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September 24, 2007

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48909

Re: In the matter of the formal complaint, application and request for emergency relief of Clear Rate Communications, Inc. against Local Exchange Carriers of Michigan, Inc., and Internet 123, Inc.
MPSC Case No. U-15424

Dear Ms. Kunkle:

Enclosed for filing, please find Internet 123, Inc.'s Response to Clear Rate Communications, Inc.'s Request for Emergency Relief in the above-captioned proceeding. Proof of Service upon the Party of Record is also enclosed.

Very truly yours,

CLARK HILL PLC

Haran C. Rashes

HCR:pat
Enclosures

cc: Party of Record

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the formal complaint,)
application and request for emergency relief of)
Clear Rate Communications, Inc. against) Case No. U-15424
Local Exchange Carriers of Michigan, Inc. and)
Internet 123, Inc.)

INTERNET 123, INC.'S RESPONSE TO
CLEAR RATE COMMUNICATIONS, INC.'S REQUEST FOR EMERGENCY RELIEF

Internet 123, Inc. (“Internet 123”), by and through its attorneys, Clark Hill PLC, pursuant to Section 203(2) of the Michigan Telecommunications Act (“MTA”), MCL 484.2203(2), hereby submits its Response to Clear Rate Communications, Inc.’s (“Clear Rate” or “Complainant”) Request for Emergency Relief (“Request for Emergency Relief”) in the above-captioned proceeding and states as follows:¹

Internet 123 is a Michigan corporation headquartered in New Baltimore, Michigan. Internet 123 is a provider of telecommunications services in Michigan. Internet 123 provides telecommunications services utilizing a packet based switch and Voice Over Internet Protocol (“VoIP”) technology – such services are unregulated in Michigan for which no license is required.

On September 17, 2007, Clear Rate filed its Complaint against Internet 123 and Local Exchange Carriers of Michigan, Inc. (“LECOMI”) alleging that Clear Rate “entered into an agreement with [LECOMI and Internet 123] to purchase wholesale basic local exchange and other telecommunications services for t he provision of retail telecommunications services by Clear

¹ Internet 123 makes this response and motion without waiving any claims or defenses it may have to jurisdiction of the Commission to adjudicate the issues raised in this matter and reserves its right to contest the subject matter jurisdiction of the Commission to adjudicate these issues.

Rate” (Complaint at ¶16) and that LECMI and Internet 123 had threatened to shut off service being provided to Clear Rate (Complaint ¶¶ 10, 22, 28, 30, 39, 41, 47, 49, and 57). Clear Rate seeks an Emergency Relief Order from this Commission requiring Internet 123 “to not discontinue service to Clear Rate until Clear Rate has migrated off of [LECMI and Internet 123’s] network.” (Complaint, Relief Requested, ¶ B).

Clear Rate’s Request for Emergency Relief has two main flaws that require that the Commission dismiss the Request for Emergency Relief against Internet 123²:

- 1. Clear Rate has no written agreement with Internet 123 to receive or purchase any services from Internet 123; and,**
- 2. The Commission has no authority to order a provider to provide unregulated services to another provider.**

II. THE REQUEST FOR EMERGENCY RELIEF IS MOOT

Though Clear Rate claims that it has an agreement with Internet 123 to provide various telecommunications services (Complaint at ¶16), no such “agreement” was attached to the Complaint or to the prefiled testimony that accompanied the Complaint. This is because Internet 123 has been providing services to Clear Rate on a month-to-month basis. (Affidavit of Dan Irvin ¶24). The unregulated services being provided to Clear Rate by Internet 123 are commodity services available from several other telecommunications service providers in Michigan.

Internet 123 has indicated to Clear Rate that it intends to discontinue offering Clear Rate telecommunications services on a month-to-month basis within thirty (30) days. (Affidavit of Dan Irvin ¶25). Internet 123 believes that thirty (30) days is sufficient time for Clear Rate to

² LECMI is responding separately to Clear Rate’s Request for Emergency Relief.

move all of its services to another provider. Though Clear Rate has alleged that it cannot move its services to another provider within thirty (30) days, Clear Rate has not provided any evidence or attached any proposals to its Complaint or to the prefiled testimony that accompanied the Complaint that demonstrate that it has even tried to move its services to another provider. Internet 123 sees no reason, in the current competitive market among unregulated telecommunications providers that Clear Rate cannot move its services to another provider within thirty (30) days.

An examination of the MTA demonstrates that the only places where jurisdiction is granted to the Commission to examine “disconnect” or “discontinuance” of service issues is with respect to regulated services, and most of those sections deal exclusively with services to end-users. MCL 484.2313, 484.2314, 484.2314a, 484.2314b, and 484.2502. With one limited exception, the Commission does not have jurisdiction to prevent the discontinuance of service to a month-to-month customer of unregulated services.

However, the MTA does provide 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.

MCL 484.2203(13). Internet 123 recognizes that if Clear Rate “post[s] a surety bond, provide[s] an irrevocable letter of credit, or provide[s] other adequate security in an amount and on a form as determined by the Commission,” it will be prohibited from discontinuing service during the period that this proceeding is under consideration by the Commission. Internet 123, respectfully requests that any security include a pledge, and weekly updates to the Commission and Internet 123, of Clear Rate’s progress in transitioning its services away from Internet 123.

Because Clear Rate and Internet 123 do not have a written contract, the Commission cannot impose a contractual obligation on Internet 123. The Commission's statutory authority over public utilities does not include the review or approval of contracts for unregulated services. The Commission has no authority to order Internet 123 to provide services to Clear Rate. The Commission's authority does not give the Commission the power to make management decisions. *Union Carbide Corp v Public Service Comm*, 431 Mich 135; 428 NW2d 232 (1988). Because the services provided to Clear Rate by Internet 123 utilize a packet based switch and VOIP technology – which are unregulated in Michigan – the Commission does not have the authority to nor should the Commission grant the relief requested by Clear Rate. Because Internet 123 has given Clear Rate thirty (30) days to migrate its services away from Internet 123, Clear Rate has had adequate and sufficient notice to discontinue purchasing services from Internet 123.

A. Clear Rate Cannot Meet the Requirements for an Emergency Relief Order against LECMI.

Section 203(3) of the MTA provides:

- (3) 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.

Internet 123 respectfully contends that Clear Rate cannot meet these four (4) requirements. Because Clear Rate is purchasing services on a month-to-month basis from Internet 123, rather than through written contract, Clear Rate can have no expectation that services will continue to be offered by Internet 123 for longer than the current month in which the services are provided. Because Internet 123 has given Clear Rate thirty (30) days to migrate its services away from Internet 123, Clear Rate has received adequate and sufficient notice to discontinue purchasing services from Internet 123. The thirty (30) day notice to discontinue taking services from Internet 123 demonstrates that there are no exigent circumstances warranting emergency relief.

Because the services provided to Clear Rate by Internet 123 utilize a packet based switch and VOIP technology – which are unregulated in Michigan – the Commission does not have the authority to grant the relief requested by Clear Rate in its Complaint. Therefore it is unlikely that Clear Rate will succeed on the merits of its Complaint.

Though Clear Rate has alleged that it cannot move its services to another provider within thirty (30) days, Clear Rate has not provided any evidence or attached any proposals to its Complaint or to the prefiled testimony that accompanied the Complaint that demonstrate that it has even tried to move its services to another provider. Internet 123 sees no reason, in the current competitive market among unregulated telecommunications providers that Clear Rate cannot move its services to another provider within thirty (30) days. Therefore, Clear Rate has not demonstrated that it will suffer any harm in its ability to serve customers if emergency relief against Internet 123 is not granted.

If the Commission issues an Emergency Relief Order against Internet 123, it will demonstrate that such an order can be obtained against someone based on month-to-month

purchases and the Commission will in effect impose a contract upon Internet 123. The imposition of a contract and a requirement forcing one carrier to provide unregulated competitive services to another is not in the public interest.

For the above-stated reasons, Internet 123 respectfully requests that the Commission deny Clear Rate's Request for an Emergency Relief Order.

III. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons Internet 123 respectfully requests that the Commission issue an Order:

- A. Denying Clear Rate's Request for an Emergency Relief Order against Internet 123;
- B. Granting Internet 123 such other relief as is just and reasonable.

Respectfully Submitted,

By: _____

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Date: September 24, 2007

Attorneys For
Internet 123, Inc.

STATE OF MICHIGAN

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Clear Rate Communications, Inc. against)
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Internet 123, Inc.)

Case No. U-15424

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Patricia A. Tooker, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on September 24, 2007, a copy of Internet 123, Inc.'s Response to Clear Rate Communications, Inc.'s Request for Emergency Relief in the above captioned proceeding was served via Electronic and United States Postal Service First-Class Mail upon the below stated party of record.

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Patricia A. Tooker

Subscribed and sworn to before me
this 24th day of September, 2007.

Haran C. Rashes, Notary Public
Washtenaw County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: September 18, 2013