

At a hearing on July 6, 2005, Osirus presented the testimony and exhibits of Scott A. Baldwin, its President. At the close of the hearing, the parties waived compliance with the provisions of Section 81 of the Michigan Administrative Procedures Act, MCL 24.281.

After a review of the application and testimony, the Commission finds that approval of the application is in the public interest. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. Approval of the request for a license to provide basic local exchange service will expand the opportunities for competition.

Accordingly, the application should be approved. The grant of a license is conditioned on full compliance with the provisions of the MTA, as well as the anti-slamming procedures adopted in Case No. U-11900 and the number reclamation process adopted in Case No. U-12703. Failure to comply fully may result in revocation of the license or other penalties. Further, the grant of a license is conditioned upon the provision of service to customers within a reasonable time. Failure to do so may result in revocation of the license. Finally, the Commission notes that any numbers obtained by the applicant are a public resource and are not owned by the applicant. Consequently, if the applicant fails to provide service or goes out of business, any numbers assigned to it are subject to reclamation.

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. Osirus possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to all residential and commercial customers within the

geographic area of the license and intends to provide service within one year from the date of this order.

c. Granting Osirus a license to provide basic local exchange service in the requested areas will not be contrary to the public interest.

THEREFORE, IT IS ORDERED that:

A. Osirus Communications, Inc., is granted a license to provide basic local exchange service in the areas currently served by Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, CenturyTel of Michigan, Inc., CenturyTel Midwest--Michigan, Inc., CenturyTel of Northern Michigan, Inc., CenturyTel of Upper Michigan, Inc., and SBC Michigan.

B. Osirus Communications, Inc., shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service, Osirus Communications, Inc., shall submit its tariff reflecting the services that it will offer and identifying the exchanges in which it will offer service.

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 after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of August 1, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
OSIRUS COMMUNICATIONS, INC.,)	
for a temporary license to provide basic local)	Case No. U-15356
exchange services in eight currently unserved areas)	
in the lower peninsula of Michigan.)	
_____)	

At the September 18, 2007 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

OPINION AND ORDER

Osirus Communications, Inc. (Osirus), was granted a license to provide basic local exchange service in the August 1, 2005 order in Case No. U-14494. On July 27, 2007, Osirus filed an application, pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, to permanently expand its license to provide basic local exchange service to eight currently unserved areas in Gladwin, Presque Isle, Montmorency, Oscoda, Cheboygan, Ogemaw and Alcona counties in the lower peninsula of Michigan. Osirus seeks authority to serve only territories within these counties that are currently unassigned and have no access to wireline phone service. It also requested a temporary license expansion.

MCL 484.2301(2) states: "Pending a determination of an application for a license, the commission without notice and hearing may issue a temporary license for a period not to exceed

1 year.” Osirus states that it seeks a temporary license to allow it to begin engineering and construction of networks, and to seek necessary approvals from the Federal Communications Commission.

After a review of the application, the Commission finds that approval of the application is in the public interest.

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. Osirus should be granted a temporary license expansion.

THEREFORE, IT IS ORDERED that:

A. Osirus Communications, Inc., is granted a temporary license to provide basic local exchange service in the eight currently unserved areas in Gladwin, Presque Isle, Montmorency, Oscoda, Cheboygan, Ogemaw and Alcona counties described in its application.

B. Osirus Communications, Inc., shall provide basic local exchange service under the temporary license in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service under the temporary license, Osirus Communications, Inc., shall submit its tariff reflecting the services that it will offer and identifying the exchanges in which it will offer service.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Orjiakor N. Isiogu
Chairman

(S E A L)

/s/ Monica Martinez
Commissioner

/s/ Steven A. Transeth
Commissioner

By its action of September 18, 2007.

/s/ Mary Jo Kunkle
Its Executive Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

In the Matter of)
)
OSIRUS COMMUNICATIONS, INC.)
)
Petition for Waivers of the Commission's)
Rules to Participate in NECA Pools and)
Tariffs and to Obtain Accelerated USF Support)
_____)

CC Docket No. 96-45

**PETITION FOR WAIVERS OF THE COMMISSION'S
RULES TO PARTICIPATE IN NECA POOLS AND TARIFFS
AND TO OBTAIN ACCELERATED USF SUPPORT**

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Filed: October 1st, 2007

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554

In the Matter of)
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OSIRUS COMMUNICATIONS, INC.)
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CC Docket No. 96-45

PETITION FOR WAIVERS OF THE COMMISSION'S
RULES TO PARTICIPATE IN NECA POOLS AND TARIFFS
AND TO OBTAIN ACCELERATED USF SUPPORT

I. Introduction

Osirus Communications, Inc. ("Osirus"), by its attorneys, pursuant to section 1.3 of the Commission's rules,¹ requests waivers of the Commission's rules as set forth herein to allow Osirus to become a member of the National Exchange Carrier Association ("NECA") and participate in NECA tariffs and pools, and to begin receiving high-cost Universal Service Fund ("USF") support in a timely manner. Specifically, Osirus requests the following:

- (1) Waivers of the definition of "telephone company" in sections 69.2(hh) and 69.601 and of the annual election filing deadline in section 69.3(e)(6) to allow Osirus to become a member of NECA and to immediately participate in NECA pools and tariffs;
- (2) Declaratory ruling that a waiver of the definition of "study area" in the Appendix-Glossary of Part 36 of the Commission's rules is not necessary;

¹ 47 C.F.R. § 1.3.

Waivers of sections 36.611 and 36.612 of the Commission's historical cost rules to allow Osirus to access USF high-cost loop support based on forecasted or estimated cost;

- (3) Waivers of the July 1, 2007, and October 1, 2007 state USF certification deadlines set forth in section 54.314(d) of the Commission's rules;
- (4) Waivers of data filing deadlines set forth in sections 54.301(b), and 54.903(a) of the Commission's rules.

The granting of the above waivers is essential to enable Osirus to economically serve the unserved areas. Without the above requested waivers, service to these areas would not be possible.

In the event any additional waivers are necessary to expedite Osirus' receipt of USF support and participation in NECA pools and tariffs, Osirus requests that such waivers be considered and granted on the Commission's own motion. If some of the waivers requested *herein* will require substantially more time for review than others, Osirus requests that those waiver requests be severed and those requiring less time be ruled upon while review of the other requests is pending.

II. Background

Osirus is a privately-held domestic company incorporated in the State of Michigan. On August 1, 2005, Osirus was granted by the Michigan Public Service Commission ("MPSC") a permanent license to provide basic local exchange service in Michigan. On July 27, 2007, Osirus applied to the MPSC for an expansion of the license to include eight areas in the lower peninsula of Michigan that have never been served by any local exchange provider. The eight unserved areas are located in Alcona County, Cheboygan County, Gladwin County, Montmorency County, Oscoda County, Ogemaw County and Presque Isle County in Michigan. Maps of the unserved territories can be viewed at <http://efile.mpsc.cis.state.mi.us/efile/docs/15356/0001.pdf>,

from page 13 to page 30. On September 18, 2007, the MPSC granted Osirus a temporary license to serve those eight unserved areas.

On September 24, 2007, Osirus filed a request with the MPSC for designation as an eligible telecommunications carrier (“ETC”) pursuant to section 214(e)(2) of the Federal Communications Act of 1996 (the “Act”)² and section 54.201 of the Commission’s rules.³ Osirus expects the MPSC to grant Osirus the ETC designation in the near future.

III. Good Cause Exists for the Requested Waivers

As a general matter, Commission rules may be waived for good cause.⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵ The waiver should serve the policy goals and principles which underlie the waived rules.⁶ In addition, the Commission “may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”⁷ Each of the waivers requested herein satisfies these standards.

A. Waiver of Definition of “Telephone Company”

As discussed in *2004 Skyline Order*, in order to become a member of NECA and to participate in the NECA pools and tariffs, a carrier must be a “telephone company,” as defined in

² Public Law No. 104-104, 110 Stat. 56 (1996)

³ 47 C.F.R. § 54.201.

⁴ 47 C.F.R. § 1.3.

⁵ *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission Rules*, WC Docket No. 05-174, Order, para. 5 (Rel. Aug. 11, 2005) (*2005 Allband Order*).

⁶ *City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 662-63 (D.C. Cir. 1984).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

Part 69 of the Commission's rules.⁸ Section 69.2(hh) of the Commission's rules defines a "telephone company" as an incumbent local exchange carrier ("ILEC"). Parts 54 and 69 of the Commission's rules define "incumbent LEC" as that term is defined in section 251(h)(1) of the Act.⁹ In addition, section 36.611 of the Commission's rules applies only to ILECs.¹⁰ Section 251(h)(1) of the Act defines an "incumbent local exchange carrier" as a provider of telephone exchange service and a member of NECA on the date of enactment of the 1996 Act (or a successor or assign of such a carrier).¹¹ As a recently established carrier that is not a successor or assign of an ILEC, Osirus does not meet the definition of an ILEC and thus, does not meet the definition of a "telephone company" in section 69.2(hh) of the Commission's rules.

However, similar to Skyline Telephone in *2004 Skyline Order*, Adak Telephone in *Adak Order*,¹² and Allband in *Allband Order*, Osirus' circumstances warrant a waiver of definition of "telephone company" in section 69.2(hh). The purpose of the ILEC restriction in Parts 36, 54 and 69 is to distinguish competitive LECs from incumbent LECs for purpose of calculating universal service support and access charges.¹³ In *Wilderness Valley Telephone Company, Inc.*, 13 FCC Rcd 6573 (March 31, 1998), the Commission's Wireline Bureau granted waivers of sections

⁸ *M&L Enterprise, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Section 36.611, 63.612, and 69.2(hh) of the Commission's Rules*, Order, 19 FCC Rcd 6761, para. 24 (2004) ("*2004 Skyline Order*").

⁹ 47 C.F.R. §§ 51.5, 54.5, 69.2(hh).

¹⁰ 47 C.F.R. § 36.611.

¹¹ 47 U.S.C. § 251(h)(1).

¹² *In the Matter of Adak Eagle Enterprises, LLC d/b/a/ Adak Telephone Utility: Petition for Waiver of Section 36.611, 36.612, 54.314(d), 54.903(a)(3), 69(hh) and 69.3(e)(6) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 05-3352, 20 FCC Rcd 20543 (Rel. Dec. 30, 2005) ("*Adak Order*").

¹³ *Allband Order*, para. 7, fn. 21.

69.2(hh) and 69.601 to permit a small new local exchange carrier serving a previously unserved area to become a member of NECA and participate in NECA tariffs and pools. The Bureau noted that when the Commission revised section 69.2 to require that telephone companies be ILECs to participate in NECA tariffs and pools, the Commission did not specifically provide for companies that do not meet the statutory definition of “incumbent local exchange carrier,” that come into existence after the enactment of the 1996 Act, and that serve previously unserved areas. It therefore waived the LEC requirement of Part 69 for Wilderness Valley Telephone Company (a small new LEC serving approximately 40 subscribers in a previously unserved area), so that it could become a member of NECA and participate in NECA tariffs and pools.

Participation in NECA will allow Osirus to avoid the costs of filing and maintaining its own company-specific interstate tariff. Osirus is a small newly established company. Osirus would incur disproportionately excessive costs to prepare company specific tariffs in order to serve small number of customers. It is in the public interest to grant the requested waiver to allow Osirus and its customers the benefit of cost saving and lower rates available through NECA participation.

In addition to a waiver of the definition of “telephone company” in section 69.2(hh), Osirus also requests a waiver of section 69.3(e)(6) of the Commission’s rules to allow Osirus to enter NECA’s Tariff No. 5 outside the annual election period. This waiver will help expedite Osirus’ participation in NECA.

For all of the foregoing reasons, Osirus requests that the Commission waive the definition of “telephone company” in section 69.2(hh) of the Commission’s rules; waive the incumbent LEC requirements of section 36.6111, 54.301, and 54.303 of the Commission’s rules; and waive

section 69.3(e)(6) of the Commission's rules to allow Osirus to promptly participate in NECA pools and tariffs and receive universal service support.

B. Study Area Waiver

Osirus believes that it is not required to seek a waiver of the definition of "Study Area" in the Appendix-Glossary of Part 36 of the Commission's rules for the purpose of establishing a study area serving a heretofore unserved area. A carrier must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.¹⁴ In the *2004 Skyline Order*, the Commission clarified that "a study area waiver request must be filed with the Commission where a company is seeking to create a new study area from within one or more existing study areas."¹⁵ Study area waiver is not required "under three conditions: (a) a separately incorporated company is establishing a study area for a previously unserved area; (b) a company is combining previously unserved territory with one of its existing areas in the same state; and (c) a holding company is consolidating study area in the same state."¹⁶

Osirus' proposed study areas, the eight unserved areas that Osirus will be serving, have never been part of any existing study area. Moreover, these areas have never been served by any licensed local exchange carrier or designated ETC. Osirus is a separately incorporated company

¹⁴ *MIS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*. CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*), adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984).

¹⁵ *2004 Skyline Order*, para. 13 (2004).

¹⁶ *Request for Clarification Filed by National Exchange Carrier Association, Inc., and Petitions for Waivers filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc. Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's rules*, AAD 95-173, AAD 96-29, AAD 96-51, Memorandum Opinion and Order, 11 FCC Rcd 8156, 8160 (Com. Carr. Bur. July 16, 1996).

establishing a study area for a previously unserved area. The Commission has concluded on several occasions that a waiver is not necessary if the proposed study area is not within any existing study area.¹⁷ Osirus respectfully requests that the Commission issues a declaratory ruling that Osirus is not required to request a study area waiver for the eight unserved areas that Osirus is proposing to serve.

C. Waiver of Sections 36.611 and 36.612

Osirus will be a incumbent “rural telephone company” under section 153(37)¹⁸ of the Act to serve those eight unserved areas. Accordingly, it will be eligible to receive USF cost recovery assistance. Under the Commission’s rules, calculation of high-cost loop support is based on historical cost information. However, as a company proposing to serve an area that has not previously been served by any carrier, Osirus does not have historical cost information reflecting the high costs that Osirus will soon incur to provide adequate and reliable service in those eight unserved areas.

Under these circumstances, strict application of section 36.611 and 36.612 of the Commission’s rules would preclude Osirus from receiving high-cost loop support related to Osirus’ new telephone system and administration and operations 2010¹⁹ (although the quarterly update provision of section 36.612 could reduce this period to some extent).²⁰ During this period, Osirus would be forced to look to its rural customers for cost recovery of amounts that

¹⁷ See, e.g. *Allband Order*, para. 10; *Adak Order*, para. 6.

¹⁸ 47 U.S.F. § 153(37).

¹⁹ The data submission and filing requirements of Part 36 of the Commission’s rules operate to postpone the eligibility of a newly established local exchange carrier for receipt of USF support until its third year of operation. See, e.g. *2004 Skyline Order*, para. 19.

²⁰ 47 C.F.R. § 36.612.

should otherwise be recovered through the USF in a manner consistent with established Commission policy and practice.

In the *Adak Order*, the Commission agreed with Adak Telephone that waiver of sections 36.611 and 36.612 is appropriate to allow newly established carriers lacking historical cost data to receive support based on estimated costs that are subject to true-up.²¹ Similarly, “delaying the timing of high-cost loop support could have the unintended effect of discouraging new carriers from extending service in unserved remote areas, thereby frustrating the statutory goal of promoting the provision of services at reasonable rates.”²² Again, under strict application of the Commission’s historical cost rules, Osirus’ customers would have to wait at least two years from the much needed local service rate relief that will result from high-cost loop support related to its projected equipment and operational costs. Osirus seeks this waiver treatment until such time as Osirus’ 2007 and 2008 costs become historical costs upon which USF recovery can be calculated under the normal procedures set forth in sections 36.511 and 36.612 of the Commission’s rules.

D. Waiver of Sections 54.301(b), 54.314(d), and 54.903(a)

The Commission has waived Sections 54.301(b), 54.314(d) and 54.903(a) either on its own motion or upon request on several occasions.²³ Pursuant to section 54.314 of the Commission’s rules, a state that desires a rural ILEC within its jurisdiction to receive universal service support must file an annual certification with the Universal Service Administrative

²¹ *Adak Order*, para. 9.

²² *Adak Order*, para. 9. *Id.*

²³ See, e.g. *M&L Enterprise, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Section 54.301(b), 54.314(d), and 54.903(a) of the Commission’s Rules*, CC Docket No. 96-45, Order, DA 05-84, 20 FCC Rcd 653 (WCB 2005) (“2005 Skyline Order”); *Adak Order*, paras. 11-13; *Allhand Order*, para. 8.

Company ("USAC"). The certification must be filed by July 1 to receive the last quarter of the calendar year and by October 1 of the preceding calendar year to receive support beginning in the first quarter of the subsequent calendar year. Section 54.301(b) of the Commission's rules provides that ILECs file certain data with USAC by October 1 of each year to receive local switching support ("LSS") and interstate common line support ("ICLS) for the following calendar year. Section 54.903(a)(3) of the Commission's rules provide that rate-of-return LECs must file certain cost and revenue data on March 31 of each year to receive ICLS support from July 1 through June 30 of the next year.²⁴ In addition, section 54.903(a)(1) of the Commission's rules provides that rate-of-return LECs must file line count data by customer class and disaggregation zone, if any, annually on July 31.²⁵

In the *2005 Skyline Order*, the Wireline Competition Bureau, on its own motion, waived state certification and data filing deadlines in sections 54.301(b), 54.314(d), and 54.903(a) of the Commission's rules to allow Skyline Telephone to receive high-cost universal service support beginning in 2004.²⁶ For the same reasons consistent with the Commission's orders in *2005 Skyline Order*, *Allband Order* and *Adak Order*, and as were stated previously with regard to the waiver of the Commission's rules for high-cost loop support, good cause exists to grant Osirus these additional waivers to allow Osirus to be eligible to receive high-cost support upon obtaining ETC designation from the MPSC. Waiver of these deadlines will allow Osirus to begin receiving high cost loop, local switching, and interstate common line support on the dates that it would otherwise be entitled to receive such support, absent the waived requirements.

²⁴ 47 C.F.R. § 54.903(a)(3).

²⁵ 47 C.F.R. § 54.903(a)(1).

²⁶ See *2005 Skyline Order*, 20 FCC Rcd at 655, para. 7.

For the reasons stated above, Osirus requests a waiver of the filing deadlines set forth in section 54.301(b) and 54.903(a) of the Commission's rules and a waiver of the July 1, 2007 and October 1, 2007 state USF certification deadlines set forth in section 54.314(d), as necessary to allow Osirus to receive LSS and ICLS upon obtaining ETC designation from the MPSC.

IV. Conclusion

Osirus Communications, Inc. respectfully requests the following:

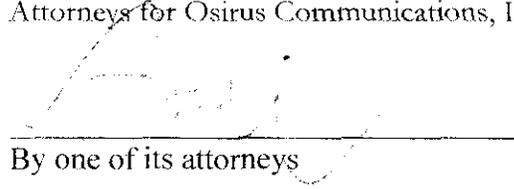
- (1) Waivers of the definition of "telephone company" in sections 69.2(hh) and 69.601 and of the annual election filing deadline in section 69.3(e)(6) to allow Osirus to become a member of NECA and to immediately participate in NECA pools and tariffs;
- (2) Declaratory ruling that a waiver of the definition of "study area" in the Appendix-Glossary of Party 36 of the Commission's rules is not necessary;
- (3) Waivers of sections 36.611 and 36.612 of the Commission's historical cost rules to allow Osirus to access USF high-cost loop support based on forecasted or estimated cost;
- (4) Waivers of the July 1, 2007, and October 1, 2007 state USF certification deadlines set forth in section 54.314(d) of the Commission's rules;
- (5) Waivers of data filing deadlines set forth in sections 54.301(b), and 54.903(a) of the Commission's rules.

Granting these waivers will ensure administration of USF in a manner consistent with the Commission's goal of assisting local exchange carriers in serving high-cost rural areas and maintaining affordable local service. In the event any additional waivers are necessary to expedite Osirus' receipt of USF support and participation in NECA pools and tariffs, Osirus

requests that such waivers be considered and granted on the Commission's own motion. If some of the waivers requested herein will require substantially more time for review than others, Osirus requests that those waiver requests be severed and those requiring less time be ruled upon while review of the other requests is pending.

RESPECTFULLY SUBMITTED this 1st day of October, 2007.

Field Law Group, PLLC
Attorneys for Osirus Communications, Inc.



By one of its attorneys

Gary L. Field (P37270)
Hai Jiang (P67088)

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
OSIRUS COMMUNICATIONS, INC., for a)
license to provide basic local exchange service)
in the areas currently served by Verizon North Inc.)
and Contel of the South, Inc., d/b/a Verizon North)
Systems, CenturyTel of Michigan, Inc., CenturyTel)
Midwest--Michigan, Inc., CenturyTel of Northern)
Michigan, Inc., CenturyTel Of Upper Michigan, Inc.,)
and SBC Michigan.)
_____)

Case No. U-14494

At the August 1, 2005 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

OPINION AND ORDER

On April 22, 2005, Osirus Communications, Inc. (Osirus), filed an application, pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, for a license to provide basic local exchange service in the areas currently served by Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, CenturyTel of Michigan, Inc., CenturyTel Midwest--Michigan, Inc., CenturyTel of Northern Michigan, Inc., CenturyTel of Upper Michigan, Inc., and SBC Michigan.

At a hearing on July 6, 2005, Osirus presented the testimony and exhibits of Scott A. Baldwin, its President. At the close of the hearing, the parties waived compliance with the provisions of Section 81 of the Michigan Administrative Procedures Act, MCL 24.281.

After a review of the application and testimony, the Commission finds that approval of the application is in the public interest. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. Approval of the request for a license to provide basic local exchange service will expand the opportunities for competition. Accordingly, the application should be approved. The grant of a license is conditioned on full compliance with the provisions of the MTA, as well as the anti-slammings procedures adopted in Case No. U-11900 and the number reclamation process adopted in Case No. U-12703. Failure to comply fully may result in revocation of the license or other penalties. Further, the grant of a license is conditioned upon the provision of service to customers within a reasonable time. Failure to do so may result in revocation of the license. Finally, the Commission notes that any numbers obtained by the applicant are a public resource and are not owned by the applicant. Consequently, if the applicant fails to provide service or goes out of business, any numbers assigned to it are subject to reclamation.

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. Osirus possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to all residential and commercial customers within the

geographic area of the license and intends to provide service within one year from the date of this order.

c. Granting Osirus a license to provide basic local exchange service in the requested areas will not be contrary to the public interest.

THEREFORE, IT IS ORDERED that:

A. Osirus Communications, Inc., is granted a license to provide basic local exchange service in the areas currently served by Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, CenturyTel of Michigan, Inc., CenturyTel Midwest--Michigan, Inc., CenturyTel of Northern Michigan, Inc., CenturyTel of Upper Michigan, Inc., and SBC Michigan.

B. Osirus Communications, Inc., shall provide basic local exchange service in accordance with the regulatory requirements specified in the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, including the number portability provisions of Section 358, the anti-slamming procedures adopted in Case No. U-11900, and the number reclamation process adopted in Case No. U-12703.

C. Before commencing basic local exchange service, Osirus Communications, Inc., shall submit its tariff reflecting the services that it will offer and identifying the exchanges in which it will offer service.

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 after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of August 1, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

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section 69.3(e)(6) of the Commission's rules to allow Osirus to promptly participate in NECA pools and tariffs and receive universal service support.

B. Study Area Waiver

Osirus believes that it is not required to seek a waiver of the definition of "Study Area" in the Appendix-Glossary of Part 36 of the Commission's rules for the purpose of establishing a study area serving a heretofore unserved area. A carrier must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges.¹⁴ In the *2004 Skyline Order*, the Commission clarified that "a study area waiver request must be filed with the Commission where a company is seeking to create a new study area from within one or more existing study areas."¹⁵ Study area waiver is not required "under three conditions: (a) a separately incorporated company is establishing a study area for a previously unserved area; (b) a company is combining previously unserved territory with one of its existing areas in the same state; and (c) a holding company is consolidating study area in the same state."¹⁶

Osirus' proposed study areas, the eight unserved areas that Osirus will be serving, have never been part of any existing study area. Moreover, these areas have never been served by any licensed local exchange carrier or designated ETC. Osirus is a separately incorporated company

¹⁴ *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939 (1985) (*Part 67 Order*), adopting Recommended Decision and Order, 49 Fed. Reg. 48325 (1984).

¹⁵ *2004 Skyline Order*, para. 13 (2004).

¹⁶ *Request for Clarification Filed by National Exchange Carrier Association, Inc., and Petitions for Waivers filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc. Concerning the Definition of "Study Area" in the Part 36 Appendix-Glossary of the Commission's rules*, AAD 95-173, AAD 96-29, AAD 96-51, Memorandum Opinion and Order, 11 FCC Red 8156, 8160 (Com. Carr. Bur. July 16, 1996).

establishing a study area for a previously unserved area. The Commission has concluded on several occasions that a waiver is not necessary if the proposed study area is not within any existing study area.¹⁷ Osirus respectfully requests that the Commission issues a declaratory ruling that Osirus is not required to request a study area waiver for the eight unserved areas that Osirus is proposing to serve.

C. Waiver of Sections 36.611 and 36.612

Osirus will be an incumbent “rural telephone company” under section 153(37)¹⁸ of the Act to serve those eight unserved areas. Accordingly, it will be eligible to receive USF cost recovery assistance. Under the Commission’s rules, calculation of high-cost loop support is based on historical cost information. However, as a company proposing to serve an area that has not previously been served by any carrier, Osirus does not have historical cost information reflecting the high costs that Osirus will soon incur to provide adequate and reliable service in those eight unserved areas.

Under these circumstances, strict application of section 36.611 and 36.612 of the Commission’s rules would preclude Osirus from receiving high-cost loop support related to Osirus’ new telephone system and administration and operations 2010¹⁹ (although the quarterly update provision of section 36.612 could reduce this period to some extent).²⁰ During this period, Osirus would be forced to look to its rural customers for cost recovery of amounts that

¹⁷ See, e.g. *Allband Order*, para. 10; *Adak Order*, para. 6.

¹⁸ 47 U.S.F. § 153(37).

¹⁹ The data submission and filing requirements of Part 36 of the Commission’s rules operate to postpone the eligibility of a newly established local exchange carrier for receipt of USF support until its third year of operation. See, e.g. *2004 Skyline Order*, para. 19.

²⁰ 47 C.F.R. § 36.612.