

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to establish the format for submission of)
METRO Act route maps.)
_____)

Case No. U-13869

At the November 25, 2003 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

OPINION AND ORDER

Background

Section 6(8) of the Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act, MCL 484.3106(8), provides that the Commission shall, after input from providers and municipalities, require that the route maps required under this section be in a paper or electronic format as the Commission may prescribe.

In an order dated September 11, 2003, the Commission directed interested persons to submit comments related to the format of those maps by September 25, 2003, with reply comments to be filed no later than October 6, 2003.

The Commission received comments from MCImetro Access Transmission Services LLC, MCI WorldCom Communications, Inc., and Brooks Fiber Communications of Michigan, Inc., (collectively, MCI), TDS Metrocom, LLC, and XO Michigan, Inc., (collectively, TDS), the City of

Detroit, Michigan, the Michigan Municipal League, and the Michigan Coalition to Protect Public Rights-of-Way (collectively, Detroit), AT&T Communications of Michigan, Inc., SBC Michigan (SBC), TCG Detroit (TCG), the Telecommunications Association of Michigan (TAM), and the Competitive Local Exchange Carrier Association (collectively, Joint Carriers), Verizon North Inc. and Contel of the South Inc., d/b/a Verizon North Systems (Verizon), and the Commission Staff (Staff).

Reply comments were submitted by AT&T Communications of Michigan, Inc. and TCG (collectively, AT&T), TAM, MCI, Detroit, Verizon, and SBC.

Positions of the Parties

Staff

In its comments, the Staff states that it conducted three collaboratives for the purpose of gathering information and identifying issues to aid in the implementation of the mapping requirements of the METRO Act. According to the Staff, during the collaboratives the parties identified a need to maintain route maps in a format that could be augmented or manipulated. Additionally, the Staff notes that concerns were raised that a mandated electronic format could be costly to implement and might require software and hardware that the municipality or provider did not possess.

Considering these needs and concerns, the Staff proposes that maps be submitted to the Commission on a compact disk (CD) in an electronic format with a DGN, DWG, or DXF extension. If the Staff does not have the software required to read the CD, then the provider must supply the Staff with the needed software. In order to avoid violations of any base map software licensing agreements, providers may need to amend their current contracts with their base map software vendor to include METRO Act requirements. The provider may either supply the Staff

with a copy of the software, provide an html link to download the free viewer, or provide access to a computer containing the software at a convenient company location or at the Commission offices.

The Staff proposes that the mapping format requirements take effect immediately, but with a provision that providers may seek a waiver from immediate compliance. A provider not able to provide electronic maps must provide documentation explaining why they are currently unable to comply, the expected date of compliance, and a request for Commission waiver. A municipality without electronic capabilities should work out an acceptable alternative arrangement with the provider.

MCI

MCI believes that it could comply with the format language originally proposed by the Commission in its June 27, 2003 minute action attachment,¹ with two modifications. Initially, MCI proposes that Section 5 of the attachment be modified to allow for other types of electronic submissions to the Commission, such as allowing portable document file (PDF) format, as long as the PDF file provides the necessary detail and provides sufficient clarity of resolution. MCI proposes to add a provision after the first sentence in Section 5 of the attachment that would permit a provider to submit maps in PDF format or in any other format, provided that such formatted maps contain the necessary detail and sufficient clarity of resolution.

MCI further believes that there also needs to be a provision to protect highly confidential information on maps, e.g., the routes of the provider's facilities. MCI proposes a new Section 7 stating that regardless of the format used to submit a map, the map shall be deemed to be a trade secret and commercial information under Section 210(1) of the Michigan Telecommunications Act

¹This action was subsequently withdrawn on July 31, 2003.

(MTA), MCL 484.2101 et seq., as amended, which would exempt such information from disclosure under the freedom of information act (FOIA). 1976 PA 442, MCL 15.231 to 15.246.

In its reply comments, MCI asserts that the purpose of the METRO Act is to create consistency for telecommunications development. As such, MCI maintains that the Commission should reject Detroit's proposal, which would force providers to comply with specific requirements for mapping as set forth by each municipality. According to MCI, Detroit proposes requirements that would require tremendous labor and capital. MCI contends that, instead of promoting telecommunications investment in the state, Detroit's proposed requirements would implement a regulatory obstacle not seen in any other state in the nation.

TDS

TDS maintains that the more common practice in the industry is for providers to submit route maps to municipalities in paper format and insists that this filing method has worked well for the industry. Furthermore, TDS maintains, requiring maps to be filed in the electronic format may raise proprietary licensing issues with respect to third party vendors of base maps. Because such issues may needlessly complicate and increase the cost of constructing new facilities, TDS asserts that these complications should be avoided. Therefore, TDS recommends that because submitting paper maps has worked well, there appears to be no reason to modify the practice.

TDS further outlined what details should be included in the maps, if the Commission addresses this issue. TDS maintains that detailed maps should not be provided to assist economic development, which is beyond the purposes of the METRO Act.

Detroit

Detroit asserts that the METRO Act was enacted to facilitate the rapid deployment of broadband in Michigan, while at the same time preserving local control of the public rights-of-way. Detroit argues that prudent municipalities seek to use telecommunications infrastructure information to promote the desirability and attractiveness of their communities for commercial, industrial, or service-oriented firms that are considering locating in their respective municipalities. Therefore, Detroit contends that accurate, reliable, and useful route maps are critical to these efforts.

Detroit further maintains that it was the intent of the Legislature that the statute guarantee and “[e]nsure the reasonable control and management of public rights-of-way *by municipalities* within this state.” MCL 484.3101(2)(e) (emphasis added), and “[p]romote the public health, safety, welfare, convenience, and prosperity of this state,” MCL 484.3101(2)(i). Detroit urges that the statute be read in the context of Article 7, §29 of the Michigan Constitution, which provides “the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys, and public places is hereby reserved to such local units of government.”

Therefore, Detroit argues that management of public rights-of-way has always been a local function and that the route map format needs to reflect local concerns, objectives, and capabilities. Detroit urges the Commission to choose a format that is sufficiently flexible so as to allow for needed local variation, input, and choice.

Detroit proposes the following format:

“Route maps shall be in paper or electronic format, or both, as requested by each municipality. If in electronic format, the route map shall be within a defined coordinate system, allowing integration with geographic information systems (“GIS”), and shall be intelligent with associated data, in the file extension requested by the municipality. The positional accuracy standard of the route map shall also be identified.”

Detroit suggests that the proposed format provides the flexibility needed by the almost 2,000 municipalities in the state, some of which have no electronic capabilities whatsoever, whereas, others of which have highly developed electronic systems and databases. Detroit argues that this is the only format standard that will allow interfacing and layering with existing GIS, thereby enabling municipalities to integrate the route map data into existing mapping systems.

In addition, Detroit notes that providers have chosen to do business in Michigan, which requires flexibility on their part in conforming to the special requirements of the municipalities in which they conduct business. According to Detroit, there are only five or six formats for route maps nationwide and providers are likely to face all of these different format requirements at one point or another, as they conduct business across the country. Detroit insists that the providers could avoid problems by obtaining features that allow conversion of maps from one format to another. Finally, Detroit stresses that allowing a provider the alternative of supplying maps in an electronic format not compatible with that of a particular municipality is the functional equivalent of providing no map at all, which is inconsistent with the spirit and purposes of the METRO Act.

In its reply comments, Detroit argues that there may be situations where a municipality may need route maps submitted in both paper and electronic forms, but rejects the idea that route maps be submitted in Adobe® or PDF format and rejects any efforts to classify Section 6(7) route maps as exempt under FOIA. Detroit notes that it was the only municipality or municipality organization to file comments and, therefore, urges the Commission to adopt its plan, as proposed in its comments. Detroit maintains its GIS format is the only format that will ensure that route maps will be useful to the municipality to manage public rights-of-way consistent with applicable statutory and constitutional standards. Detroit argues that the future lies with the electronic format and its use should be encouraged. Detroit argues against the Adobe® or PDF format because it is

merely a picture of paper documents and cannot be used for layering of information by engineers and city planners. It does, however, encourage the Commission to offer a choice in the format, that route maps be submitted in both the paper and/or electronic formats, so the individual municipalities can make use of the route maps for their own individual needs.

Detroit further notes that MCI and Joint Carriers comments urging the Commission to adopt a provision deeming all route maps to be trade secrets and commercial information beyond the scope of FOIA, and, are beyond the scope of this proceeding. Further, Detroit opines that maps from utilities such as telephone and cable companies have generally always been in the public domain. Although Section 6(5) sets out the conditions under which route maps are exempt from disclosure under FOIA, when route maps under Section 6(7) are to be filed, the provider has been highly visible in its excavation and installation of the new facility. There is no secret about its presence in the public right-of-way. Beyond that, Detroit argues, municipalities obviously need to be able to share information with other users of the public rights-of-way.

Joint Carriers

The Joint Carriers argue that its common experience is that municipalities usually require paper copies of route maps. If electronic (CD-ROM) copies are provided, they are generally in Adobe® or PDF format. The Joint Carriers are unaware of any problems or issues that have arisen from the submission of route maps using these methods. The Joint Carriers recommend that the Commission not adopt any rule regarding the format for submitting route maps pursuant to Section 6(5). If a party requests a route map via a particular format, e.g., where a large-scale project is undertaken and the use of electronic format is appropriate, such requests can be handled on a case-specific basis. The Joint Carriers do not anticipate any problems with this approach, but

state that any disagreements regarding such issues could be resolved pursuant to the dispute resolution procedures found in Section 6(2) and (3).

Further, the Joint Carriers request that any modified maps submitted after the initial permit application should be in the same format as the original application. The Joint Carriers recommend that submission of post-construction route maps be tailored to the express purposes of the METRO Act. Therefore, they insist that the Commission should not require procedures that would unreasonably impede competition, restrict availability, increase the price, or restrain the terms and conditions of providing telecommunications services in the state.

The Joint Carriers conclude that providers should be authorized to submit post-construction route maps in either paper or electronic format. However, if the Commission requires submission via electronic means, the Joint Carriers recommend use of Adobe® or PDF documents, currently used by the Commission's Electronic Case Filing system, made either by e-mail or delivery via CD-ROM disk or other suitable medium. The Joint Carriers believe paper route maps may be converted via a conversion program or by scanning into the Adobe®/PDF format, to be submitted electronically to the Commission. Finally, the Joint Carriers insist that the Commission adopt explicit procedures to protect confidential trade secrets and security information contained on route maps.

Verizon

Verizon points out that the METRO Act only gives the Commission the authority to decide if route maps should be submitted in paper or electronic form, but does not grant the Commission authority to determine the content of the route maps. Verizon maintains that additional requirements would require significant costs to program, including a redesign of the industry's business

records, and would require a significant effort to implement and maintain the information on an ongoing basis.

Verizon requests that the Commission balance the negligible value of additional information requirements against the costs it would generate. Verizon states that it will report the linear feet requirements in its permit request and will include facility location in the route maps, as required by the statute. However, Verizon asserts that additional information should not be required because of the extra costs and the security and competitive issues that must be considered if detailed information about the telecommunications network infrastructure is publicly available.

Finally, Verizon states that if the Commission mandates that providers include information beyond basic route information, then the Commission should allow at least one year for telecommunications providers to modify their systems to produce such information.

TAM

TAM argues that management of the public rights-of-way is not simply a local concern and that the METRO Act does not require that the mapping format accommodate local variations and choices. TAM stresses that the purpose of the route map is to advise of the location of the route, not to encourage economic development. TAM maintains that route maps are not scaled, engineered drawings, as Detroit and the Staff would require. Rather, TAM maintains that the term “route map” is understood by the industry as requiring a very simple drawing.

TAM insists that the intent of the METRO Act is to achieve better telecommunications service by promoting competition and streamlining the process for authorizing access to public rights-of-way. TAM points out that a majority of the rights-of-way in the state is outside the large cities. It says the public rights-of-way in townships are maintained by the county road commissions, most of which have no need to maintain files of facilities.

TAM also urges the Commission not to have route maps submitted in a form that could be augmented or manipulated, because this would require that every map be an engineered drawing, drawn to scale, which would be extremely costly. Citing Section 6(7) of the METRO Act, TAM argues that the Commission will only receive route maps of newly constructed facilities. Therefore, the Commission's information will be very sparse and highly fragmented. No matter how much detail is required or how much providers spend, TAM asserts that such route map fragments will not become more useful.

Further, unless providers requested an extension, they submitted their route maps by April 29, 2003. Municipalities were required to act on permits within 45 days. Therefore, unless providers had requested an extension, by no later than June 15, 2003, those providers would have received their permits. Further, TAM vehemently opposes any requirement that providers re-file maps with municipalities.

Finally, TAM argues that the collection of detailed statewide route maps implicates homeland security concerns, because such detailed information could be an unintended source of information for persons who wish to cause disruption of the state's telecommunications infrastructure.

AT&T

AT&T argues that nothing in the METRO Act even remotely suggests that route maps are to be used for purposes unrelated to the access and use of public rights-of-way by telecommunications providers. Moreover, AT&T asserts that the statute expressly limits public dissemination of confidential information contained in route maps submitted to municipalities. MCL 484.3106(5). According to AT&T, the Legislature understood that information in route maps could give competitors sensitive information regarding an applicant's market entry strategies, planned facility deployment, and business plans.

Further, citing security concerns, AT&T argues that the protections afforded an applicant's confidential information in the METRO Act would be irretrievably lost, and the telecommunications network less secure, if the data were integrated or compiled with other data and shared with the public for whatever purpose a municipality might deem useful. AT&T also asserts that any benefits realized by allowing a municipality to accumulate data in the format suggested by Detroit would be outweighed by the administrative difficulties imposed on providers. Detroit's proposal, AT&T continues, fails to consider that the METRO Act was adopted in response to the obstacles providers experienced in obtaining permits from municipalities under a system whereby each municipality imposed its own requirements. The costs, legal expenses, and administrative delay associated with the former permit process posed significant barriers to carriers seeking to deploy facilities in public rights-of-way. According to AT&T, the streamlined and standardized approach to the permitting process would be defeated if providers are forced to meet diverse requirements to suit each municipality. Further, AT&T asserts that this approach would effectively increase right-of-way fees, by requiring providers to bear the cost of developing and implementing a municipality's defined coordinate system, which could impede the ability of new providers to enter the market.

Further, AT&T maintains that had the Legislature intended that municipalities were in the best position to make the format determination, it could have granted each municipality the authority to set its own mapping formats. It did not. The only requirement the Legislature imposed was that providers submit route maps showing the location of facilities, existing and planned, when filing an application for a permit and follow up construction with a route map showing the location of the new facilities. MCL 484.3106(5) and (7). The term "route maps" is a term that is commonly understood in the telecommunications industry. Route maps are not engineering drawings or as-

built drawings, which are also terms of art in the industry. The Legislature did not give the Commission the authority to determine what mapping requirements would be imposed; it had decided that route maps were required. However, the Legislature delegated to the Commission the limited role to decide if the route maps are to be submitted on paper or electronically, and the role of the municipalities is even more limited, only to provide “input” to the Commission with respect to whether the route maps should be paper or electronic. MCL 484.3106(8). Hence, Detroit’s suggestion that each municipality be authorized to set mapping requirements is inconsistent with the language of the statute.

In addition to rejecting Detroit’s proposal, AT&T urges the Commission to reject the Staff’s recommendation because of the cost and unnecessary administrative difficulties it would cause. Additionally, the Staff’s recommendation of electronic filings fails to address the licensing issues and to recognize that confidential information contained in route maps must to be protected. AT&T agrees with MCI and recommends that the Commission adopt the Adobe®/PDF format. Further, it agrees with TDS’s proposal to use paper maps, but believes a provider should be given the option of using electronic means. It views the Staff’s proposal to view route maps using the provider’s computer and software to be impractical. Further, it argues, the option to use multiple alternate formats would defeat the concept of a uniform, streamlined application process. The Staff has not addressed how the ability to augment or manipulate information is necessary for evaluating a permit application or how the commingling of this information with other data can protect providers’ confidential or proprietary information. AT&T maintains that electronically aggregating this confidential and proprietary information makes it vulnerable to misuse. Finally, AT&T agrees with Verizon that there is no statutory basis to require that providers disclose any information beyond the location of the providers’ existing and proposed facilities.

Verizon

Verizon urges the Commission to adopt the Staff's proposal with one modification, that telecommunications providers submit maps to the Commission and municipalities on CD-ROM in an electronic format with DGN, DWG, or DXF extensions. Verizon believes that the Staff's proposal was a reasonable compromise for providers as it allows them the flexibility to determine the electronic format of their route maps, which saves them the software and data conversion costs to match the multiple systems that Michigan's 2,000 municipalities may employ.

SBC

SBC maintains that Detroit's proposal goes beyond format, but seeks substantive and content requirements for route maps, which would require tremendous expense and expenditure of time. SBC states that it is one of the oldest and largest providers of telecommunications services in the state with over 5 million wholesale and retail access lines and facilities located in over 471 million linear feet of public rights-of-way. If the format were other than the maps SBC currently maintains, it argues that it would need longer than any other provider to comply, at substantially greater expense. SBC states that it has not mapped or recorded its facilities in reference to fixed locations or surveying monuments. It says that until recently, outside plant location records were kept by hand and were not drawn to scale, but were exaggerated to show connectivity detail, not precise locational information. SBC maintains that it would need 10 years and tens to hundreds of millions of dollars to perform the work needed to create Detroit plan maps. SBC further maintains that the Detroit plan is not useful unless all facilities in the rights-of-way are mapped to the same degree of accuracy.

SBC points out that the only discretion granted to the Commission is to decide if route maps are paper or electronic. SBC maintains that the general statement of purpose for the METRO Act

cannot serve to change the express statutory language of Section 6(8). Finally, it proposes that because the METRO Act requires that maps submitted by providers should be kept confidential for competitive and national security reasons, SBC urges the Commission to keep the information in route maps confidential.

SBC has no problem with supplying the electronic maps in the Staff's proposal, provided it is able to work out appropriate terms with its vendor, if supplied via e-mail. However, SBC sees no benefit to burn CD ROMs unless the Staff or municipality is willing to bear the costs associated with such a requirement. However, SBC believes it is inappropriate to require an amendment to SBC's software license agreements, which would compel SBC to purchase software for the Staff. SBC agrees with TDS that the current practice of submitting paper maps has worked and should continue. However, if the Commission requests an electronic format, it should be reciprocal. SBC proposes a threshold standard, e.g., that all maps be electronic unless either party seeks a waiver from the Commission.

Discussion

Section 484.3106(8) of the METRO act provides that "[t]he commission shall, after input from providers and municipalities, require that the route maps required under this section be in a paper or electronic format as the commission may prescribe." After reviewing all the comments and reply comments, it appears to be the general consensus of providers and municipalities that route maps should be submitted in an electronic format. Only TDS urges the Commission to adopt a paper only format. Although SBC agrees with TDS's paper proposal, it is receptive to the Staff's electronic proposal, with modifications.

The Commission, therefore, finds that an electronic format is the preferred method for submission of route maps. There were two proposed plans discussed during the comment period. These plans will be referred to as the Detroit plan and the Staff plan.

Detroit Plan

The Detroit plan is premised on the idea that one of the purposes of the METRO Act is to assist municipalities in economic development. The Detroit plan further advocates that control of the public rights-of-way is a local function and, therefore, encourages route maps to be submitted in paper or electronic format, or both, as determined by the municipality. However, if the electronic format is chosen, it should be within a defined coordinate system, which allows for integration with other GIS information systems with identification of the positional accuracy standard.

In its comments, TDS disagrees that a general purpose of the METRO Act is to spur economic development and rejects the idea that information on route maps can be shared with other state agencies.

In the reply comments, all other parties advocated rejection of the Detroit plan. TAM and AT&T specifically reject the idea that the purpose of the METRO Act, beyond encouraging the expansion of telecommunications providers in the state, is to generally promote the economic development of municipalities.

Further, TAM and AT&T object to the Detroit plan's initial premise that the format of route maps should be a local choice. TAM and AT&T point out that if the Legislature had intended that the choice be local, it would not have directed, in Section 6(8) of the METRO Act that the Commission select the format for route maps. AT&T further argues that in Section 6(8) the Legislature indicated that municipalities would have an even more limited role, specifically, to provide only

input to the Commission prior to its selection of the format for the route maps. MCI maintains that the Detroit plan would undermine the legislative intent for uniform route maps.

Further, TAM, AT&T, and SBC argue that the Detroit plan would dictate the content of route maps, including the requirement for scaled, engineered plans, which goes beyond the Commission's task to select a paper or electronic format. MCI points out that no other utilities are required to provide detailed route maps, as proposed by the Detroit plan.

In addition, TAM and AT&T argue that the Detroit plan would thwart the intent of the METRO Act to streamline the process for and make less costly the expansion of telecommunications providers in Michigan.

Finally, TAM, AT&T, and SBC have concerns about protecting confidential information and homeland security, which could be compromised with the detailed route maps required by the Detroit plan.

Staff Plan

The Staff plan requires that providers submit maps on CD-ROM in an electronic format with DGN, DWG, or DXF extensions. If a provider is unable to provide electronic maps, it must submit supporting documentation to seek a waiver from the Commission. If the municipality does not have electronic capabilities, then the municipality and provider must work out an acceptable arrangement.

TDS encourages the Commission to reject the Staff plan and to require that route maps be submitted in paper form only. It opines that the paper method has been the traditional method for submission of route maps and should not be changed. SBC agrees with TDS's paper only proposal, but does find the Staff plan acceptable with one modification, that electronic information not be captured on a CD-ROM.

MCI could accept the Staff plan if it allowed for electronic transmission in the PDF format. The Joint Carriers (AT&T, SBC, TCG Detroit, TAM, and CLEC) also would support the Staff plan if the electronic submissions were allowed to be in the Adobe®/PDF format. Verizon supports the Staff plan, if the Commission requires that route maps submitted to municipalities are in the same format as those submitted to the Commission. SBC supports the Staff plan if it can work out terms with its vendor, and provided the electronic format can be sent via e-mail. SBC encourages the Commission not to require electronic capture on CD-ROMs, which it maintains would be too expensive.

TAM and AT&T argue in their reply comments that the Staff does not need route maps that can be manipulated. TAM asserts that the cost of the Staff plan is excessive and points out that only new facilities will be filed with the Commission under the METRO Act, therefore, such incomplete information would be of no value. AT&T objects to the current Staff plan, alleging it is too costly and difficult to administer, but would agree with the plan if it allowed for a paper alternative. AT&T further believes that the choice of multiple electronic formats defeats the goal of uniformity.

MCI and AT&T are concerned that confidential information and national security could be compromised with the electronic format required by the Staff plan. MCI points out that no other utilities are required to file on CD-ROM such confidential information with the Commission.

Findings

The Commission agrees with TDS, TAM, and AT&T and does not find that the intent of the METRO Act is to spur economic development generally, but rather to encourage the economic development of telecommunications providers, by making the process easier, quicker, and less costly for providers to enter or expand in the telecommunications market. Section 1(2)(c) of the

METRO Act indicates specifically that the purpose of the Act is to “[i]mprove the opportunities for economic development and the delivery of telecommunication services.” MCL 484.3101. A fair reading of the statute indicates that the economic development purpose of the METRO Act was specific to the telecommunications industry.

Further, the Commission agrees with TAM, AT&T, and MCI that the Legislature, when delegating to the Commission in Section 6(8) of the METRO Act the authority to decide the format for route maps, did not intend for the choice of format to be left to each individual municipality, but vested the decision only with the Commission.

In addition, the Commission agrees with TAM, AT&T, SBC, and MCI that the Detroit plan would make content requirements of the route maps, which is beyond the format question the Legislature delegated to the Commission to decide. The Metro Authority may, pursuant to Section 6(5) of the Metro Act, wish to impose requirements similar to those contained in paragraphs 1 through 4 of the June 27, 2003 minute action. That is not the purpose of today’s order.

Additionally, the Commission agrees with TAM and AT&T that the Detroit plan would not streamline the process for providers to enter the telecommunications market but would unduly complicate the process.

Finally, the Commission is sensitive to the confidentiality and national security concerns of TAM, AT&T, and SBC, should they be required to disclose the detailed information required of the Detroit plan, which could later be used in other city planning or economic development strategies. Therefore, the Commission rejects the Detroit plan for all of the reasons discussed above.

However, after considering all the arguments presented, it does appear that there is a general consensus, with minor concerns, that the Staff plan is workable. The Commission declines to accept MCI and the Joint Carriers recommendation that the Commission allow route maps to be submitted in the Adobe® or PDF format. Documents submitted in the Adobe® or PDF format may lack detail and clarity of resolution.

Further, the Commission rejects SBC's argument that CD-ROM capture is too expensive and difficult to administer. SBC's suggestion to submit the maps via e-mail would not be a workable solution for the Commission due to capacity limitations on the Commission's e-mail system. Finally, the Commission is unconvinced by providers' concerns for confidentiality. Section 6(5) of the METRO Act is very specific and provides that "information included in the route maps of a provider's existing and proposed facilities that is a trade secret, proprietary, or confidential information is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246." MCL 484.3106(5). Therefore, any trade secret, proprietary, or confidential information is protected from disclosure pursuant to the FOIA. A provision, which exempts all information in the route maps from disclosure as proposed by MCI, could be contrary to Section 6(5), which calls for a judgment or determination of the information "that is trade secret, proprietary, or confidential information."

The Commission finds that the following requirements should be adopted:

Providers shall submit maps to the municipalities and the Commission on a compact disk (CD) in an electronic format with any of the following file extensions: DGN, DWG, or DXF. If the MPSC Staff does not have the software required to read the CD, it is the company's responsibility to provide MPSC Staff with the software needed to read the information contained on the CD. The company can either provide the MPSC Staff with a copy of the software, or provide an html link to download the free viewer, or, as a last resort, provide access to a computer containing the software at a convenient company location or at the MPSC's offices.

In order to avoid any violation of license agreements with base map providers, the telecommunications providers may need to amend their current contracts with their base map providers and include METRO Act requirements.

If the provider is not able to provide electronic maps, the provider must seek a waiver from the Commission. A request for a waiver shall include all necessary supporting documentation. If a municipality does not have electronic capabilities, the municipality and the provider should work out an acceptable agreement.

Providers are still subject to municipal construction permitting requirements that are separate and distinct from the permit and mapping requirements of the METRO Act.

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. Providers subject to the METRO Act will submit route maps as required by statute in the format set out in this order.

THEREFORE, IT IS ORDERED that:

- A. Providers subject to the Metropolitan Extension Telecommunications Rights-of-way Oversight Act, Public Act 48 of 2002, MCL 484.3106, shall file route maps with municipalities and the Commission in the format set out in this order.
- B. The route map format requirements are effective on the date of this order.
- C. Providers may request a waiver from immediate compliance, by submitting supporting documentation explaining why they are unable to comply and the expected date of compliance.

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 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 November 25, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of November 25, 2003.

Its Acting Executive Secretary

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Suggested Minute:

“Adopt and issue order dated November 25, 2003 adopting mapping format requirements for telecommunications providers pursuant to Section 6(8) of the METRO Act, as set forth in the order.”