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# MILLER CANFIELD

MICHAEL C. RAMPE  
TEL (517) 483-4941  
FAX (517) 374-6304  
E-MAIL rampe@millercanfield.com

**Miller, Canfield, Paddock and Stone, P.L.C.**  
One Michigan Avenue, Suite 900  
Lansing, Michigan 48933  
TEL (517) 487-2070  
FAX (517) 374-6304  
[www.millercanfield.com](http://www.millercanfield.com)

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February 8, 2014

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

**RE: WC Docket Nos. 10-90 and 14-228 and CC Docket No. 01-92**

Dear Secretary Dortch,

Attached for filing in the above matter are the Comments of the Michigan Local Exchange Carriers On Petition For Declaratory Ruling.

If you have any questions regarding this filing, please direct them to the undersigned.

Sincerely,

/s/ Michael C. Rampe

Michael C. Rampe

Enclosure

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling To Clarify the	)	WC Docket No. 14-228
Applicability of the IntraMTA Rule to LEC-	)	
IXC Traffic and Confirm That Related IXC	)	
Conduct Is Inconsistent with the	)	
Communications Act of 1934, as Amended,	)	
and the Commission's Implementing Rules	)	
and Policies	)	

**COMMENTS OF THE MICHIGAN LOCAL EXCHANGE CARRIERS ON  
PETITION FOR DECLARATORY RULING**

Michael C. Rampe (Michigan Bar No. P58189)  
Todd A. Holleman (Michigan Bar No. P57699)  
Conor T. Fitzpatrick (Michigan Bar No. P78981)  
Theresa A.G. Staley (Michigan Bar No. P56998)  
Miller, Canfield, Paddock and Stone, PLC  
One E. Michigan Avenue, Suite 900  
Lansing, MI 48933

February 8, 2015

Miller, Canfield, Paddock and Stone, P.L.C., on behalf of numerous Michigan Local Exchange Carriers (“Michigan LECs”) that have been named Defendants in litigation filed by interexchange carriers (“IXC”) MCI Communications Services Inc. (“MCI”), Verizon Select Services, Inc. (“Verizon”), and Sprint Communications Company L.P. (“Sprint”),<sup>1</sup> hereby provide their comments on the Petition for Declaratory Ruling filed by Bright House Networks LLC et al. in this matter on November 10, 2014 (“Petition”). The Michigan LECs provide these Comments pursuant to this Commission’s Public Notice, dated December 10, 2014, seeking comment on the Petition.

The litigation in which the Michigan LECs have been named as Defendants was filed by Sprint in the United States District Court for the Eastern District of Michigan (Case No. 2:14-cv-12087) and Western District of Michigan (Case No. 1:14-cv-00565), and by MCI in the Western District of Michigan (Case No. 1:14-00937). Motions to Dismiss on the merits of the Sprint cases were filed by the Michigan LECs in those matters, which remain pending.<sup>2</sup> Subsequently, pursuant to an order dated December 16, 2014 and subsequent transfer orders issued by the United States Judicial Panel on Multidistrict Litigation, the Sprint and MCI litigation matters were consolidated with other similar causes of action filed nation-wide and transferred to the

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<sup>1</sup> The Michigan LECs are: (i) Ace Telephone Company of Michigan, Inc., Baraga Telephone Company, Hiawatha Telephone Company, Upper Peninsula Telephone Company, and Westphalia Telephone Company, which are the defendants in litigation filed by MCI in the United States District Court for the Western District of Michigan (Case No. 1:14-00937); (ii) Ace Telephone Company of Michigan, Inc., Allendale Telephone Company, Drenthe Telephone Company, Carr Telephone Company, Climax Telephone Company, Kaleva Telephone Company, Upper Peninsula Telephone Company, Bloomingdale Telephone Company, Inc., Chippewa County Telephone Company, Hiawatha Telephone Company, Midway Telephone Company, and Ontonagon County Telephone Company, which are defendants in the litigation filed by Sprint in the United States District Court for the Western District of Michigan (Case No. 1:14-cv-00565); and (iii) Deerfield Farmers Telephone Company, Lennon Telephone Company, Sand Creek Telephone Company, Springport Telephone Company, and Winn Telephone Company, which are defendants in the litigation filed by MCI in the United States District Court for the Eastern District of Michigan (Case No. 2:14-cv-12087).

<sup>2</sup> As of the date of these Comments, the Michigan LECs in the MCI litigation have not yet filed a responsive pleading to MCI’s Complaint pursuant to the order entered by the Northern District of Texas on December 19, 2014 staying “all deadlines to file responsive pleadings”. Case Number 3:14-cv-04418-D, Document Number 11.

United States District Court for the Northern District of Texas for adjudication (“Texas Federal District Court”) (collectively “Litigation”).

#### **I. Comments on Petition for Declaratory Ruling**

On or about November 10, 2014, the Petitioners, who are similarly situated to the Michigan LECs herein, filed the subject Petition for Declaratory Ruling of the LEC Petitioners with the Commission. As will be discussed below, the arguments and request for relief of the Petitioners in the within matter substantially mirror those arguments of the Michigan LECs in their Motions to Dismiss, currently pending in the Northern District of Texas. As a result, the Michigan LECs support the Petitioners, including all primary relief requested therein.

The Petitioners “request that the Commission issue a declaratory ruling to confirm that the ‘intraMTA rule’ – under which intraMTA calls exchanged between local exchange carriers (‘LECs’) and commercial mobile radio service (‘CMRS’) carriers are subject to reciprocal compensation – does not apply to LEC charges billed to an *interexchange carrier* (‘IXC’) when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services.” Petition, page 2. The Petitioners also ask the FCC to declare that “attempts of certain IXCs to misapply the intraMTA rule to avoid paying access charges and to claim entitlement to substantial retroactive refunds are inconsistent with the Communications Act of 1934 . . . and the Commission’s implementing rules and policies.” *Id.* Michigan LECs support both of these requests for relief and note that they are consistent with the relief requested by Michigan LECs in their Motions to Dismiss.

Similarly, the Michigan LECs consider it worthy of note that, in support of their Petition, the Petitioners draw attention to the fact that the “IXCs not only paid both terminating and originating access charges for years in connection with this alleged intraMTA traffic, without

objection, but also presumably recovered the costs associated with those payments from their own retail and wholesale customers (through long-distance or other charges).” *Id.* at 5. Petitioners then point out that the IXCs are not only “large, sophisticated carriers” that could not have possibly just discovered the intraMTA rule, but that the IXCs are “making such claims even though their own LEC operations for years engaged in (and still engage in) the very same billing practices that these companies (in their capacity as IXCs) now contend have been unlawful for nearly two decades.” *Id.* These arguments, along with others, were similarly the basis for Michigan LECs’ Motions to Dismiss, which are pending in the Texas Federal District Court.

The Michigan LECs share the same concerns as the Petitioners over the IXCs’ use of an unauthorized self-help remedy to withhold payments of previously undisputed balances for tariffed access services, thereby helping themselves to the refunds to which they claim entitlement. The Michigan LECs also echo Petitioners’ concerns over the practical effect of a decision which favors the position of the IXCs. A decision favoring the IXCs would require significant guidance for the LECs on billing matters relating to traffic between IXCs and LECs. The Michigan LECs share the concerns of Petitioners regarding the effect of a retroactive application of a decision in favor of the IXCs because retroactive application would not only create a substantial refund liability, but also be an enormously complex and disruptive exercise to go back in time and sort out “how much intraMTA wireless traffic was transmitted via tariffed access service, over what period of time, and what offset should be calculated based on the difference between the applicable access rates and appropriate reciprocal compensation fees.” *Id.* at 7-8.

Like Petitioners, Michigan LECs find the decision in *Sprint Communs Co., L.P. v. Butler-Bemer Mutual Tel. Co.*, 2014 U.S. Dist. LEXIS 141758 (N.D. Iowa Oct. 6, 2014), to be

well-reasoned, consistent with the law, and consistent with the past practices between the LECs and IXCs as it relates to access charges and request that it be followed.

## **II. Conclusion**

Whether the FCC rules in this matter as requested by Petitioners, or whether the issues are decided by the Texas Federal District Court, the issues and the requested relief remain substantially the same. The Michigan LECs support the primary legal arguments set forth by the Petitioners.

Respectfully submitted,

/s/ Michael C. Rampe

Michael C. Rampe (Michigan Bar No. P58189)  
Todd A. Holleman (Michigan Bar No. P57699)  
Theresa A.G. Staley (Michigan Bar No. P56998)  
Conor T. Fitzpatrick (Michigan Bar No. P78981)  
Miller, Canfield, Paddock and Stone, PLC  
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