

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In re

Petition of )  
)  
)  
MICHIGAN ACCESS, INC. )  
Emergency Petition for Waiver of the )  
Commission's Rules to Designate Michigan ) CC Docket No. 96-45  
Access an Incumbent Local Exchange Carrier in )  
Two Unserved Areas in Northeast Michigan )  
Petition for Waivers of the Commission's Rules to )  
Allow New Local Exchange Carrier to Participate )  
in NECA Tariffs and Pools and Obtain )  
Accelerated USF Support )

**REPLY COMMENTS**

**Of**

**ALLBAND COMMUNICATIONS COOPERATIVE**

Allband Communications Cooperative ("Allband") hereby files its reply comments requesting that the Commission deny Michigan Access Inc.'s petition in the above-captioned proceeding.

## **BACKGROUND**

Allband Communications Cooperative (“Allband”) is a new ILEC that was formed to serve unserved areas in Michigan. Allband’s formation and provision of service in Michigan is in the public interest and advances the 1996 Telecommunications Act’s universal service goals. Allband’s continuing operations aimed at serving additional unserved areas in Michigan should be supported by the Commission and Michigan Access, Inc’s (“Michigan Access”) petition should be denied. Allband is a member owned cooperative formed in 2006 in order to serve previously unserved territories in Michigan. These plans were laid out in two distinct phases. Phase one involved the creation of the Robbs Creek exchange. Phase two involves the additional exchanges already subject to a FCC petition.<sup>1</sup> Allband, as explained further below, has met all the FCC and the National Exchange Carrier Association (“NECA”) requirements to be deemed the ILEC in the exchanges subject to Michigan Access’s Petition.

## **COMMENTS**

The Commission should deny Michigan Access’s request for a Waiver of the Commission’s Rules. Unlike Michigan Access, Allband is an existing ILEC in Northern Michigan and it has expended considerable resources and time planning and engineering to provide service to the unserved areas referenced in Michigan Access’ petition to the FCC.<sup>2</sup> Again, unlike Michigan Access, Allband already meets the requirements laid out

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<sup>1</sup> 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 (filed Oct. 2, 2007).

<sup>2</sup> See Attachment 1 for a specific map of Allband’s Phase 1 and Phase 2 areas including those subject to this petition.

by both the Commission<sup>3</sup> and National Exchange Carrier Association (NECA)<sup>4</sup> pertaining to the incorporation of these unserved areas into its ILEC study area. Allband has already deployed services throughout its phase one territory and is poised to deploy services into the phase two areas, areas that are the subject of the Michigan Access petition.

Michigan Access' petition should be denied because Allband has already taken steps to provide service in the Phase 2 unserved territories (see map incorporated as Attachment 1) and is awaiting Commission action on the pending Osirus Communications, Inc.'s ("Osirus") petition. A map of the contested areas in which Osirus seeks to become the ILEC is Attachment 2. Relying on the fact that it has already fulfilled the Commission's requirements to serve additional unserved areas in Michigan<sup>5</sup>, Allband, has expended significant resources of its members to design the network and

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<sup>3</sup> *American Samoa Government and the American Samoa Telecommunications Authority Petition for Waivers and Declaratory Rulings to Enable American Samoa to Participate in the Universal Service High Cost Support Program and the National Exchange Carrier Association Pools and Tariffs*, CC Docket No. 96-45, AAD/USB File No. 98-41, Order released June 9, 1999, (American Samoa). ). In paragraph 10 of this Order the Commission stated:

“Study area waivers are required whenever a company seeks to create or reconfigure study areas except 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 study areas in the same state; and (c) a holding company is consolidating existing study areas in the same state.”

Allband is complying with the (b) requirement because it is combining the additional Phase 2 previously unserved territory in Michigan with its existing study area (the Robbs Creek exchange).

See also ¶ 9 of the *Request for Clarification Filed by the 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

<sup>4</sup> NECA Cost/Average Schedule Issue Number 8.5 – Study Area Waivers and Reporting Data for Lines Served Outside Frozen Study Area Boundaries dated 5/96 and revised 10/96, 6/97, 1/06.

<sup>5</sup> Order granting Allband Communications Cooperative Petition for Waiver of Sections 69.2 and 69.601 of the Commission’s Rules, WC Docket No. 05-174 (August 11, 2005).

prepare to build out its fiber optic network into the unserved areas Michigan Access discusses in its Petition. As noted in its January 2, 2008 Comments in this proceeding, Allband has acquired a license and been deemed an ETC in order to serve the territories from the Michigan Public Service Corporation (“MPSC”). Allband has completed and submitted the necessary NECA forms to add the territory to its existing ILEC study area in Michigan in compliance with Commission Order. Allband has fully engineered the network design needed to serve these areas, run several financial forecasts, is shovel ready and is prepared to file a complete loan design with the USDA Rural Utility Service (“RUS”) immediately, pending Allband’s ability to participate in NECA tariffs and pools for the areas in question.

Allband has already met all of the requirements as set forth by both the Commission and NECA to serve the additional unserved areas set forth as Allband’s Phase two deployment. Specifically:

- Allband, an existing ILEC in Michigan, is already planning to serve the unserved territory described in Michigan Access’ petition.
- Allband already meets all of the requirements of this Commission and the Michigan PSC to serve the unserved territory. Allband:
  - a) Has a license and ETC designation to serve the territory from the MPSC.
  - b) Is combining the unserved territory with its existing ILEC study area in Michigan in compliance with the Commission’s Orders.
  - c) Meets the requirements of NECA to include the additional territories in the NECA pools and tariffs and has provided such documentation to NECA.

- Allband has already completed the work (network design, financial analysis, RUS loan) to provide service to the territory in question.

By meeting these requirements, Allband is currently classified as an ILEC, and intends to continue its mission to serve previously unserved areas in the State of Michigan.

Allband is currently serving the Robbs Creek exchange with a state of the art optical network, and has planned and developed strategies to deliver both phone and advanced data services to other unserved areas in upper Michigan. There is already a proceeding in front of the Commission regarding who should be the ILEC of record.<sup>6</sup> Allband has demonstrated that it is in a superior position to deploy and service the customers in these unserved areas.

Allband, as an ILEC has already shown due diligence and followed the rules of both the Commission and NECA with regard to providing service in the additional unserved areas discussed in Michigan Access' petition. Michigan Access' petition is not in the public interest as it is merely confusing and delaying current proceedings. As a consequence, Commission approval of Michigan Access' petition would be at odds with the Commission's own Orders<sup>7</sup> and would be a disservice to both the members of Allband and the potential members in the unserved areas which have been overlooked by existing phone companies for years. Allband has in good faith spent monies engineering and planning service into territories which are currently in jeopardy and is awaiting the outcome of the existing petition.

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<sup>6</sup> 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 (filed Oct. 2, 2007) (Petition).

<sup>7</sup> See footnote 2 above.

Michigan Access' petition is causing yet further delays in provision of service to these unserved areas in addition to the delays caused by Osirus. The delay of service to unserved homeowners and businesses originated with Osirus' FCC waiver.<sup>8</sup> As noted in both the Allband comments and the Osirus petitions, as well as stated by Michigan Access themselves<sup>9</sup>, these areas are not economically viable to serve with quality service at reasonable and affordable rates and to provide quality advanced services including high speed broadband without federal USF funding and NECA pooling of access. These areas are a prime example of the low density, high cost areas for which the Act created Universal Service.<sup>10</sup> Allband is in the best position to provide service to these areas as it stated in the Osirus petition and as it has shown by its actions and deployment of facilities in the Phase One territories.

Michigan Access is not providing *ubiquitous* service in the unserved areas in question.<sup>11</sup> This lack of service is even noted on the company's own website. "... We live among lakes and river valleys, often surrounded by majestic tall pines and colorful hardwood forests. These can make delivering wireless service to all who want or need it difficult at times, and sometimes impossible." (emphasis added) Alternatively, Allband provides a quality, high-speed fiber to the home network that is never "impossible."

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<sup>8</sup> 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 (filed Oct. 2, 2007) (Petition).

<sup>9</sup> Michigan Access, 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 (filed Sep. 30, 2009) (Petition). At page 10.

<sup>10</sup> Telecommunications Act of 1996, 254 (b)(3) "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services..."

<sup>11</sup> From <http://www.m33access.com/WirelessCoverageArea.asp>

Only Allband is in the position to truly provide that ubiquitous service to these unserved territories.

Additionally, Allband takes issue with M33 Access' assumption that it has a license from the MPSC to serve the unserved areas in question. The MPSC Order does not directly grant a license for Michigan Access to serve any unserved areas. Allband has obtained a license from the MPSC specifically for the unserved areas covered in this petition. The MPSC's Order indicates that Michigan Access requested to serve "all exchanges and zones throughout the state of Michigan."<sup>12</sup> The Order says nothing regarding unserved areas. Thus, it is not clear that Michigan Access has a license to serve the areas at issue.

In summary, it is in the public interest and is consistent with prior Commission orders to deny Michigan Access' petition. In order to allow rapid provision of service to the additional unserved areas in Michigan, the Commission should grant Allband's request in its January 2, 2008 Comments to confirm that Allband's ILEC status, and previous waiver requests, apply fully to the additional unserved areas that Allband proposes to serve. Finally, Michigan Access will not be harmed if the Commission denies its petition because Michigan Access is a CLEC in all areas of Michigan and may, as a CLEC, provide service in these areas.

Respectfully,  
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<sup>12</sup> August 22, 2006 Order of the MPSC in Case No. U-14896