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February 9, 2010

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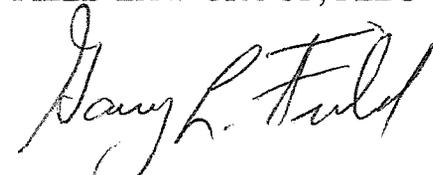
Re: In the matter of ACD Telecom, Inc.; DayStarr, LLC; Clear Rate Communications, Inc.; TC3 Telecom, Inc.; and TelNet Worldwide, Inc. Joint Petition for Declaratory Ruling that the State of Michigan's Statute 2009 PA 182 is Preempted Under Section 253 and 254 of the Communications Act.

Dear Ms. Dortch:

Enclosed for filing is an original and 6 copies of ACD Telecom, Inc., DayStarr, LLC, Clear Rate Communications, Inc., TC3 Telecom, Inc., and TelNet Worldwide, Inc.'s *Motion for Temporary Relief*. Also enclosed is the Proof of Service. Please contact me if you have any questions.

Very truly yours,

FIELD LAW GROUP, PLLC



Gary L. Field

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enc.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear
Rate Communications, Inc.; TC3 Telecom,
Inc.; and TelNet Worldwide, Inc.**

Docket No. _____

Joint Petition for Expedited Declaratory Ruling
that the State of Michigan's Statute 2009 PA 182
is Preempted Under Sections 253 and 254 of the
Communications Act

_____ /

MOTION FOR TEMPORARY RELIEF OF ACD TELECOM, INC.,
DAYSTARR, LLC, CLEAR RATE COMMUNICATIONS, INC., TC3
TELECOM, INC., AND TELNET WORLDWIDE, INC. FROM THE EFFECT
AND OPERATION OF MICHIGAN'S STATUTE 2009 PA 182

February 9, 2010

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SUMMARY

Pursuant to 47 U.S.C. § 154(i), 47 C.F.R. § 1.44(e), and 47 C.F.R. § 1.45(d), ACD Telecom, Inc. (“ACD”); DayStarr, LLC, (“DayStarr”); Clear Rate Communications, Inc. (“Clear Rate”); TC3 Telecom, Inc. (“TC3”); and TelNet Worldwide, Inc. (“TelNet”) (collectively “Petitioners”) respectfully move the Federal Communications Commission (“FCC” or “Commission”) to immediately prohibit the operation and effect of Michigan statute 2009 PA 182 (“Act 182”) while the Commission considers the Joint Petition for Expedited Declaratory Ruling that the State of Michigan’s Statute 2009 PA 182 is Preempted Under Sections 253 and 254 of the Communications Act (“Joint Petition”) that the Petitioners have filed with the Commission simultaneously with the instant Motion. Petitioners are highly likely to prevail on the merits because Act 182, a copy of which is attached as Exhibit 1, prohibits or has the effect of prohibiting the ability of the Petitioners, and other competitive local exchange carriers (“CLECs”), from providing interstate and intrastate telecommunications service because it establishes a state subsidy for a select group of incumbent local exchange carriers (“ILECs”), while excluding CLECs from the subsidy, even where CLECs otherwise meet all of the same criteria as the eligible ILECs. Thus, Act 182 violates § 253(a) of the Communications Act of 1934 (the “Federal Act”), 47 U.S.C. § 253(a) and § 254 of the Federal Act, 47 U.S.C. § 254. Petitioners will lose current and potential customers as a result of Act 182, which harm is irreparable because the State of Michigan’s sovereign immunity prohibits the Petitioners from recovering money damages from the State. No other party will be harmed by the temporary relief, and in fact the temporary relief will benefit both the State of Michigan and most other providers in the State. Finally,

temporary relief is in the public interest because it will preserve competition while the Commission considers the Joint Petition.

I. Statement of Facts

Act 182, which became effective on December 17, 2009, amends § 310 of the Michigan Telecommunications Act (“MTA”), MCL § 484.2310.¹ As described in the Joint Petition, Act 182 revised § 310 of the MTA to remove the exception that the smaller LECs (250,000 customers or fewer) were previously afforded in that they were not required to set their intrastate access rates to the same rate as their interstate access rates. Act 182 requires *all* LECs to reduce their intrastate access rates to rate levels no higher than their interstate access rates. *See* MCL § 484.2310(2). For “eligible providers” as defined under Act 182, which, as will be discussed, are the smaller ILECs, the reduction commences within 270 days after the effective date of Act 182, or by September 13, 2010. *See* MCL § 484.2310(9). For the providers that are not “eligible providers,” which are the smaller CLECs, the intrastate access rate reduction begins to be phased in on January 1, 2011. *See* MCL § 484.2310(2). This requirement will result in a significant loss of intrastate access revenues for those smaller ILECs and CLECs.

However, as shown in the Joint Petition, Act 182 establishes a state fund, called a “restructuring mechanism,” to reimburse the smaller ILECs for their lost intrastate access revenues by paying them equal replacement revenues from the state fund. The only LECs eligible to receive monthly disbursements from the “restructuring mechanism” under Act 182 are “eligible providers.” MCL § 484.2310(8). A provider must be an ILEC to qualify as an eligible provider. MCL § 484.2310(23)(c). Petitioners and other smaller CLECs are excluded from obtaining the same subsidy provided to the smaller ILECs.

On January 11, 2010, the Michigan Public Service Commission (“MPSC”) issued an order initiating its implementation of Act 182. *In re the Commission’s own motion, to implement 2009 PA 182, MCL 484.2310*, Case No. U-16183 (Jan. 11, 2010 Order) (the “MPSC Order”). The MPSC Order is attached as Exhibit 3. As the MPSC stated:

The [MPSC] has been charged with establishing “the procedures and timelines for organizing, funding, and administering the restructuring mechanism.” MCL 484.2310(10). As part of the administrative duties, the [MPSC] needs to collect data, including confidential data, from providers, determine eligible providers’ distributions, and issue an order establishing the contribution percentage.

MPSC Order at 3. Accordingly, the MPSC Order requires all providers to submit substantial data to the MPSC by February 16, 2010. *Id.* at 6-7.

II. Argument

A. Standard for Issuing Temporary Relief

As part of its authorization to issue orders to execute its functions pursuant to 47 U.S.C. § 154(i), the Commission has the discretion to grant temporary relief. *See In the Matter of Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 18 FCC Rcd. 20987, FCC 03-241, ¶ 3, n. 9 (rel’d Oct. 20, 2003). The Commission has stated that it and the federal courts “generally consider the four criteria set forth in *Virginia Petroleum Jobbers* to evaluate requests for preliminary injunctive relief.” *In the Matter of AT&T Corp. v. Ameritech Corporation*, 13 FCC Rcd. 14508, FCC 98-141, ¶ 13 (rel’d June 30, 1998). The Commission identified the four criteria as follows:

¹ Attached as Exhibit 2 is Act 182 as passed by the Michigan State Senate showing the revisions that Act 182 made to § 310 of the Michigan Telecommunications Act.

(1) likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest.

Id. See also *Virginia Petroleum Jobbers v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958).

The Commission indicated that these criteria must be balanced, and that the importance of the various criteria depends on the circumstances.

In applying the four criteria, we recognize that no single factor is necessarily dispositive. For example, a compelling demonstration that the public interest would be irreparably harmed lessens the level of certainty required of a moving party to show that it will prevail on the merits. Indeed, the court in *Virginia Petroleum Jobbers* recognized the relative importance of the four criteria will vary depending upon the circumstances, noting that “[i]n litigation involving the administration of regulatory statutes designed to promote the public interest, this factor necessarily becomes crucial.”

In the Matter of AT&T Corp. v. Ameritech Corporation, 13 FCC Rcd. 14508, ¶ 14 (footnotes omitted).

1. Petitioners are highly likely to succeed on the merits.

The FCC has already found that statutes such as Act 182 should almost certainly be preempted pursuant to § 253(d) of the Federal Act, 47 U.S.C. § 253(d), and as such Petitioners are highly likely to succeed on the merits of their request for preemption in the Joint Petition.

Section 253(d) of the Federal Act, 47 U.S.C. § 253(d), states:

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission *shall preempt* the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency. (Emphasis supplied.)

Thus, the Commission is required to preempt a state statute where the Commission finds that the statute violates §§ 253(a) or (b).

Section 253(a) of the Federal Act, 47 U.S.C. § 253(a), states:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Act 182, by requiring *all* LECs, as of January 1, 2011, to cap their intrastate access rates, but only permitting *ILECs* to obtain funding to replace the lost revenues, violates § 253(a) of the Federal Act. On its face, Act 182 “prohibits or has the effect of prohibiting” the CLECs’ ability to compete with the smaller ILECs. Act 182 provides a subsidy to the smaller ILECs that is not available to the smaller CLECs. Such a subsidy inhibits CLECs from entering into the smaller ILECs’ territory to provide the ILECs’ customers with a competitive alternative. Please see attached Exhibits 4 through 8.

As stated in the Joint Petition, in *In the Matter of Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, 15 FCC Rcd. 16227, FCC 00-309 (rel’d Aug. 28, 2000) (“*Western Wireless*”), a Kansas Act required “all local exchange carriers in Kansas to reduce their intrastate access charges to interstate rate levels.” *Id.* at ¶ 2. The statute permitted the Kansas Corporation Commission (“KCC”) to “offset the access charge and toll charge reductions required by the Kansas Act through rebalancing of local residential and business rates, with any remaining portion initially being paid out from the Kansas Universal Service Fund.” *Id.* The KCC issued an order implementing the Kansas Act and establishing the Kansas Universal Service Fund (“KUSF”) whereby, in addition to providing for High Cost Funding to all ETCs,² the KCC “provided ILECs additional support based on their

² “ETCs” or “eligible telecommunications carriers” are carriers eligible to receive universal service support as defined at 47 C.F.R. § 54.201. The FCC does not limit ETC designations to only ILECs, but instead opens such designations up to competitive providers. *See* 47 C.F.R. § 54.201; 47 C.F.R. § 54.307.

revenues lost due to intrastate access charge reform.” *Id.* at ¶ 3. In the first two years, “the KUSF distributed approximately \$158 million, of which approximately \$152 million, or 96 percent, was distributed to ILECs to offset the revenues they lost due to intrastate access charge reform.” *Id.*

Western Wireless filed a petition with the FCC for preemption asking the Commission to declare that § 253 of the Federal Act preempted the Kansas Act and KCC order “that served to limit the ability of carriers other than ILECs to receive universal service support under the Rate Cut Funding program in exchange areas with more than 10,000 access lines.” *Id.* at ¶ 4. Western Wireless alleged that the Rate Cut Funding program “discriminated against new entrants and deterred competitive entry,” and that the program was not protected by § 253(b) because it “was not competitively neutral and not related to the cost of providing universal service.” *Id.* Before the Commission issued a decision on Western Wireless’s petition, the KCC adopted a series of orders changing the operation of the KUSF, including holding that “on a going-forward basis, all KUSF funding would be fully portable to competing carriers; *i.e.*, if a competing carrier obtained a customer that was previously served by an ILEC, all funding that would previously have gone to the ILEC as a result of serving that line would instead be paid to the competing carrier.” *Id.* at ¶ 5. This principle of portability applied not only to the large ILECs, “but also to the funding for rural ILECs that continue[d] to be calculated under the High Cost Funding program and the previously non-portable Rate Cut Funding program.” *Id.*

Because of the changes the KCC made to the KUSF, the Commission determined that Western Wireless’s petition had been rendered moot. *Id.* at ¶ 6. However, in “order to provide guidance on these critical universal service issues which may well arise in other contexts,” the Commission stated that it would “briefly discuss [its] concern that programs structured like the original

Rate Cut Funding program could easily run afoul of Section 253.” *Id.* at ¶ 7. In detailing such concerns, the Commission stated:

We would be concerned about a universal service fund mechanism that provides funding only to ILECs. A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support from the state government that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that was not available to their competitors. Thus, non-ILECs would be left with two choices – match the ILEC’s price charged to the customer, even if it means serving the customer at a loss, or offer the service to the customer at a less attractive price based on the unsubsidized cost of providing such service. A mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors. Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government-imposed competitive disadvantage. Consequently, such a program may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a).

Id. at ¶ 8 (emphasis supplied).

The Commission’s analysis in *Western Wireless* applies exactly to Act 182. Act 182 erects a “substantial barrier” for the Petitioners and other CLECs to enter into a smaller ILEC’s market. As shown in the declarations of the Petitioners, Exhibits 4 through 8, the Petitioners are currently providing service in seven of the smaller ILECs’ territories, and plan to soon be providing service in eleven such territories. The “restructuring mechanism” established in Act 182 provides a subsidy to the smaller ILECs in their provision of telecommunications services, thereby effectively lowering the “price of ILEC-provided service relative to the price of competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that [is] not available to competitors.” Accordingly, Petitioners and other CLECs currently competing against the smaller ILECs, or devel-

oping business plans to enter into the smaller ILECs' service territories, must price their services in an attempt to be competitive with the prices offered by the smaller ILECs, but without the state subsidy that the smaller ILECs receive. If such pricing results in a situation where the CLECs cannot be profitable, or are even losing money, because of the rates required to make the CLECs competitive with the smaller ILECs, the CLECs have no incentive to attempt to compete with the smaller ILECs. Consequently, Act 182 effectively prohibits competition in such areas.

Thus, Act 182's subsidy of the smaller ILECs hinders the CLECs' ability to offer competitive rates for telecommunications service, and as such gives "customers a strong incentive to choose service from ILECs rather than competitors." In addition, Act 182 discourages CLECs from entering into the markets of the smaller ILECs because it is "unreasonable to expect an unsupported carrier to enter a high-cost market and provide service that its competitor already provides at a substantially supported price." Not only will competitors entering a smaller ILEC's territory face the natural advantage the smaller ILEC enjoys (i.e., the ILEC currently has *all* of the customers and an established network), but the competitors will also be at an economic disadvantage as a result of the state's subsidization of the smaller ILECs. Thus, the CLECs are prohibited from providing telecommunications service within the smaller ILECs' service territories, contrary to § 253(a).

An "absolute bar on the provision of services is not required" to find a violation of § 253(a). "It is enough that the [statute] would 'materially inhibit' the provision of services." *Qwest Corp v City of Sante Fe*, 380 F3d 1258, 1271 (10th Cir 2004) (holding that a "massive" increase in costs were prohibitive under § 253 of the Federal Act pursuant to this standard). *See also In the Matter of California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934*, 12 FCC Rcd. 14191, FCC 97-251, ¶ 31

(rel'd July 17, 1997). As discussed, Act 182 “materially inhibits or limits” the ability of competitors to compete in the smaller ILECs’ service territories.

The Commission has previously found that statutes or ordinances that resulted in limiting a competitor’s ability to compete violated § 253(a) of the Federal Act. For example, in *In the Matter of the Public Utility Commission of Texas, The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc., Teleport Communications Group, Inc., City of Abilene, Texas, Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd. 3460, FCC 97-346, ¶ 13 (rel'd Oct. 1, 1997) (“*Texas Preemption Proceeding*”), the Commission preempted certain build-out requirement provisions of a Texas state law. Also, in *In the Matter of The Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, 14 FCC Rcd. 21697, FCC 99-402, ¶ 22 (rel'd Dec. 23, 1999) (“*Minnesota Preemption Proceeding*”), the Commission rejected a Minnesota petition that requested the Commission to find consistent with § 253 an agreement where the State had given a developer exclusive access to certain rights-of-way, and held that agreement had the effect of prohibiting competition:

As discussed below, our concern that the Agreement may have the effect of prohibiting facilities-based entry is premised on evidence in the record that utilizing rights-of-way other than the freeway rights-of-way to install telecommunications infrastructure is substantially more expensive than using the freeway rights-of-way. The evidence in the present record precludes us from concluding that the Agreement will not have the effect of prohibiting facilities-based competition because the availability of alternative rights-of-way, the existence of excess fiber optic capacity, or access to Developer’s capacity. We are very concerned that giving Developer exclusive physical access to rights-of-way that are inherently less costly to use has the potential to prevent facilities-based entry by certain other carriers that cannot use these rights-of-way.

In *In the Matter of Silver Star Telephone, Inc. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd. 15639, FCC 97-336, ¶ 11 (rel'd Sept. 24 1997) (“Silver Star”), the Commission held as follows:

Wyoming’s rural incumbent protection provision gives incumbent LECs with 30,000 or fewer access lines the ability to block the grant of CPCN applications of potential competitors. The incumbent LEC involved in this matter, Union, exercised that veto power with respect to Silver Star’s CPCN application to provide competing local exchange service in the Afton exchange; in turn, as required by the Wyoming Act’s rural incumbent protection provision, the Wyoming Commission denied Silver Star’s application and thereby barred Silver Star from entering the Afton local exchange market. Consequently, the rural incumbent protection provision and the Denial Order clearly prohibit Silver Star from providing telecommunications service in the Afton exchange, a prohibition proscribed by section 253(a). Indeed, section 253(a), at the very least, proscribes State and local legal requirements that prohibit all but one entity from providing telecommunications services in a particular State or locality. *Congress intended primarily for competitive markets to determine which entrants shall provide the telecommunications services demanded by consumers. The express preemption authority granted to the Commission under section 253 is designed to ensure that State and local governments implement the 1996 Act in a manner consistent with these goals.*

Id. at ¶ 38 (footnotes omitted) (emphasis supplied) (upheld in *RT Communs., Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000)).

Similarly, it is highly likely that the Commission will find that Act 182 violates § 253(a) of the Federal Act because it “materially inhibits or limits” the ability of Petitioners and other CLECs to enter into the smaller ILECs’ markets and to provide viable competition with the smaller ILECs.

If the Commission finds that Act 182 is “proscribed by section 253(a) considered in isolation, [it] must then determine whether, nonetheless, [it falls] within the reservation of state authority set forth in section 253(b).” *In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion’s Application Requesting to Provide Service in Tennessee Rural LEC Service Areas*, 14 FCC Rcd. 11064,

FCC 99-100, ¶ 8 (rel'd May 27, 1999) (“*Hyperion*”). Act 182 is not imposed on a “competitively neutral basis,” and as such it is not permitted under § 253(b).

A state regulation must meet each of three criteria to fall within the “safe harbor” of § 253(b): (1) it must be competitively neutral, (2) it must be consistent with § 254 of the Federal Act, and (3) it must be necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, or safeguard the rights of consumers. *Silver Star*, 12 FCC Rcd 15639, ¶¶ 37, 40. In addition, the Commission has noted that “[a]lthough the party seeking preemption bears the burden of proof that there is a violation of section 253(a), the burden of proving that a statute, regulation, or legal requirement comes within the exemptions found in sections 253(b) and (c) falls on the party claiming that exception applies.” *Minnesota Preemption Proceeding*, 14 FCC Rcd. 21697, ¶ 11, n. 26. See also *New Jersey Payphone Ass’n, Inc. v. Town of West New York*, 299 F.3d 235, 240 (3rd Cir. 2002).

In *Western Wireless*, the Commission expressed its doubts that a funding program such as the one established in Act 182 would be permissible under § 253(b):

It appears doubtful that a program which limits eligibility for universal service funding to ILECs would be found competitively neutral, and thus within the authority reserved to the states in section 253(b). Section 253(b) cannot save a state legal requirement from preemption pursuant to sections 253(a) and (d) unless, *inter alia*, the requirement is competitively neutral with respect to, and as between, *all* of the participants and potential participants in the market at issue. Because, as discussed above, a mechanism that offers non-portable support may give ILECs a substantial unfair price advantage in competing for customers, it is difficult to see how such a program could be considered competitively neutral. Moreover, a state requirement which otherwise violates section 253(b) cannot be saved merely because it is transitional.

Western Wireless, 15 FCC Rcd. 16227 (quotation and footnotes omitted). The Commission has also stated that requirements that “shield the incumbent LEC from competition by other LECs” are not

competitively neutral and do not fall within the reservation of state authority set forth in § 253(b). *Hyperion*, 14 FCC Rcd. 11064, ¶ 12. A state requirement is not competitively neutral “if it favors incumbent LECs over new entrants (or vice-versa).” *Id.* at ¶ 16.

As discussed, the “restructuring mechanism” of Act 182 provides to smaller ILECs a “substantial unfair price advantage in competing for customers,” and thereby acts to “shield the incumbent LEC from competition by other LECs.” Therefore, Act 182 is *not* “competitively neutral,” and as such § 253(b) does *not* save Act 182 from preemption. In addition to the fact that Act 182 is not competitively neutral, it is difficult to see how Act 182 is “necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, or safeguard the rights of consumers,” which provides another reason that § 253(b) does not save Act 182.

Not only are Petitioners highly likely to succeed in their claim that Act 182 should be preempted pursuant to § 253(d), but Petitioners are also likely to succeed in their claim that § 254 of the Federal Act, 47 U.S.C. § 254, requires the Commission to preempt Act 182. The Commission noted in *Western Wireless* that “a program that provides universal service funding only to ILECs could well be found invalid under traditional preemption doctrine.” *Western Wireless*, 15 FCC Rcd 16227, ¶ 11. The enforcement of a state regulation may be preempted in several circumstances, including where “there is outright or actual conflict between federal and state law” and where “the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.” *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 368-69 (1986). In addition, preemption “may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation.” *Id.* at 369.

Section 254(f) of the Federal Act, 47 U.S.C. § 254(f), states that a “State may adopt regulations *not inconsistent with the Commission’s rules* to preserve and advance universal service.” (Emphasis supplied.) Although Act 182 does not explicitly indicate that it is establishing a state universal service fund, Act 182 in effect seeks to “preserve and advance universal service.” As discussed, the result of Act 182 is to provide subsidies to smaller ILECs, who are the same ILECs that typically receive federal universal service support. In addition, the smaller ILEC must be providing “the services and functionalities identified by rules of the [FCC] described at 47 CFR 54.101(a),” MCL § 484.2310(23)(c), which specifically ties a smaller ILEC’s ability to receive the state subsidy to whether it provides services that would be eligible for federal universal service support as listed at 47 C.F.R. § 54.101. Also, although Act 182 declares that VoIP services are not subject to the mandatory monthly contribution to the “restructuring mechanism,” Act 182 states that if the FCC “determines that interconnected [VoIP] services may be subject to state regulation for universal services purposes, the [Michigan Public Service Commission] may open a proceeding to determine who is required to participate in a universal service fund.” MCL § 484.2310(13). Act 182 also links the contribution methodology for the “restructuring mechanism” to the federal universal service contribution methodology. *See* MCL § 484.2310(19). Thus, even if the Michigan Legislature did not call the “restructuring mechanism” a state universal service fund, the restructuring mechanism was clearly meant to provide state universal service support to smaller ILECs.

The FCC will likely choose to preempt Act 182 because it is “inconsistent with the Commission’s rules,” and as such not authorized under § 254(f) of the Federal Act. The Commission’s universal service rules do not limit universal service funding to ILECs. On the contrary, 47 C.F.R. § 54.307(a) specifically requires that a “competitive eligible telecommunications carrier shall receive

universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an [ILEC] or services new subscriber lines in the [ILEC's] service area.”

In addition, § 254(f) requires that contributions be made on an “equitable and nondiscriminatory basis,” which further supports the fact that § 254(f) requires that a state universal service fund be administered in a “competitive neutral” manner. Pursuant to § 254(b)(7) of the Federal Act, 47 U.S.C. § 254(b)(7), the Commission has explicitly established “competitive neutrality” as a principle upon which the Commission bases its policies for the preservation and advancement of universal service. *In the Matter of Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776, FCC 97-157, ¶ 46 (rel'd May 8, 1997). The Commission defined the principle of “competitive neutrality” as follows:

Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor one technology over another.

Id. at ¶ 47. The Commission stated that “competitive neutrality is consistent with several provisions of section 254 including the explicit requirement of equitable and nondiscriminatory contributions” found in § 254(d), 47 U.S.C. § 254(d). *Id.* at ¶ 48. Similarly, the Commission recognized that the “principle of competitive neutrality is also embodied in . . . section 254(f)’s requirement that state universal service contributions be equitable and nondiscriminatory.” *Id.* The Commission also agreed that “an explicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal support mechanisms is consistent with congressional intent and necessary to promote a pro-competitive, de-regulatory national policy framework.” *Id.* (quotation omitted).

As discussed, Act 182 is not “competitively neutral” in that it provides a subsidy to only the smaller ILECs and does not permit any competitive providers to qualify for the subsidy. As the FCC has stated, “it is doubtful that a universal service funding program that restricts eligibility to ILECs could be considered competitively neutral.” *Western Wireless*, 15 FCC Rcd. 16227, ¶ 11. Accordingly, Act 182 is inconsistent with § 254(f) of the Act and Congress’s purposes in establishing universal service funding, and thus must be preempted.

2. Petitioners will be irreparably harmed absent temporary relief.

The Petitioners will be irreparably harmed if the Commission does not grant temporary relief to prohibit the operation and effect of Act 182. The MPSC has already begun its implementation of Act 182, and Petitioners are required to file substantial information on February 16, 2010. The MPSC has also stated the additional orders that are forthcoming to implement Act 182.

At the legislatively-mandated times, the [MPSC] intends to issue further orders for each of the following items: informing each eligible provider of the amount it is entitled to receive (no later than April 16, 2010); informing all providers of the contribution percentage (no later than May 17, 2010); and notifying providers of the official start-date and the mechanics of paying into and receiving money from the restructuring mechanism (no later than August 16, 2010).

MPSC Order at 5. In addition, the Petitioners will begin paying into the “restructuring mechanism” no later than September 13, 2010, MCL § 484.2310(9), and the Petitioners will need to begin the reduction of their intrastate access rates on January 1, 2011, including the filing of revised tariffs, MCL § 484.2310(2).

If Act 182 is permitted to operate absent temporary relief, Petitioners will be harmed in that they will be required to make significant, unrecoverable expenditures to comply with Act 182’s re-

porting and tariffing requirements, and will also be required to pay into the fund. Also, the Petitioners, and competition in general, will be harmed if the Petitioners and other smaller CLECs are required to reduce their intrastate access rates without receiving the same replacement revenues available to the smaller ILECs. As discussed, the Petitioners will be placed at a severe competitive disadvantage, and will not only lose current customers, but will be severely hindered in their ability to compete for future customers.

Each customer lost and each customer that refuses to take service from the Petitioners represents an irreparable loss to the Petitioners. Although economic loss alone does not typically constitute irreparable harm, the Commission has recognized that “the threat of *unrecoverable* economic loss ‘does qualify as irreparable harm.’” *In the Matter of Access Charge Reform*, 12 FCC Rcd. 10175, FCC 97-216, ¶ 30 (rel’d June 18, 1997) (emphasis supplied) (*quoting Iowa Utilities Board v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996)). *See also Baker Elec. Coop. v. Chaske*, 28 F.3d 1466, 1473-74 (8th Cir. 1994) (holding that irreparable harm existed where the party would be unable to recover damages from a state commission because of the state’s Eleventh Amendment sovereign immunity in federal court in suits requesting money damages); *ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1310 (S.D. Fla. 2008) (holding that in “cases where the defendant is immune from a claim for damages such as claims against the state barred by Eleventh Amendment immunity, irreparable harm is presumed”). Petitioners would be unable to recover from the State of Michigan any of its damages resulting from Act 182’s violation of §§ 253 and 254 of the Federal Act, and as a result the economic loss resulting from the loss of customers is irreparable.

3. No other party will be injured if the temporary relief is granted.

If the Commission grants Petitioners' request for temporary relief and prohibits the operation and effect of Act 182 until such time as the Commission is able to rule on the Joint Petition, no harm will come to any other party. Instead, the status quo in Michigan will be maintained - intrastate access rates will remain at their current levels, there will be no unnecessary expenditures related to preparing for and paying into the "restructuring mechanism" fund, and competition will not be harmed. In fact, a temporary halt to the operation and effect of Act 182 *benefits* the State of Michigan. If the operation of Act 182 is not immediately stopped, the MPSC will continue to make plans, compile data, and issue orders putting the funding mechanism of Act 182 into effect. If Act 182 is later preempted by the Commission, as is highly likely, the MPSC will have wasted its valuable time and resources.

In addition, once Act 182 has been preempted, much will need to be done to undo the effects of the prohibited statute. Depending on when the Commission issues its order, an issue will arise as to whether the MPSC needs to establish a procedure for refunding to the providers all of the contributions they had made to the fund. Also, all providers that were required to revise their tariffs to reflect the reduction in intrastate access rates required under Act 182, which includes most of the providers in Michigan, will then need to make additional revisions to their tariffs to return their rates to where they were previously. Thus, temporarily halting the effect of Act 182 benefits the State of Michigan and nearly all of the providers in Michigan.

4. The issuance of the temporary order will further the public interest.

The issuance of the temporary order will further the public interest because it will ensure that competition is not hindered while the Commission considers the Joint Petition. As the D.C. Circuit recognized, when the administration of regulatory statutes is at issue, the consideration of the “public interest” factor is crucial. *Virginia Petroleum Jobbers*, 259 F.2d at 925. As the Commission has stated, the purpose of the Telecommunications Act of 1996 was to promote competition.

The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and *affirmatively promote efficient competition* using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, *the 1996 Act requires telephone companies to open their networks to competition.*

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, FCC 96-325, ¶ 1 (rel’d Aug. 8, 1996) (emphasis supplied) (footnote omitted) (“*Local Competition Order*”).

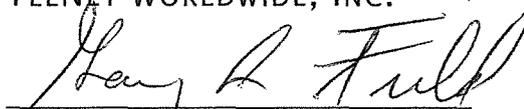
If Act 182 is permitted to operate absent temporary relief, the public will be harmed because, for the reasons discussed above, competition will be hindered in the smaller ILEC territories. Thus, temporary relief is needed to restore the prospect of competition in the smaller ILEC territories to provide a moderating factor and to make a choice of rates and providers available to the public. The public interest favors the Commission issuing a temporary order to protect competition consistent with §§ 253 and 254 of the Federal Act.

III. Conclusion.

For all of the reasons stated above, Petitioners request that the Commission grant its request for temporary relief and immediately prohibit the effect and operation of Act 182 until such time as the Commission issues an order ruling on the Joint Petition.

Respectfully submitted,

ACD TELECOM, INC.; DAYSTARR,
LLC; CLEAR RATE COMMUNICATIONS,
INC.; TC3 TELECOM, INC.; AND
TELNET WORLDWIDE, INC.



Dated: February 9, 2010

Gary L. Field (P37270)
Gary A. Gensch, Jr. (P66912)
FIELD LAW GROUP, PLLC
915 N. Washington Ave.
Lansing, Michigan 48906
(517) 913-5100
Facsimile (517) 913-3471

Exhibit List

1. 2009 PA 182 (“Act 182”)
2. Act 182 as passed by the Michigan State Senate showing the revisions that Act 182 made to § 310 of the MTA
3. *In re the Commission’s own motion, to implement 2009 PA 182, MCL 484.2310*, Case No. U-16183 (Jan. 11, 2010 Order) (the “MPSC Order”)
4. Declaration of Mark Iannuzzi
5. Declaration of Joseph Mattausch
6. Declaration of Thane Namy
7. Declaration of Kevin Schoen
8. Declaration of Collin Rose

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear
Rate Communications, Inc.; TC3 Telecom,
Inc.; and TelNet Worldwide, Inc.**

Docket No. _____

Joint Petition for Expedited Declaratory Rul-
ing that the State of Michigan's Statute 2009
PA 182 is Preempted Under Sections 253 and
254 of the Communications Act

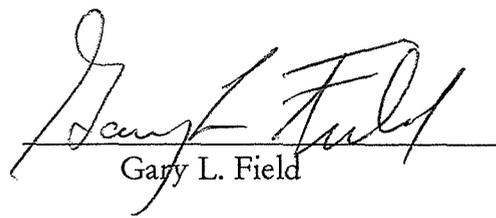
_____ /

Proof of Service

Gary L. Field, employed at Field Law Group, PLLC, being duly sworn, affirms that on the 9th day of February, 2010, he caused to be served a copy of ACD Telecom, Inc., DayStarr, LLC, Clear Rate Communications, Inc., TC3 Telecom, Inc., and TelNet Worldwide, Inc.'s *Motion for Temporary Relief* upon the parties listed below at their respective street addresses by regular first class mail, postage prepaid:

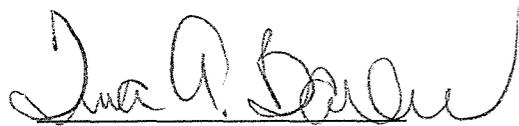
Mike Cox
Michigan Attorney General
G. Mennen Williams Building, 7th Floor
525 W. Ottawa St.
P.O. Box 30212
Lansing, MI 48909

Steve Hughey
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911



Gary L. Field

Subscribed and sworn before me on February 9, 2010

A handwritten signature in cursive script, appearing to read "Tina A. Barlow". The signature is written in black ink on a white background.

Tina A. Barlow

Ingham County, Michigan

My Commission Expires September 9, 2014

Exhibit 1

Act No. 182
Public Acts of 2009
Approved by the Governor
December 17, 2009
Filed with the Secretary of State
December 17, 2009
EFFECTIVE DATE: December 17, 2009

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Rep. Melton

ENROLLED HOUSE BILL No. 4257

AN ACT to amend 1991 PA 179, entitled "An act to regulate and insure the availability of certain telecommunication services; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; and to repeal acts and parts of acts," by amending section 310 (MCL 484.2310), as amended by 2005 PA 235.

The People of the State of Michigan enact:

Sec. 310. (1) Except as provided by this section, the commission shall not review or set the rates for toll access services.

(2) A provider of toll access services shall set the rates for intrastate switched toll access services at rates that do not exceed the rates allowed for the same interstate services by the federal government and shall use the access rate elements for intrastate switched toll access services that are in effect for that provider and are allowed for the same interstate services by the federal government. Eligible providers shall comply with this subsection as of the date established for the commencement of the operation of the restructuring mechanism under subsection (9). Providers other than eligible providers shall not charge intrastate toll access service rates in excess of those rates in effect as of July 1, 2009 and shall reduce the differential, if any, between intrastate and interstate switched toll access service rates in effect as of July 1, 2009 in no more than 5 steps of at least 20% each of the differential on the following dates: January 1, 2011; January 1, 2012; January 1, 2013; January 1, 2014; and January 1, 2015. Providers may agree to a rate that is less than the rate allowed by the federal government.

(3) Two or more providers that each have less than 250,000 access lines may agree to joint toll access service rates and pooling of intrastate toll access service revenues.

(4) A provider of toll access services shall make available for intrastate access services any technical interconnection arrangements, including colocation required by the federal government for the identical interstate access services.

(5) A provider of toll access service, whether under tariff or contract, shall offer the services under the same rates, terms, and conditions, without unreasonable discrimination, to all providers. All pricing of special toll access services and switched access services, including volume discounts, shall be offered to all providers under the same rates, terms, and conditions.

(6) If a toll access service rate is reduced, then the provider receiving the reduced rate shall reduce its rate to its customers by an equal amount. The commission may investigate and ensure that the provider has complied with this subsection.

(7) In order to restructure intrastate switched toll access service rates, there is hereby established in the department of energy, labor, and economic growth an intrastate switched toll access rate restructuring mechanism as a separate interest-bearing fund. The state treasurer shall direct the investment of the restructuring mechanism. Money in the restructuring mechanism shall remain in the restructuring mechanism at the close of the fiscal year and shall not revert to the general fund.

(8) An eligible provider is entitled to receive monthly disbursements from the restructuring mechanism as provided in subsection (11) in order to recover the lost intrastate switched toll access service revenues resulting from rate reductions under subsection (2).

(9) The restructuring mechanism shall be administered by the commission. The restructuring mechanism shall be established and shall begin operation within 270 days after the effective date of the amendatory act that added this subsection. Subject to the preceding sentence, the commission shall establish the date for commencing the operation of the restructuring mechanism and shall notify the participants in the restructuring mechanism at least 30 days in advance of that date. The commission shall recover its actual costs of administering the restructuring mechanism from assessments collected for the operation of the restructuring mechanism.

(10) The commission shall establish the procedures and timelines for organizing, funding, and administering the restructuring mechanism. The commission shall report to the legislature and the governor annually regarding the administration of the restructuring mechanism. The report shall include the total amount of money collected from contributing providers, the total amount of money disbursed from the restructuring mechanism annually to each eligible provider, the costs of administration, and any other information considered relevant by the commission. Any company-specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenues submitted to the commission under this subsection are confidential commercial or financial information and exempt from public disclosure pursuant to section 210.

(11) The initial size of the restructuring mechanism shall be calculated as follows:

(a) Within 60 days of the effective date of the amendatory act that added this subsection each eligible provider shall submit to the commission information and all the supporting documentation that establishes the amount of the reduction in annual intrastate switched toll access revenues which will result from the reduction in rates required in subsection (2). The reduction shall be calculated for each eligible provider as the difference between intrastate and interstate switched toll access service rates in effect as of July 1, 2009, multiplied by the intrastate switched access minutes of use and other switched access demand quantities for the calendar year 2008.

(b) The commission shall compute the size of the initial restructuring mechanism disbursements for each eligible provider and shall inform each eligible provider of that computation within 60 days after receiving the information and supporting documentation from the eligible providers under subdivision (a).

(12) The restructuring mechanism shall be created and supported by a mandatory monthly contribution by all providers of retail intrastate telecommunications services and all providers of commercial mobile service. Interconnected voice over internet protocol services shall not be considered an intrastate telecommunications service for the purposes of this section and interconnected voice over internet protocol service providers shall not be required to pay, directly or indirectly, the mandatory monthly contributions established in this subsection. A provider of telecommunications services to a provider of interconnected voice over internet protocol services shall not pay a mandatory monthly contribution related to those interconnected voice over internet protocol services or attempt to pass through any mandatory monthly contributions, directly or indirectly, to a provider of interconnected voice over internet protocol services. Nothing in this act grants the commission authority over commercial mobile service providers or voice over internet protocol service providers except as is strictly necessary for administration of the restructuring mechanism.

(13) Within 60 days of the effective date of the amendatory act that added this subsection, each contributing provider shall report its 2008 intrastate retail telecommunications services revenues to the commission. Notwithstanding anything in subsection (12), if the federal communications commission determines that interconnected voice over internet protocol services may be subject to state regulation for universal services purposes, the commission may open a proceeding to determine who is required to participate in a universal service fund.

(14) The initial contribution assessment percentage shall be a uniform percentage of retail intrastate telecommunications services revenues determined by projecting the total amount necessary to cover the initial intrastate switched toll access rate restructuring mechanism disbursement levels for 12 months, including projected cash reserve requirements, actual and projected administrative costs, and projected uncollectible contribution assessments, divided by the 2008 calendar year total retail intrastate telecommunications services revenues in this state, less projected uncollectible revenues, reported to the commission. The commission shall issue an order establishing the initial calculation of the contribution assessment percentage within 150 days of the effective date of the amendatory act that added this subsection. The commission may increase or decrease the contribution assessment on a quarterly or other basis as necessary to maintain sufficient funds for disbursements.

(15) Each contributing provider shall remit to the commission on a monthly basis an amount equal to its intrastate retail telecommunications services revenues, less uncollectible revenues, multiplied by the contribution assessment percentage determined under subsection (14), according to a time frame established by the commission. These contributions shall continue until the end of the period for which eligible providers are entitled to receive monthly disbursements from the restructuring mechanism under subsections (11) and (16).

(16) The commission shall recalculate the size of the restructuring mechanism for each eligible provider 4 years from the date the initial restructuring mechanism becomes operational pursuant to subsection (9) and again 4 years thereafter. The recalculation process shall be as follows:

(a) The restructuring mechanism shall be recalculated each time as the difference between the intrastate switched toll access rates in effect as of July 1, 2009 and the interstate switched toll access rates in effect at the time of the recalculation, multiplied by the intrastate switched toll access minutes of use and other switched access demand quantities for the calendar year 2008.

(b) The recalculated restructuring mechanism shall be further adjusted during the first recalculation by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31, 2008 to December 31 of the year immediately preceding the year in which the adjustment is made.

(c) The recalculated restructuring mechanism shall be adjusted during the second recalculation by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31 of the year of the first recalculation to December 31 of the year immediately preceding the second recalculation.

(d) Each eligible provider is entitled to receive monthly disbursements from the restructuring mechanism for a period of no more than 12 years from the date the restructuring mechanism is established under subsection (9), at which time the restructuring mechanism shall cease to exist.

(17) The money received and administered by the commission for the support and operation of the restructuring mechanism created by the amendatory act that created this subsection shall not be used by the commission or any department, agency, or branch of the government of this state for any other purpose, and that money is not subject to appropriation, allocation, assignment, expenditure, or other use by any department, agency, or branch of the government of this state.

(18) If the federal government adopts intercarrier compensation reforms or takes any action that causes or requires a significant change in interstate switched toll access service rates, the commission may initiate, or any interested party may file an application for, a proceeding pursuant to section 203 within 60 days of that action to determine whether any modifications to the size, operation, or composition of the restructuring mechanism are warranted. During the pendency of that proceeding, the requirement in subsection (2) for eligible providers to set intrastate switched toll access service rates equal to interstate switched toll access service shall be temporarily suspended by those providers. Intrastate access rates may not be increased above the levels that exist at the time of the suspension. Following notice and hearing, upon a showing of good cause, the commission may stop or place certain conditions on the temporary suspension.

(19) If the federal government changes the federal universal service contribution methodology so that it is not based on a percentage of total interstate telecommunications services revenues, the commission shall modify the contribution methodology for the restructuring mechanism to be consistent with the federal methodology. The commission shall initiate a proceeding to modify the contribution methodology for the restructuring mechanism and to establish a reasonable time period for transition to the new contribution methodology.

(20) Disputes arising under this section may be submitted to the commission for resolution pursuant to sections 203 and 204.

(21) If any contributing provider subject to this section fails to make the required contributions or fails to provide required information to the commission, the commission shall initiate an enforcement proceeding under section 203. If the commission finds that a contributing provider has failed to make contributions or to perform any act required under this section, a contributing provider shall be subject to the remedies and penalties under section 601.

(22) Eligible providers and contributing providers shall provide information to the commission that is required for the administration of the restructuring mechanism. Company-specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenues submitted to the commission under this subsection is confidential commercial or financial information and exempt from public disclosure pursuant to section 210.

(23) As used in this section:

(a) "Commercial mobile service" means that term as defined in section 332(d)(1) of the telecommunications act of 1996, 47 USC 332.

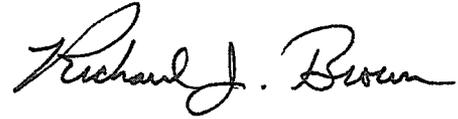
(b) "Contributing provider" means an entity required to pay into the restructuring mechanism.

(c) "Eligible provider" means an incumbent local exchange carrier as defined in section 251 of the telecommunications act of 1996, 47 USC 251, that as of January 1, 2009 had rates for intrastate switched toll access services higher than its rates for the same interstate switched toll access services, and that provides the services and functionalities identified by rules of the federal communications commission described at 47 CFR 54.101(a).

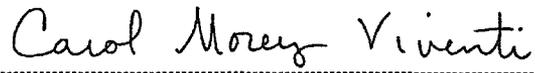
(d) "Interconnected voice over internet protocol service" means that term as defined in 47 CFR 9.3.

(e) "Restructuring mechanism" means the intrastate switched toll access rate restructuring mechanism established in this section.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Exhibit 2

SUBSTITUTE FOR
HOUSE BILL NO. 4257

A bill to amend 1991 PA 179, entitled
"Michigan telecommunications act,"
by amending section 310 (MCL 484.2310), as amended by 2005 PA 235.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 310. (1) Except as provided by this section, the
2 commission shall not review or set the rates for toll access
3 services.

4 (2) A provider of toll access services shall set the rates for
5 **INTRASTATE SWITCHED** toll access services ~~. Access service AT rates~~
6 ~~and charges set by a provider that do not exceed the rates allowed~~
7 ~~for the same interstate services by the federal government are just~~
8 ~~and reasonable~~ **AND SHALL USE THE ACCESS RATE ELEMENTS FOR**
9 **INTRASTATE SWITCHED TOLL ACCESS SERVICES THAT ARE IN EFFECT FOR**
10 **THAT PROVIDER AND ARE ALLOWED FOR THE SAME INTERSTATE SERVICES BY**

1 THE FEDERAL GOVERNMENT. ELIGIBLE PROVIDERS SHALL COMPLY WITH THIS
2 SUBSECTION AS OF THE DATE ESTABLISHED FOR THE COMMENCEMENT OF THE
3 OPERATION OF THE RESTRUCTURING MECHANISM UNDER SUBSECTION (9).
4 PROVIDERS OTHER THAN ELIGIBLE PROVIDERS SHALL NOT CHARGE INTRASTATE
5 TOLL ACCESS SERVICE RATES IN EXCESS OF THOSE RATES IN EFFECT AS OF
6 JULY 1, 2009 AND SHALL REDUCE THE DIFFERENTIAL, IF ANY, BETWEEN
7 INTRASTATE AND INTERSTATE SWITCHED TOLL ACCESS SERVICE RATES IN
8 EFFECT AS OF JULY 1, 2009 IN NO MORE THAN 5 STEPS OF AT LEAST 20%
9 EACH OF THE DIFFERENTIAL ON THE FOLLOWING DATES: JANUARY 1, 2011;
10 JANUARY 1, 2012; JANUARY 1, 2013; JANUARY 1, 2014; AND JANUARY 1,
11 2015. Providers may agree to a rate that is less than the rate
12 allowed by the federal government.

13 (3) Two or more providers that each have less than 250,000
14 access lines may agree to joint toll access service rates and
15 pooling of intrastate toll access service revenues.

16 (4) A provider of toll access services shall make available
17 for intrastate access services any technical interconnection
18 arrangements, including colocation required by the federal
19 government for the identical interstate access services.

20 (5) A provider of toll access service, whether under tariff or
21 contract, shall offer the services under the same rates, terms, and
22 conditions, without unreasonable discrimination, to all providers.
23 All pricing of special toll access services and switched access
24 services, including volume discounts, shall be offered to all
25 providers under the same rates, terms, and conditions.

26 (6) If a toll access service rate is reduced, then the
27 provider receiving the reduced rate shall reduce its rate to its

1 customers by an equal amount. The commission shall ~~shall~~ MAY investigate
2 and ensure that the provider has complied with this subsection.

3 ~~—— (7) This section shall not apply to basic local exchange~~
4 ~~providers that have 250,000 or fewer customers in this state.~~

5 (7) IN ORDER TO RESTRUCTURE INTRASTATE SWITCHED TOLL ACCESS
6 SERVICE RATES, THERE IS HEREBY ESTABLISHED IN THE DEPARTMENT OF
7 ENERGY, LABOR, AND ECONOMIC GROWTH AN INTRASTATE SWITCHED TOLL
8 ACCESS RATE RESTRUCTURING MECHANISM AS A SEPARATE INTEREST-BEARING
9 FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE
10 RESTRUCTURING MECHANISM. MONEY IN THE RESTRUCTURING MECHANISM SHALL
11 REMAIN IN THE RESTRUCTURING MECHANISM AT THE CLOSE OF THE FISCAL
12 YEAR AND SHALL NOT REVERT TO THE GENERAL FUND.

13 (8) AN ELIGIBLE PROVIDER IS ENTITLED TO RECEIVE MONTHLY
14 DISBURSEMENTS FROM THE RESTRUCTURING MECHANISM AS PROVIDED IN
15 SUBSECTION (11) IN ORDER TO RECOVER THE LOST INTRASTATE SWITCHED
16 TOLL ACCESS SERVICE REVENUES RESULTING FROM RATE REDUCTIONS UNDER
17 SUBSECTION (2).

18 (9) THE RESTRUCTURING MECHANISM SHALL BE ADMINISTERED BY THE
19 COMMISSION. THE RESTRUCTURING MECHANISM SHALL BE ESTABLISHED AND
20 SHALL BEGIN OPERATION WITHIN 270 DAYS AFTER THE EFFECTIVE DATE OF
21 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION. SUBJECT TO THE
22 PRECEDING SENTENCE, THE COMMISSION SHALL ESTABLISH THE DATE FOR
23 COMMENCING THE OPERATION OF THE RESTRUCTURING MECHANISM AND SHALL
24 NOTIFY THE PARTICIPANTS IN THE RESTRUCTURING MECHANISM AT LEAST 30
25 DAYS IN ADVANCE OF THAT DATE. THE COMMISSION SHALL RECOVER ITS
26 ACTUAL COSTS OF ADMINISTERING THE RESTRUCTURING MECHANISM FROM
27 ASSESSMENTS COLLECTED FOR THE OPERATION OF THE RESTRUCTURING

1 MECHANISM.

2 (10) THE COMMISSION SHALL ESTABLISH THE PROCEDURES AND
3 TIMELINES FOR ORGANIZING, FUNDING, AND ADMINISTERING THE
4 RESTRUCTURING MECHANISM. THE COMMISSION SHALL REPORT TO THE
5 LEGISLATURE AND THE GOVERNOR ANNUALLY REGARDING THE ADMINISTRATION
6 OF THE RESTRUCTURING MECHANISM. THE REPORT SHALL INCLUDE THE TOTAL
7 AMOUNT OF MONEY COLLECTED FROM CONTRIBUTING PROVIDERS, THE TOTAL
8 AMOUNT OF MONEY DISBURSED FROM THE RESTRUCTURING MECHANISM ANNUALLY
9 TO EACH ELIGIBLE PROVIDER, THE COSTS OF ADMINISTRATION, AND ANY
10 OTHER INFORMATION CONSIDERED RELEVANT BY THE COMMISSION. ANY
11 COMPANY-SPECIFIC INFORMATION PERTAINING TO ACCESS LINES, SWITCHED
12 TOLL ACCESS SERVICES MINUTES OF USE, SWITCHED TOLL ACCESS DEMAND
13 QUANTITIES, CONTRIBUTIONS, AND INTRASTATE TELECOMMUNICATIONS
14 SERVICES REVENUES SUBMITTED TO THE COMMISSION UNDER THIS SUBSECTION
15 ARE CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION AND EXEMPT
16 FROM PUBLIC DISCLOSURE PURSUANT TO SECTION 210.

17 (11) THE INITIAL SIZE OF THE RESTRUCTURING MECHANISM SHALL BE
18 CALCULATED AS FOLLOWS:

19 (A) WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT
20 THAT ADDED THIS SUBSECTION EACH ELIGIBLE PROVIDER SHALL SUBMIT TO
21 THE COMMISSION INFORMATION AND ALL THE SUPPORTING DOCUMENTATION
22 THAT ESTABLISHES THE AMOUNT OF THE REDUCTION IN ANNUAL INTRASTATE
23 SWITCHED TOLL ACCESS REVENUES WHICH WILL RESULT FROM THE REDUCTION
24 IN RATES REQUIRED IN SUBSECTION (2). THE REDUCTION SHALL BE
25 CALCULATED FOR EACH ELIGIBLE PROVIDER AS THE DIFFERENCE BETWEEN
26 INTRASTATE AND INTERSTATE SWITCHED TOLL ACCESS SERVICE RATES IN
27 EFFECT AS OF JULY 1, 2009, MULTIPLIED BY THE INTRASTATE SWITCHED

House Bill No. 4257 (H-6) as amended December 3, 2009

1 ACCESS MINUTES OF USE AND OTHER SWITCHED ACCESS DEMAND QUANTITIES
2 FOR THE CALENDAR YEAR 2008.

3 (B) THE COMMISSION SHALL COMPUTE THE SIZE OF THE INITIAL
4 RESTRUCTURING MECHANISM DISBURSEMENTS FOR EACH ELIGIBLE PROVIDER
5 AND SHALL INFORM EACH ELIGIBLE PROVIDER OF THAT COMPUTATION WITHIN
6 60 DAYS AFTER RECEIVING THE INFORMATION AND SUPPORTING
7 DOCUMENTATION FROM THE ELIGIBLE PROVIDERS UNDER SUBDIVISION (A).

8 (12) THE RESTRUCTURING MECHANISM SHALL BE CREATED AND
9 SUPPORTED BY A MANDATORY MONTHLY CONTRIBUTION BY ALL PROVIDERS OF
10 RETAIL INTRASTATE TELECOMMUNICATIONS SERVICES AND ALL PROVIDERS OF
11 COMMERCIAL MOBILE SERVICE. INTERCONNECTED VOICE OVER INTERNET
12 PROTOCOL SERVICES SHALL NOT BE CONSIDERED AN INTRASTATE
13 TELECOMMUNICATIONS SERVICE FOR THE PURPOSES OF THIS SECTION AND
14 INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS SHALL
15 NOT BE REQUIRED TO PAY, DIRECTLY OR INDIRECTLY, THE MANDATORY
16 MONTHLY CONTRIBUTIONS ESTABLISHED IN THIS SUBSECTION. A PROVIDER OF
17 TELECOMMUNICATIONS SERVICES [TO A PROVIDER OF INTERCONNECTED VOICE OVER
INTERNET PROTOCOL SERVICES SHALL NOT PAY A MANDATORY MONTHLY
CONTRIBUTION RELATED TO THOSE INTERCONNECTED VOICE OVER INTERNET PROTOCOL
SERVICES] OR ATTEMPT TO PASS
18 THROUGH ANY MANDATORY MONTHLY CONTRIBUTIONS, DIRECTLY OR
19 INDIRECTLY, TO A PROVIDER OF INTERCONNECTED VOICE OVER INTERNET
20 PROTOCOL SERVICES. NOTHING IN THIS ACT GRANTS THE COMMISSION
21 AUTHORITY OVER COMMERCIAL MOBILE SERVICE PROVIDERS OR VOICE OVER
22 INTERNET PROTOCOL SERVICE PROVIDERS EXCEPT AS IS STRICTLY NECESSARY
23 FOR ADMINISTRATION OF THE RESTRUCTURING MECHANISM.

24 (13) WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY
25 ACT THAT ADDED THIS SUBSECTION, EACH CONTRIBUTING PROVIDER SHALL
26 REPORT ITS 2008 INTRASTATE RETAIL TELECOMMUNICATIONS SERVICES
27 REVENUES TO THE COMMISSION. [NOTWITHSTANDING ANYTHING IN SUBSECTION (12),

House Bill No. 4257 (H-6) as amended December 3, 2009

1 IF THE FEDERAL COMMUNICATIONS COMMISSION DETERMINES THAT INTERCONNECTED
2 VOICE OVER INTERNET PROTOCOL SERVICES MAY BE SUBJECT TO STATE REGULATION
3 FOR UNIVERSAL SERVICES PURPOSES, THE COMMISSION MAY OPEN A PROCEEDING TO
4 DETERMINE WHO IS REQUIRED TO PARTICIPATE IN A UNIVERSAL SERVICE FUND.

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12 (14) THE INITIAL CONTRIBUTION ASSESSMENT PERCENTAGE SHALL BE A
13 UNIFORM PERCENTAGE OF RETAIL INTRASTATE TELECOMMUNICATIONS SERVICES
14 REVENUES DETERMINED BY PROJECTING THE TOTAL AMOUNT NECESSARY TO
15 COVER THE INITIAL INTRASTATE SWITCHED TOLL ACCESS RATE
16 RESTRUCTURING MECHANISM DISBURSEMENT LEVELS FOR 12 MONTHS,
17 INCLUDING PROJECTED CASH RESERVE REQUIREMENTS, ACTUAL AND PROJECTED
18 ADMINISTRATIVE COSTS, AND PROJECTED UNCOLLECTIBLE CONTRIBUTION
19 ASSESSMENTS, DIVIDED BY THE 2008 CALENDAR YEAR TOTAL RETAIL
20 INTRASTATE TELECOMMUNICATIONS SERVICES REVENUES IN THIS STATE, LESS
21 PROJECTED UNCOLLECTIBLE REVENUES, REPORTED TO THE COMMISSION. THE
22 COMMISSION SHALL ISSUE AN ORDER ESTABLISHING THE INITIAL
23 CALCULATION OF THE CONTRIBUTION ASSESSMENT PERCENTAGE WITHIN 150
24 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
25 SUBSECTION. THE COMMISSION MAY INCREASE OR DECREASE THE
26 CONTRIBUTION ASSESSMENT ON A QUARTERLY OR OTHER BASIS AS NECESSARY
27 TO MAINTAIN SUFFICIENT FUNDS FOR DISBURSEMENTS.

1 (15) EACH CONTRIBUTING PROVIDER SHALL REMIT TO THE COMMISSION
2 ON A MONTHLY BASIS AN AMOUNT EQUAL TO ITS INTRASTATE RETAIL
3 TELECOMMUNICATIONS SERVICES REVENUES, LESS UNCOLLECTIBLE REVENUES,
4 MULTIPLIED BY THE CONTRIBUTION ASSESSMENT PERCENTAGE DETERMINED
5 UNDER SUBSECTION (14), ACCORDING TO A TIME FRAME ESTABLISHED BY THE
6 COMMISSION. THESE CONTRIBUTIONS SHALL CONTINUE UNTIL THE END OF THE
7 PERIOD FOR WHICH ELIGIBLE PROVIDERS ARE ENTITLED TO RECEIVE MONTHLY
8 DISBURSEMENTS FROM THE RESTRUCTURING MECHANISM UNDER SUBSECTIONS
9 (11) AND (16).

10 (16) THE COMMISSION SHALL RECALCULATE THE SIZE OF THE
11 RESTRUCTURING MECHANISM FOR EACH ELIGIBLE PROVIDER 4 YEARS FROM THE
12 DATE THE INITIAL RESTRUCTURING MECHANISM BECOMES OPERATIONAL
13 PURSUANT TO SUBSECTION (9) AND AGAIN 4 YEARS THEREAFTER. THE
14 RECALCULATION PROCESS SHALL BE AS FOLLOWS:

15 (A) THE RESTRUCTURING MECHANISM SHALL BE RECALCULATED EACH
16 TIME AS THE DIFFERENCE BETWEEN THE INTRASTATE SWITCHED TOLL ACCESS
17 RATES IN EFFECT AS OF JULY 1, 2009 AND THE INTERSTATE SWITCHED TOLL
18 ACCESS RATES IN EFFECT AT THE TIME OF THE RECALCULATION, MULTIPLIED
19 BY THE INTRASTATE SWITCHED TOLL ACCESS MINUTES OF USE AND OTHER
20 SWITCHED ACCESS DEMAND QUANTITIES FOR THE CALENDAR YEAR 2008.

21 (B) THE RECALCULATED RESTRUCTURING MECHANISM SHALL BE FURTHER
22 ADJUSTED DURING THE FIRST RECALCULATION BY THE PERCENTAGE CHANGE,
23 IF ANY, IN THE NUMBER OF ACCESS LINES IN SERVICE FOR EACH ELIGIBLE
24 PROVIDER FROM DECEMBER 31, 2008 TO DECEMBER 31 OF THE YEAR
25 IMMEDIATELY PRECEDING THE YEAR IN WHICH THE ADJUSTMENT IS MADE.

26 (C) THE RECALCULATED RESTRUCTURING MECHANISM SHALL BE ADJUSTED
27 DURING THE SECOND RECALCULATION BY THE PERCENTAGE CHANGE, IF ANY,

1 IN THE NUMBER OF ACCESS LINES IN SERVICE FOR EACH ELIGIBLE PROVIDER
2 FROM DECEMBER 31 OF THE YEAR OF THE FIRST RECALCULATION TO DECEMBER
3 31 OF THE YEAR IMMEDIATELY PRECEDING THE SECOND RECALCULATION.

4 (D) EACH ELIGIBLE PROVIDER IS ENTITLED TO RECEIVE MONTHLY
5 DISBURSEMENTS FROM THE RESTRUCTURING MECHANISM FOR A PERIOD OF NO
6 MORE THAN 12 YEARS FROM THE DATE THE RESTRUCTURING MECHANISM IS
7 ESTABLISHED UNDER SUBSECTION (9), AT WHICH TIME THE RESTRUCTURING
8 MECHANISM SHALL CEASE TO EXIST.

9 (17) THE MONEY RECEIVED AND ADMINISTERED BY THE COMMISSION FOR
10 THE SUPPORT AND OPERATION OF THE RESTRUCTURING MECHANISM CREATED BY
11 THE AMENDATORY ACT THAT CREATED THIS SUBSECTION SHALL NOT BE USED
12 BY THE COMMISSION OR ANY DEPARTMENT, AGENCY, OR BRANCH OF THE
13 GOVERNMENT OF THIS STATE FOR ANY OTHER PURPOSE, AND THAT MONEY IS
14 NOT SUBJECT TO APPROPRIATION, ALLOCATION, ASSIGNMENT, EXPENDITURE,
15 OR OTHER USE BY ANY DEPARTMENT, AGENCY, OR BRANCH OF THE GOVERNMENT
16 OF THIS STATE.

17 (18) IF THE FEDERAL GOVERNMENT ADOPTS INTERCARRIER
18 COMPENSATION REFORMS OR TAKES ANY ACTION THAT CAUSES OR REQUIRES A
19 SIGNIFICANT CHANGE IN INTERSTATE SWITCHED TOLL ACCESS SERVICE
20 RATES, THE COMMISSION MAY INITIATE, OR ANY INTERESTED PARTY MAY
21 FILE AN APPLICATION FOR, A PROCEEDING PURSUANT TO SECTION 203
22 WITHIN 60 DAYS OF THAT ACTION TO DETERMINE WHETHER ANY
23 MODIFICATIONS TO THE SIZE, OPERATION, OR COMPOSITION OF THE
24 RESTRUCTURING MECHANISM ARE WARRANTED. DURING THE PENDENCY OF THAT
25 PROCEEDING, THE REQUIREMENT IN SUBSECTION (2) FOR ELIGIBLE
26 PROVIDERS TO SET INTRASTATE SWITCHED TOLL ACCESS SERVICE RATES
27 EQUAL TO INTERSTATE SWITCHED TOLL ACCESS SERVICE SHALL BE

1 TEMPORARILY SUSPENDED BY THOSE PROVIDERS. INTRASTATE ACCESS RATES
2 MAY NOT BE INCREASED ABOVE THE LEVELS THAT EXIST AT THE TIME OF THE
3 SUSPENSION. FOLLOWING NOTICE AND HEARING, UPON A SHOWING OF GOOD
4 CAUSE, THE COMMISSION MAY STOP OR PLACE CERTAIN CONDITIONS ON THE
5 TEMPORARY SUSPENSION.

6 (19) IF THE FEDERAL GOVERNMENT CHANGES THE FEDERAL UNIVERSAL
7 SERVICE CONTRIBUTION METHODOLOGY SO THAT IT IS NOT BASED ON A
8 PERCENTAGE OF TOTAL INTERSTATE TELECOMMUNICATIONS SERVICES
9 REVENUES, THE COMMISSION SHALL MODIFY THE CONTRIBUTION METHODOLOGY
10 FOR THE RESTRUCTURING MECHANISM TO BE CONSISTENT WITH THE FEDERAL
11 METHODOLOGY. THE COMMISSION SHALL INITIATE A PROCEEDING TO MODIFY
12 THE CONTRIBUTION METHODOLOGY FOR THE RESTRUCTURING MECHANISM AND TO
13 ESTABLISH A REASONABLE TIME PERIOD FOR TRANSITION TO THE NEW
14 CONTRIBUTION METHODOLOGY.

15 (20) DISPUTES ARISING UNDER THIS SECTION MAY BE SUBMITTED TO
16 THE COMMISSION FOR RESOLUTION PURSUANT TO SECTIONS 203 AND 204.

17 (21) IF ANY CONTRIBUTING PROVIDER SUBJECT TO THIS SECTION
18 FAILS TO MAKE THE REQUIRED CONTRIBUTIONS OR FAILS TO PROVIDE
19 REQUIRED INFORMATION TO THE COMMISSION, THE COMMISSION SHALL
20 INITIATE AN ENFORCEMENT PROCEEDING UNDER SECTION 203. IF THE
21 COMMISSION FINDS THAT A CONTRIBUTING PROVIDER HAS FAILED TO MAKE
22 CONTRIBUTIONS OR TO PERFORM ANY ACT REQUIRED UNDER THIS SECTION, A
23 CONTRIBUTING PROVIDER SHALL BE SUBJECT TO THE REMEDIES AND
24 PENALTIES UNDER SECTION 601.

25 (22) ELIGIBLE PROVIDERS AND CONTRIBUTING PROVIDERS SHALL
26 PROVIDE INFORMATION TO THE COMMISSION THAT IS REQUIRED FOR THE
27 ADMINISTRATION OF THE RESTRUCTURING MECHANISM. COMPANY-SPECIFIC

1 INFORMATION PERTAINING TO ACCESS LINES, SWITCHED TOLL ACCESS
2 SERVICES MINUTES OF USE, SWITCHED TOLL ACCESS DEMAND QUANTITIES,
3 CONTRIBUTIONS, AND INTRASTATE TELECOMMUNICATIONS SERVICES REVENUES
4 SUBMITTED TO THE COMMISSION UNDER THIS SUBSECTION IS CONFIDENTIAL
5 COMMERCIAL OR FINANCIAL INFORMATION AND EXEMPT FROM PUBLIC
6 DISCLOSURE PURSUANT TO SECTION 210.

7 (23) AS USED IN THIS SECTION:

8 (A) "COMMERCIAL MOBILE SERVICE" MEANS THAT TERM AS DEFINED IN
9 SECTION 332(D) (1) OF THE TELECOMMUNICATIONS ACT OF 1996, 47 USC
10 332.

11 (B) "CONTRIBUTING PROVIDER" MEANS AN ENTITY REQUIRED TO PAY
12 INTO THE RESTRUCTURING MECHANISM.

13 (C) "ELIGIBLE PROVIDER" MEANS AN INCUMBENT LOCAL EXCHANGE
14 CARRIER AS DEFINED IN SECTION 251 OF THE TELECOMMUNICATIONS ACT OF
15 1996, 47 USC 251, THAT AS OF JANUARY 1, 2009 HAD RATES FOR
16 INTRASTATE SWITCHED TOLL ACCESS SERVICES HIGHER THAN ITS RATES FOR
17 THE SAME INTERSTATE SWITCHED TOLL ACCESS SERVICES, AND THAT
18 PROVIDES THE SERVICES AND FUNCTIONALITIES IDENTIFIED BY RULES OF
19 THE FEDERAL COMMUNICATIONS COMMISSION DESCRIBED AT 47 CFR
20 54.101(A) .

21 (D) "INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE"
22 MEANS THAT TERM AS DEFINED IN 47 CFR 9.3.

23 (E) "RESTRUCTURING MECHANISM" MEANS THE INTRASTATE SWITCHED
24 TOLL ACCESS RATE RESTRUCTURING MECHANISM ESTABLISHED IN THIS
25 SECTION.

Exhibit 3

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to implement 2009 PA 182, MCL 484.2310.)
_____)

Case No. U-16183

At the January 11, 2010 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
 Hon. Monica Martinez, Commissioner
 Hon. Greg R. White, Commissioner

OPINION AND ORDER

On December 17, 2009, Governor Jennifer M. Granholm signed 2009 PA 182 (Act 182) into law. Act 182 amends MCL 484.2310 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2101 *et seq.* Act 182 was passed in an effort to reform toll access service rates in Michigan.

Except as provided in Act 182, the Commission is precluded from reviewing or setting the rates for toll access services. MCL 484.2310(1). However, under MCL 484.2310(2), the Legislature adopted the following provisions to govern the rates charged for toll access services:

A provider of toll access services shall set the rates for intrastate switched toll access services at rates that do not exceed the rates allowed for the same interstate services by the federal government and shall use the access rate elements for intrastate switched toll access services that are in effect for that provider and are allowed for the same interstate services by the federal government. Eligible providers shall comply with this subsection as of the date established for the commencement of the operation of the restructuring mechanism under subsection (9). Providers other than eligible providers shall not charge intrastate toll access service rates in excess of those rates in effect as of July 1, 2009 and shall reduce

the differential, if any, between intrastate and interstate switched toll access service rates in effect as of July 1, 2009 in no more than 5 steps of at least 20% each of the differential on the following dates: January 1, 2011; January 1, 2012; January 1, 2013; January 1, 2014; and January 1, 2015. Providers may agree to a rate that is less than the rate allowed by the federal government.

MCL 484.2310(2).

Among other things, Act 182 requires that the Commission administer a fund known as the intrastate switched toll access rate restructuring mechanism¹ (restructuring mechanism). MCL 484.2310(9).² The restructuring mechanism will be funded via “a mandatory monthly contribution by all providers of retail intrastate telecommunications services and all providers of commercial mobile service.” MCL 484.2310(12).³ This restructuring mechanism must “be established and shall begin operation within 270 days after the effective date” of Act 182.⁴ An eligible provider⁵ is entitled to receive monthly disbursements from the restructuring mechanism

¹See, MCL 484.2310(23)(e).

²Pursuant to MCL 484.2310(7), the restructuring mechanism will be established as a separate interest-bearing fund in the Department of Energy, Labor, and Economic Growth. The State Treasurer has authority to direct the investment of the restructuring mechanism. Money in the restructuring mechanism shall remain in the restructuring mechanism at the close of the fiscal year and shall not revert to the general fund.

³Interconnected voice over internet protocol (VoIP) services are not considered an intrastate telecommunications service for the purposes of this section and are not required to pay the mandatory monthly contributions required by MCL 484.2310(12).

⁴September 13, 2010 is the deadline for the Commission to begin operation of the restructuring mechanism. However, the Commission has discretion to establish an earlier effective date for the restructuring mechanism so long as it notifies “the participants in the restructuring mechanism at least 30 days in advance of that date.” MCL 484.2310(9).

⁵An eligible provider is defined as “an incumbent local exchange carrier as defined in section 251 of the telecommunications act of 1996, 47 USC 251, that as of January 1, 2009 had rates for intrastate switched toll access services higher than its rates for the same interstate switched toll access services, and that provides the services and functionalities indentified by rules of the federal communications commission described at 47 CFR 54.101(a).” MCL 484.2310(23)(c). A list of

as provided in subsection (11) in order to recover the lost intrastate switched toll access service revenues resulting from rate reductions under subsection (2). MCL 484.2310(8).

The Commission has been charged with establishing “the procedures and timelines for organizing, funding, and administering the restructuring mechanism.” MCL 484.2310(10). As part of the administrative duties, the Commission needs to collect data, including confidential data, from providers, determine eligible providers’ distributions, and issue an order establishing the contribution percentage. The responsibilities to be borne by the Commission include all of the following tasks:

A. The submission of an annual report to the Legislature and the Governor “regarding the administration of the restructuring mechanism.” MCL 484.2310(10). These annual reports are to include the total amount of money collected from contributing providers, the total amount of money disbursed from the restructuring mechanism annually to each eligible provider, the costs of administration, and any other information considered relevant by the Commission. Although Act 182 is silent on a specific date for the commencement of the annual reporting requirement, because this obligation is meant to provide the Legislature and the Governor with useful data, the Commission concludes that the initial annual report should be submitted on December 1, 2011 (and annually on that date thereafter), which will allow 30 days for the gathering of a full year’s worth of data and 45 days to analyze the data and draft a report.

B. The gathering of data from providers for the calculation of the size of the initial restructuring mechanism.⁶ Pursuant to MCL 484.2310(11)(a), by February 16, 2010, each eligible

the providers that the Commission believes meet the definition of an eligible provider is attached to this order as Exhibit A.

⁶Company specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenues submitted to the Commission are to be treated as confidential commercial or

provider shall submit to the Commission information and all the supporting documentation that establishes the amount of the reduction in annual intrastate switched toll access revenues that will result from the reduction in rates required by MCL 484.2310(2). In this regard, the Act provides that “[t]he reduction shall be calculated for each eligible provider as the difference between intrastate and interstate switched toll access service rates in effect as of July 1, 2009, multiplied by the intrastate switched access minutes of use and other switched access demand quantities for the calendar year 2008.” MCL 484.2310(11)(a).

C. The computation of the size of the initial restructuring mechanism. MCL 484.2310(11)(b) indicates that the Commission shall “compute the size of the initial restructuring mechanism disbursements for each eligible provider and shall inform each eligible provider of that computation within 60 days after receiving the information and supporting documentation from the eligible providers under subdivision (a).”

D. The gathering of data from each contributing provider⁷ regarding its 2008 intrastate retail telecommunications services revenues. Pursuant to MCL 484.2310(13), by February 16, 2010, each contributing provider must report to the Commission its 2008 intrastate retail telecommunications services revenues. In reporting their retail intrastate telecommunications revenues per Act 182, all contributing providers shall base their reports on revenues derived from retail intrastate telecommunications services as defined in MCL 484.2102(gg).⁸

financial information, which are exempt from public disclosure pursuant to MCL 484.2210(10) and MCL 484.2310(22).

⁷A contributing provider is defined as “an entity required to pay into the restructuring mechanism.” MCL 484.2310(23)(b).

⁸MCL 484.2102(gg) defines telecommunication services to include regulated and unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage.

At the legislatively-mandated times, the Commission intends to issue further orders for each of the following items: informing each eligible provider of the amount it is entitled to receive (no later than April 16, 2010); informing all providers of the contribution percentage (no later than May 17, 2010); and notifying providers of the official start-date and the mechanics of paying into and receiving money from the restructuring mechanism (no later than August 16, 2010). Upon the start of the restructuring mechanism (no later than September 13, 2010), eligible providers must lower their intrastate access rates to a level no greater than their interstate access rates.⁹

Further, the Commission observes that its administration of Act 182 will obligate providers to make a variety of tariff filings, including the following items:

- Upon the official start date of the restructuring mechanism, eligible providers will need to file new tariffs that show rates no greater than interstate rates for the same elements.
- On January 1, 2011, providers other than eligible providers will need to file a new tariff or a brief explanation of how the provider is already meeting requirements of the legislation.¹⁰

⁹Some of these dates have been adjusted to account for weekends and holidays in accordance with MCL 8.6.

¹⁰For example, AT&T Michigan, Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems (Verizon), and many competitive local exchange carriers (CLECs) already mirror their interstate rates. If filing a new tariff, the provider should show that intrastate access rates have decreased by at least 20% from the rates in effect as of July 1, 2009 or to the level of the provider's interstate rates.

- On January 1, 2012, providers other than eligible providers will need to file a new tariff or a brief explanation of how the provider is already meeting requirements of the legislation.¹¹
- On January 1, 2013, providers other than eligible providers will need to file a new tariff or a brief explanation of how the provider is already meeting requirements of the legislation.¹²
- On January 1, 2014, providers other than eligible providers will need to file a new tariff or a brief explanation of how the provider is already meeting requirements of the legislation.¹³
- On January 1, 2015, providers other than eligible providers will need to file a new tariff or a brief explanation of how the provider is already meeting requirements of the legislation.¹⁴

THEREFORE, IT IS ORDERED that:

A. All providers shall submit the following information to the Commission by February 16,

2010:

1. The provider's July 1, 2009 intrastate switched toll access rates by rate element. If using a combined rate, the provider shall include detail on how the rate is developed, including references to the provider's tariffs wherein the rate or rates are found.

¹¹For example, AT&T Michigan, Verizon, and many CLECs already mirror their interstate rates. If filing a new tariff, the provider should show that intrastate access rates have decreased by at least 40% from the rates in effect as of July 1, 2009 or to the level of the provider's interstate rates.

¹²For example, AT&T Michigan, Verizon, and many CLECs already mirror their interstate rates. If filing a new tariff, the provider should show that intrastate access rates have decreased by at least 60% from the rates in effect as of July 1, 2009 or to the level of the provider's interstate rates.

¹³For example, AT&T Michigan, Verizon, and many CLECs already mirror their interstate rates. If filing a new tariff, the provider should show that intrastate access rates have decreased by at least 80% from the rates in effect as of July 1, 2009 or to the level of the provider's interstate rates.

¹⁴For example, AT&T Michigan, Verizon, and many CLECs already mirror their interstate rates. If filing a new tariff, new tariffs must show rates no greater than interstate rates for the same elements.

2. The provider's July 1, 2009 interstate switched toll access rates by rate element. If using a combined rate, include detail on how the rate is developed, including references to the provider's tariffs wherein the rate or rates are found.
3. If a provider is not providing toll access service, a statement to that effect.

B. All eligible providers shall submit the following information to the Commission by February 16, 2010 in the formay contained in Exhibit B:

1. The eligible provider's July 1, 2009 intrastate switched toll access rates by rate element. If using a combined rate, include detail on how the rate is developed, including references to the provider's tariffs wherein the rate or rates are found.
2. The eligible provider's July 1, 2009 interstate switched toll access rates by rate element. If using a combined rate, include detail on how the rate is developed, including references to the provider's tariffs wherein the rate or rates are found.
3. The eligible provider's total number of access lines in service as of December 31, 2008.
4. The eligible provider's intrastate switched access minutes of use for calendar year 2008 for each rate element, including number of terminations and mileage factors, as appropriate.

C. All contributing providers shall submit the following information to the Commission by February 16, 2010 as three separate numbers:

1. The contributing provider's 2008 total intrastate retail telecommunications services revenues.
2. The contributing provider's 2008 uncollectible intrastate retail telecommunications services revenues, actual or projected.
3. The contributing provider's 2008 total intrastate retail telecommunications revenues minus uncollectibles. (The value reported for subparagraph C3 should be equal to the value for subparagraph C1 minus the value for subparagraph C2.)

D. In reporting its retail intrastate telecommunications revenues per 2009 PA 182, each contributing provider shall base its report on revenues derived from retail intrastate telecommunications services as defined in MCL 484.2102(gg).

E. All information required to be filed by either 2009 PA 182 or this order shall be accompanied by a sworn affidavit by a person knowledgeable of the facts attesting to the accuracy and authenticity of all data provided.

F. Any provider that believes that it is not a contributing provider shall file a sworn affidavit by a person knowledgeable of the facts attesting to the fact that his or her company is not a contributing provider, and fully documenting the explanation for the position taken in the affidavit.

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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

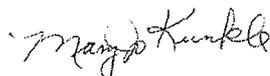


Orjiakor N. Isiogu, Chairman



Monica Martinez, Commissioner

By its action of January 11, 2010.



Mary Jo Kunkle, Executive Secretary



Greg R. White, Commissioner

EXHIBIT A

Ace Telephone Company
Allendale Telephone Company
Baraga Telephone Company
Barry County Telephone Company
Blanchard Telephone Company
Bloomington Telephone Company
Carr Telephone Company
CenturyTel of Michigan
CenturyTel Midwest--Michigan, Inc.
CenturyTel of Northern Michigan
CenturyTel of Upper Michigan
Chapin Telephone Company
TDS Telecom/Chatham Telephone Company
Chippewa County Telephone Company
Climax Telephone Company
TDS Telecom/Communications Corporation of Michigan
Deerfield Farmers' Telephone Company
Drenthe Telephone Company
Frontier Telephone Company
Hiawatha Telephone Company
TDS Telecom/Island Telephone Company
Kaleva Telephone Company
Lennon Telephone Company
Midway Telephone Company
Ogden Telephone Company
Ontonagon Telephone Company
Peninsula Telephone Company
Pigeon Telephone Company
Sand Creek Telephone Company
TDS Telecom/Shiawassee Telephone Company
Springport Telephone Company
Upper Peninsula Telephone Company
Waldron Telephone Company
Westphalia Telephone Company
Winn Telephone Company
TDS Telecom/Wolverine Telephone Company

EXHIBIT B

Company Name
Contact Name
Phone Number
Email

Intrastate Switched Access Rate
Elements Billed Calendar Year 2008

Rate	Rate
Intrastate	Interstate
07/01/09	07/01/09

Carrier Common Line - Originating
Carrier Common Line - Terminating
Local Switching
Information Surcharge
Tandem Interconnection Charge
Tandem Switched Termination
Tandem Switched Facility
Tandem Switching
Shared Multiplexing DS3 -DS1
Shared Trunk Port
800 Data Base Access Service Queries - Basic
800 Data Base Access Service Queries - Vertical
Entrance Facility
 Voice Grade Two-Wire
 Voice Grade Four-Wire
 High Capacity DS1
 High Capacity DS3
 Synchronous Optic Channel OC3
 Synchronous Optic Channel OC12
Direct Trunk Facility
 Voice Grade
 High Capacity DS1
 High Capacity DS3
 Synchronous Optic Channel OC3
 Synchronous Optic Channel OC12
Direct Trunk Termination
 Voice Grade
 High Capacity DS1
 High Capacity DS3
 Synchronous Optic Channel OC3
 Synchronous Optic Channel OC12
Multiplexing DS3 to DS1
Multiplexing DS1 to Voice Grade

Reduction in annual intrastate switched toll access revenues

Access Lines at 12/31/08

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-16183

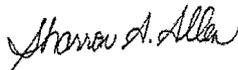
County of Ingham)

Lisa Felice being duly sworn, deposes and says that on January 11, 2010 A.D. she served a copy of the attached **Commission Order (Commission's Own Motion)** via e-mail **transmission**, to the persons as shown on the attached service list (Listserv Distribution List).



Lisa Felice

Subscribed and sworn to before me
this 11th day of January 2010



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Notary Public, Ingham County, MI
My Commission Expires August 16, 2011

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Exhibit 4

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear
Rate Communications, Inc.; TC3 Telecom,
Inc.; and TelNet Worldwide, Inc.**

Docket No. _____

Joint Petition for Expedited Declaratory Ruling
that the State of Michigan's Statute 2009 PA 182
is Preempted Under Sections 253 and 254 of the
Communications Act

_____/

DECLARATION OF MARK IANNUZZI

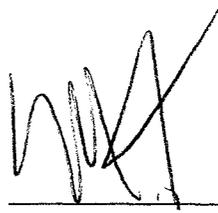
I, Mark Iannuzzi, declare under penalty of perjury as follows:

1. I am the President of TelNet Worldwide, Inc. ("TelNet"). I am responsible for the management and operation of TelNet.
2. TelNet is a competitive local exchange carrier ("CLEC") licensed to provide basic local exchange service in the State of Michigan.
3. TelNet currently provides telecommunications services in the service territories of CenturyTel Midwest – Michigan, Inc., CenturyTel of Michigan, Inc., CenturyTel of Northern Michigan, Inc., and CenturyTel of Upper Michigan, Inc., all of which are smaller ILECs that will

be eligible to obtain the “restructuring mechanism” subsidy under Michigan statute 2009 PA 182 (“Act 182”).

4. Under Act 182, although TelNet will be required to reduce its intrastate access rates, TelNet will not be eligible to receive the “restructuring mechanism” subsidy for the sole reason that TelNet is a CLEC.
5. As a result, the subsidy effectively lowers the rate of the smaller ILECs’ service in comparison with TelNet’s service in the amount of the state subsidy that is available to the smaller ILECs, but that is not available to TelNet.
6. Thus, the smaller ILECs will have the ability to price its services at rates lower than TelNet can provide.
7. The smaller ILECs’ resultant ability to offer lower prices will give TelNet’s current and potential customers in the smaller ILECs’ territories a strong incentive to choose service from the smaller ILECs rather than from TelNet.
8. TelNet’s inability to match the rates of the smaller ILECs will also inhibit TelNet’s ability to expand its services into additional smaller ILECs’ territories in the future.
9. Therefore, Act 182 harms TelNet’s ability to compete with the smaller ILECs, will result in the loss of TelNet’s current customers, and will inhibit TelNet’s ability to obtain additional customers.
10. TelNet will also be harmed because it will be required to make significant, unrecoverable expenditures to comply with Act 182’s reporting and tariffing requirements, and will be required to pay into the “restructuring mechanism” fund.

I declare under penalty of perjury that the foregoing is true and correct.



Mark Iannuzzi
President
TelNet Worldwide, Inc.
1175 W. Long Lake Rd.
Ste. 101
Troy, Michigan 48098

Dated: February 4, 2010

Exhibit 5

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear
Rate Communications, Inc.; TC3 Telecom,
Inc.; and TelNet Worldwide, Inc.**

Docket No. _____

Joint Petition for Expedited Declaratory Ruling
that the State of Michigan's Statute 2009 PA 182
is Preempted Under Sections 253 and 254 of the
Communications Act

_____ /

DECLARATION OF JOSEPH MATTAUSCH

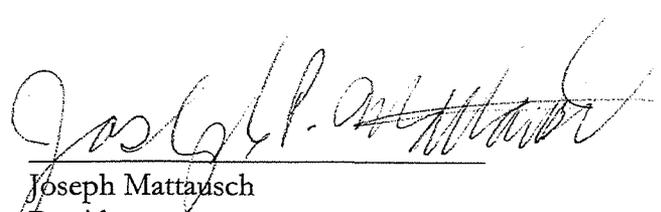
I, Joseph Mattausch, declare under penalty of perjury as follows:

1. I am the President of TC3 Telecom, Inc. ("TC3"). I am responsible for the management and operation of TC3.
2. TC3 is a competitive local exchange carrier ("CLEC") licensed to provide basic local exchange service in the State of Michigan.
3. TC3 is far along in the planning stages and process of extending the provision of telecommunications services to the service territories of TDS Telecom/Communications Corp. of MI, Deerfield Farmers Telephone Company, Ogden Telephone Company, and Sand Creek

Telephone Company, all of which are smaller ILECs that will be eligible to obtain the “restructuring mechanism” subsidy under Michigan statute 2009 PA 182 (“Act 182”).

4. Under Act 182, although TC3 will be required to reduce its intrastate access rates, TC3 will not be eligible to receive the “restructuring mechanism” subsidy for the sole reason that TC3 is a CLEC.
5. As a result, the subsidy effectively lowers the rate of the smaller ILECs’ service in comparison with TC3’s service in the amount of the state subsidy that is available to the smaller ILECs, but that is not available to TC3.
6. Thus, the smaller ILECs will have the ability to price its services at rates lower than TC3 will be able to provide.
7. The smaller ILECs’ resultant ability to offer lower prices will give TC3’s potential customers in the smaller ILECs’ territories a strong incentive to choose service from the smaller ILECs rather than from TC3.
8. TC3’s inability to match the rates of the smaller ILECs will also inhibit TC3’s ability to expand its services into additional smaller ILECs’ territories in the future.
9. Therefore, Act 182 harms TC3’s ability to compete with the smaller ILECs, and will inhibit TC3’s ability to obtain customers both in the service territories into which TC3 is currently in the process of extending service, and in any future service territories TC3 may choose to provide service.
10. TC3 will also be harmed because it will be required to make significant, unrecoverable expenditures to comply with Act 182’s reporting and tariffing requirements, and will be required to pay into the “restructuring mechanism” fund.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read "Joseph Mattausch", written over a horizontal line.

Joseph Mattausch
President
TC3 Telecom, Inc.
247 S. Main St.
Adrian, Michigan 49221

Dated: February 5th, 2010

Exhibit 6

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear
Rate Communications, Inc.; TC3 Telecom,
Inc.; and TelNet Worldwide, Inc.**

Docket No. _____

Joint Petition for Expedited Declaratory Ruling
that the State of Michigan's Statute 2009 PA 182
is Preempted Under Sections 253 and 254 of the
Communications Act

_____ /

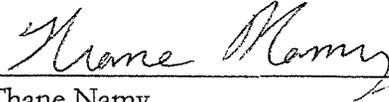
DECLARATION OF THANE NAMY

I, Thane Namy, declare under penalty of perjury as follows:

1. I am the Chief Executive Officer of Clear Rate Communications, Inc. ("Clear Rate"). I am responsible for the management and operation of Clear Rate.
2. Clear Rate is a competitive local exchange carrier ("CLEC") licensed to provide basic local exchange service in the State of Michigan.
3. Clear Rate currently provides telecommunications services in the service territories of CenturyTel Midwest-Michigan, Inc. and TDS Telecom/Wolverine Telephone Co., both of which are smaller ILECs that will be eligible to obtain the "restructuring mechanism" subsidy under Michigan statute 2009 PA 182 ("Act 182").

4. Under Act 182, although Clear Rate will be required to reduce its intrastate access rates, Clear Rate will not be eligible to receive the “restructuring mechanism” subsidy for the sole reason that Clear Rate is a CLEC.
5. As a result, the subsidy effectively lowers the rate of the smaller ILECs’ service in comparison with Clear Rate’s service in the amount of the state subsidy that is available to the smaller ILECs, but that is not available to Clear Rate.
6. Thus, the smaller ILECs will have the ability to price their services at rates lower than Clear Rate can provide.
7. The smaller ILECs’ resultant ability to offer lower prices will give Clear Rate’s current and potential customers in the smaller ILECs’ territory a strong incentive to choose service from the smaller ILECs rather than from Clear Rate.
8. Clear Rate’s inability to match the rates of the smaller ILECs will also inhibit Clear Rate’s ability to expand its services into additional smaller ILECs’ territories in the future.
9. Therefore, Act 182 harms Clear Rate’s ability to compete with the smaller ILECs, will result in the loss of Clear Rate’s current customers, and will inhibit Clear Rate’s ability to obtain additional customers.
10. Clear Rate will also be harmed because it will be required to make significant, unrecoverable expenditures to comply with Act 182’s reporting and tariffing requirements, and will be required to pay into the “restructuring mechanism” fund.

I declare under penalty of perjury that the foregoing is true and correct.



Thane Namy
Chief Executive Officer
Clear Rate Communications, Inc.
24700 Northwestern Highway
Suite 340
Southfield, Michigan 48075

Dated: February 5th, 2010

Exhibit 7

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear
Rate Communications, Inc.; TC3 Telecom,
Inc.; and TelNet Worldwide, Inc.**

Docket No. _____

Joint Petition for Expedited Declaratory Ruling
that the State of Michigan's Statute 2009 PA 182
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Communications Act

_____ /

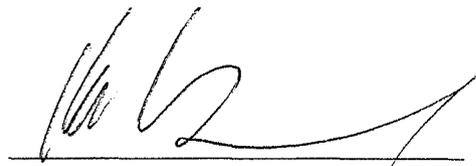
DECLARATION OF KEVIN SCHOEN

I, Kevin Schoen, declare under penalty of perjury as follows:

1. I am the President of ACD Telecom, Inc. ("ACD"). I am responsible for the management and operation of ACD.
2. ACD is a competitive local exchange carrier ("CLEC") licensed to provide basic local exchange service in the State of Michigan.
3. ACD currently provides telecommunications services in the service territory of Springport Telephone Company, which is a smaller ILEC that will be eligible to obtain the "restructuring mechanism" subsidy under Michigan statute 2009 PA 182 ("Act 182").

4. Under Act 182, although ACD will be required to reduce its intrastate access rates, ACD will not be eligible to receive the “restructuring mechanism” subsidy for the sole reason that ACD is a CLEC.
5. As a result, the subsidy effectively lowers the rate of the smaller ILEC’s service in comparison with ACD’s service in the amount of the state subsidy that is available to the smaller ILEC, but that is not available to ACD.
6. Thus, the smaller ILEC will have the ability to price its services at rates lower than ACD will be able to provide.
7. The smaller ILEC’s resultant ability to offer lower prices will give ACD’s potential customers in the smaller ILEC’s territory a strong incentive to choose service from the smaller ILEC rather than from ACD.
8. ACD’s inability to match the rates of the smaller ILECs will also inhibit ACD’s ability to expand its services into additional smaller ILECs’ territories in the future.
9. Therefore, Act 182 harms ACD’s ability to compete with the smaller ILECs, and will inhibit ACD’s ability to obtain customers both in the service territory in which ACD currently provides service, and in any future service territories ACD may choose to provide service.
10. ACD will also be harmed because it will be required to make significant, unrecoverable expenditures to comply with Act 182’s reporting and tariffing requirements, and will be required to pay into the “restructuring mechanism” fund.

I declare under penalty of perjury that the foregoing is true and correct.



Kevin Schoen
President
ACD Telecom, Inc.
1800 N. Grand River Ave.
Lansing, Michigan 48906

Dated: February 18, 2010

Exhibit 8

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear
Rate Communications, Inc.; TC3 Telecom,
Inc.; and TelNet Worldwide, Inc.**

Docket No. _____

Joint Petition for Expedited Declaratory Ruling
that the State of Michigan's Statute 2009 PA 182
is Preempted Under Sections 253 and 254 of the
Communications Act

_____ /

DECLARATION OF COLLIN ROSE

I, Collin Rose, declare under penalty of perjury as follows:

1. I am the President of DayStarr, LLC ("DayStarr"). I am responsible for the management and operation of DayStarr.
2. DayStarr is a competitive local exchange carrier ("CLEC") licensed to provide basic local exchange service in the State of Michigan.
3. DayStarr currently provides telecommunications services in the service territory of TDS Telecom/Shiawassee Telephone Co. ("Shiawassee"), a smaller ILEC that will be eligible to obtain the "restructuring mechanism" subsidy under Michigan statute 2009 PA 182 ("Act 182").

4. In addition, DayStarr has recently installed 1 mile of fiber in Shiawassee's territory, and is in the process of turning up service to customers utilizing such fiber plus other leased fiber.
5. Under Act 182, although DayStarr will be required to reduce its intrastate access rates, DayStarr will not be eligible to receive the "restructuring mechanism" subsidy for the sole reason that DayStarr is a CLEC.
6. As a result, the subsidy effectively lowers the rate of the smaller ILEC's service in comparison with DayStarr's service in the amount of the state subsidy that is available to the smaller ILEC, but that is not available to DayStarr.
7. Thus, the smaller ILEC will have the ability to price its services at rates lower than DayStarr can provide.
8. The smaller ILEC's resultant ability to offer lower prices will give DayStarr's current and potential customers in the smaller ILEC's territory a strong incentive to choose service from the smaller ILEC rather than from DayStarr.
9. DayStarr's inability to match the rates of the smaller ILECs will also inhibit DayStarr's ability to expand its services into additional smaller ILECs' territories in the future.
10. Therefore, Act 182 harms DayStarr's ability to compete with the smaller ILECs, will result in the loss of DayStarr's current customers, and will inhibit DayStarr's ability to obtain additional customers.
11. DayStarr will also be harmed because it will be required to make significant, unrecoverable expenditures to comply with Act 182's reporting and tariffing requirements, and will be required to pay into the "restructuring mechanism" fund.

I declare under penalty of perjury that the foregoing is true and correct.



Collin Rose
President
DayStarr, LLC
P.O. Box 250
Corunna, Michigan 48817

Dated: February __5__, 2010