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November 10, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Via Electronic Comment Filing System
and United States Mail

Re: *In re Osirus Communications, Inc. Petition for Waiver of Commission's Rules to Participate in the NECA Pools and Tariffs and to Obtain Accelerated USF Support*, CC Docket No. 96-45, DA 074873 (filed October 2, 2007)

Dear Ms. Dortch,

I am writing on behalf of, and at the request of, Osirus Communications, Inc. (Osirus). This correspondence responds to the letter filed in this matter by Michigan Access, Inc. (Michigan Access) and Custom Software, Inc. d/b/a M33 Access (M33 Access) on September 18, 2009. This correspondence refers to Michigan Access and M33 Access collectively as "Michigan Access." As discussed below, Michigan Access' September 18, 2009 letter lacks merit, and therefore should have no bearing on the Commission's consideration of Osirus' Petition in this matter.

Osirus filed its Petition on October 2, 2007. The Commission's pleading cycle permitted interested parties to file comments on Osirus' Petition no later than January 3, 2008, and reply comments no later than January 18, 2008.[1] The Commission subsequently granted an extension making reply comments due no later than February 1, 2008.[2]

The time for filing comments has long since passed. Although designated as a presentation in accordance with the Commission's *ex parte* rules,[3] Michigan Access' letter reads more like substantive legal comments. Osirus questions whether the

[1] Public Notice, rel'd December 4, 2007, DA 07-4873; 22 FCC Rcd 20,954; 2007 WL 4245747.

[2] Order, rel'd January 18, 2008, DA 08-132; 23 FCC Rd 476; 2008 W 183530.

[3] 47 CFR 1.1206.

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Commission intended for its *ex parte* rules to be used as a vehicle to file substantive legal comments long after the due date for such comments has passed.

Osirus will nevertheless address Michigan Access' September 18 letter.[4] Osirus is aware that Michigan Access has filed its own waiver petition[5] with the Commission. By filing this response to Michigan Access' September 18 letter, Osirus does not waive the right to comment on Michigan Access' petition.

In its letter, Michigan Access claims to be the "true incumbent"[6] in the unserved areas that are the subject of Osirus' Petition. A look at the facts belies this claim. Michigan Access states that it provides service in "rural Northeast Michigan,"[7] and includes a list of 19 Michigan counties, but does not discuss the extent to which such areas overlap, if at all, the unserved areas that are the subject of Osirus' Petition. The absence of such specifics is puzzling.

The Michigan Public Service Commission (MPSC) Order granting Michigan Access a license to provide basic local exchange service does not purport to license Michigan Access to serve any unserved areas. The MPSC's Order indicates that Michigan Access requested to serve "all exchanges and zones throughout the state of Michigan."[8] The Order says nothing regarding unserved areas.[9] Osirus, in contrast, specifically requested, and was granted, authority to serve eight (8) geographically-defined

[4] Michigan Access' September 18, 2009 letter also addresses a petition filed by Allband Communications Cooperative (Allband). Osirus only addresses the September 18 letter to the extent that it relates to Osirus, and in no way purports to speak for Allband.

[5] *Michigan Access Inc. Emergency Petition for Waiver of the Commission's Rules to Designate Michigan Access an Incumbent Local Exchange Carrier in Two Unserved Areas in Northeast Michigan, Petition for Waivers of the Commission's Rules to Permit New Local Exchange Carrier to Participate in NECA Tariffs and Pools and to Obtain Accelerated USF Support*, dated September 30, 2009.

[6] September 18, 2009 Letter, p 7.

[7] September 18, 2009 Letter, p 4.

[8] August 22, 2006 Order of the MPSC in Case No. U-14896, Attachment 2 to Michigan Access' September 14, 2009 Letter.

[9] The Michigan Telecommunications Act (MTA) defines "exchange" as "1 or more contiguous central offices and all associated facilities within a geographical area in which basic local exchange service is offered by a provider." Thus, an exchange is a defined geographic area served by a LEC's central office. The MTA does not define "zone," but Michigan ILECs define zones, in their tariffs, as smaller geographic areas within exchanges. Consequently, by granting Michigan Access a license to serve all "exchanges and zones" in Michigan, the MPSC licensed Michigan Access to serve existing ILEC exchanges, and not any undefined unserved areas.

unserved areas.[10] Thus, it is not clear that Michigan Access has a license to serve the areas at issue.

Michigan Access' online basic local exchange service tariff shows that it serves only existing ILEC areas.[11] To "identify its service territory," Michigan Access incorporates the maps, boundary descriptions, and local calling areas of ILECs. In contradiction of its claimed ILEC status, Michigan Access' tariff specifically acknowledges Osirus Communications as the "Independent Incumbent Local Exchange Carrier" in the areas at issue.[12]

Michigan Access' tariff did not even include Osirus' ILEC areas until August 12, 2009 (See Attachment A to this letter). Thus, despite Michigan Access' posturing as an established carrier in Osirus' ILEC areas, it very clearly is not. Further, in its application requesting eligible telecommunications carrier (ETC) status from the MPSC, Michigan Access described itself as a "Competitive Local Exchange Carrier (CLEC),"[13] rather than an ILEC.

Michigan Access contends that Osirus "abandoned Northeast Michigan"[14]—a curious position given that Michigan Access' claims to have held a license to serve the unserved areas since August 2006, but its tariff did not include such areas until August 2009.[15] Michigan Access' claims to be prepared to serve the unserved areas is also unpersuasive. Osirus has interconnection agreements with AT&T Michigan,[16] Verizon North Inc. and Contel of the South, Inc.[17] Osirus' affiliate, CynergyComm.Net, Inc. (f/k/a United Telecomm, Inc.) has an extensive telecommunications network, which it

[10] MPSC Case No. U-15356; See MPSC Order dated October 9, 2007 (Attachment A to Osirus January 18, 2008 Reply Comments).

[11] Tariff MPSC No. 1, Section 5, http://www.michiganaccess.com/Tariff/default.htm (last visited November 10, 2009).

[12] Tariff MPSC No. 1, Section 5, Page 16.7.

[13] September 11, 2009 Application in Case No. U-16085, p 2.

[14] September 18 Letter, p 6.

[15] Michigan Access also calls for revocation of Osirus' MPSC license. Osirus' license, of course, falls within the jurisdiction of the MPSC.

[16] October 18, 2005 Order in MPSC Case No. U-14628; October 9, 2007 Order in MPSC Case No. U-14768.

[17] January 31, 2006 Order in MPSC Case No. U-14748.

has been using to provide service in Northern Michigan since August 2001. Osirus and its affiliates have been no less active in providing telecommunications service in Northern Michigan than Michigan Access. Osirus has already received ETC designation; Michigan Access only recently applied for such status.

Osirus agrees with Michigan Access that the Commission should issue a decision on Osirus' Petition that resolves all open questions, and that permits Osirus to proceed with its plans to serve the unserved areas. Nothing in Michigan Access' September 18 letter changes the fact that Osirus was the first LEC in Michigan to (i) apply for an MPSC license to serve the previously unserved areas at issue, (ii) obtain such a license, (iii) receive the MPSC's designation as the ETC in the areas at issue, and (iv) file the necessary waiver petition with this Commission. Osirus is the ILEC in the areas at issue.

In conclusion, while Michigan Access' letter purports to "provide additional information" and to "correct certain factual discrepancies,"[18] it does neither. Michigan Access' desire to obtain federal stimulus funding, which it mentions throughout its letter, appears to be the motivation behind its recent interest in the unserved areas. Osirus, on the other hand, initiated the steps to obtain all regulatory approvals to serve the unserved areas in 2007, long before the lure of stimulus funding. Michigan Access' September 18 letter should have no bearing on Osirus' Petition in this matter.

Very truly yours,

Miller, Canfield, Paddock and Stone, PLC

Michael C. Rampe

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[18] September 18, letter, p 1.

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All of the above individuals were served a copy of this letter via United States Mail and e-mail.

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