and loss of customer good will.

E. The Issuance of Emergency Relief Is Not Adverse to the Public Interest

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 customers that **must have** access to basic local exchange service and E911 service, including police departments, medical facilities and public and private schools. If emergency relief is not granted many citizens may be left without local service and access to emergency response teams.

F. The Commission Should Issue an Order Preventing Discontinuous of Service and Set a Bond Pursuant to Section 203(13)

Section 203(13) of the MTA provides that:

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.

Clear Rate is seeking with all deliberate speed to remove its services from LECM/I 123's network. 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 transition 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. Instead of issuing an emergency order, the Commission, pursuant to Section 203(13), could issue 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. This should provide more than adequate protection to LECM/I 123 pending the resolution of this dispute.

III. REQUEST FOR EMERGENCY RELIEF OR AND ORDER PURSUANT TO SECTION 203(13)

WHEREFORE, for the reasons set forth above, pending a final order in this case Clear Rate requests that this Honorable Commission issue an order granting emergency relief or an order pursuant to Section 203(13) which requires:

- A. LECM/ I 123 to not discontinue service pending the resolution of this proceeding, and
- B. LECM/ I 123 to abide by any and all other emergency relief the Commission determines is just and reasonable.

Respectfully submitted,

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Dated: September 17, 2007

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