

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

In the Matter of)	
)	
Joint Michigan CLEC Petition for)	WC Docket No. 10-45
Declaratory Ruling and Motion for)	
Temporary Relief)	

**COMMENTS OF THE
MICHIGAN PUBLIC SERVICE COMMISSION**

Introduction

On February 22, 2010, the Federal Communications Commission (FCC) established a pleading cycle for comments on the petition of ACD Telecom, Inc., DayStarr, LLC, Clear Rate Communications, Inc., TC3 Telecom, Inc., and TelNet Worldwide, Inc., a group of competitive local exchange carriers (Joint CLECs), for a declaratory ruling to preempt Michigan statute 2009 PA 182 (Act 182). The Joint CLECs filed their *Joint Petition for Expedited Ruling that the State of Michigan’s Statute 2009 PA 182 is Preempted Under Sections 253 and 254 of the Communications Act (Petition)* on February 12, 2010.¹ The Michigan Public Service Commission (MPSC), through its Staff, was very involved throughout the yearlong legislative process that resulted in Act 182. The MPSC, as the agency charged with implementing this statute, maintained a neutral stance on the legislation. Staff from the MPSC worked very closely with legislators and industry representatives during the legislative process. As such, the MPSC is in a unique position to offer comments on the history, development, and on-going implementation of Act 182. The MPSC is pleased that the FCC has opened this

¹ The Joint CLECs actually filed the Petition on February 9, 2010. However, the FCC was closed due to inclement weather until February 12, 2010; therefore the FCC recognizes the filing date as February 12, 2010.

proceeding for comment, and would furthermore request that the FCC fully develop a complete record on this issue before taking a step as severe as preempting Michigan law.

History of PA 182

The Problem to be Solved-

As the FCC is well aware, for quite some time there has been a strong push for national intercarrier compensation reforms. At the state level, intercarrier compensation reform takes the guise of intrastate switched access charge reform. There are strong arguments in favor of lowered intrastate access rates, especially given the disparity between interstate access rates and intrastate access rates, with the interstate rates being generally lower. Without federal intercarrier compensation reform as a guide, state legislatures/commissions must work from the facts and circumstances particular to each state to accomplish access charge reform. In Michigan, this issue came before the Michigan Legislature in early 2009. As explained below, throughout 2009 the Michigan legislature and interested parties worked extensively to pass a compromise bill addressing the issues encompassed in intrastate access charges.

The Legislative Process-

On February 11, 2009, House Bill 4257 was introduced in the Michigan House of Representatives and was subsequently referred to the House Committee on Energy and Technology (Committee). A series of Committee hearings were held in July, August, September, November, and December 2009. In addition to these hearings, the chair of the Committee spearheaded a workgroup process. The workgroup consisted of key Committee legislators, industry personnel representing incumbent local exchange carriers (ILECs), commercial mobile radio service providers, cable providers, VoIP providers,

and competitive local exchange carriers—including a representative on behalf of the Joint CLECs.² MPSC staff, a representative from organized labor, and a representative of a consumer interest group also participated in the workgroups. The workgroup participants met approximately every week from late September through late October 2009 and researched and debated many issues during this process.

The workgroup format enabled all interested parties to address their issues in detail, with MPSC staff serving an informational/educational role regarding the technology and policy issues. The pressing issue was three-fold: first, to ensure that prices for basic local exchange service remained affordable for Michigan’s citizens in today’s tight economic times; while second, balancing the needs of Michigan providers, especially those with carrier-of-last-resort obligations, to recoup the costs of their network investments and maintain those networks that many types of different providers use to carry calls; with third, protecting interconnecting carriers from excessive access charges. Through the workgroup meetings, it was evident that House Bill 4257, as initially introduced, did not adequately balance these three factors. During the workgroup process, the Committee Chair directed parties to share data with the MPSC if they felt certain proposals would cause them harm. The MPSC’s role was to verify assertions of harm while protecting the confidentiality of data. Many rural ILECs shared data with the MPSC to quantify the revenue loss resulting from reducing intrastate access rates to interstate levels. No CLECs provided data to the MPSC in response to any of the

² One party to the workgroups was the Michigan Internet and Telecommunications Alliance (MITA). MITA listed the following members: ACD, Clear Rate Communications, CMC Telcom, DayStarr Communications, Grid 4, Arialink, iServ, JAS Networks, M-33 Access, Michigan Access, Michigan Online, TC3 Telecom, TelNet Worldwide, Three Rivers Telecom, and Quick Communications.

proposals addressed in the workshops. Therefore, the MPSC could not quantify claims of harm to the CLECs.

After the final workgroup meetings, a substitute version of the bill, H-6, was introduced as a compromise solution that incorporated many of the ideas discussed during the workgroup process to address the issues that were noted.

On December 3, 2009, this substitute version of House Bill 4257 passed the Michigan House by a vote of 101-5. On December 9, 2009, the bill passed the Michigan Senate with no amendments by a vote of 37-0.

Resulting Law: PA 182-

On December 17, 2009, Michigan's Governor signed House Bill 4257 into law, PA 182. PA 182 amended Section 310 of the Michigan Telecommunications Act (MTA).³ The statute requires that those providers charging intrastate access rates in excess of the rates charged for similar interstate access services lower their rates. This rate reduction is to follow one of two paths. For eligible providers, defined as ILECs with fewer than 250,000 lines,⁴ the rate reduction will occur at the time the Switched Toll Access Restructuring Mechanism (Restructuring Mechanism) commences. Non-eligible providers meanwhile will 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% of the differential, on the following dates: January 1, 2011, January 1, 2012, January 1, 2013, January 1, 2014, and January 1, 2015.

³ See Attachment 1, the MTA before amendment by PA 182 and Attachment 2, the MTA after amendment by PA 182.

⁴ ILECs with over 250,000 lines were already required to have their intrastate access rates mirror their interstate access rates pursuant to the MTA.

Act 182 also creates the above-mentioned Restructuring Mechanism. Eligible providers are entitled to receive monthly disbursements from the Restructuring Mechanism to recover the lost intrastate switched toll access revenues resulting from the reduction of the intrastate rate to the interstate level. The Restructuring Mechanism is to be supported by mandatory monthly contributions from all providers of retail intrastate telecommunications services, including all providers of commercial mobile radio services. The contribution is to be a uniform percentage applied to each contributing provider's 2008 intrastate retail telecommunications services revenues. Act 182 directs the MPSC to calculate and inform providers of the contribution percentage no later than May 17, 2010. The Restructuring Mechanism will be re-sized at 4 years from the original operational date, and again 4 years later, and will be in operation no longer than 12 years from the original operational date. PA 182 also allows for changes to the Restructuring Mechanism in the event of federal adoption of intercarrier compensation reform or federal changes to the federal Universal Service fund contribution methodology. This will allow the Michigan Restructuring program to be consistent with any changes at the federal level.

In the *Petition*, the Joint CLECs state, “[a]lthough 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.’”⁵ Without commenting on the merits of this assertion by the Joint CLECs, the MPSC agrees with their first assertion. In fact, there exists in the MTA a provision to establish a state universal service fund. This provision is found in Section 316 of the MTA, excerpted here:

Sec. 316a. (1) As used in this section:

⁵ See *Petition*, p 15.

- (a) "Affordable rates" means, at a minimum, rates in effect on January 1, 2006 or as determined by the commission.
- (b) "Intrastate universal service fund" means a fund created by the commission to provide a subsidy to customers for the provision of supported telecommunication services provided by any telecommunication carrier.
- (c) "Supported telecommunication services" means primary residential access lines and a minimum level of local usage on those lines, as determined by the commission.
- (d) "Universal service" shall mean the provision of supported telecommunication services by any carrier.
- (2) The commission shall determine for each provider whether and to what extent the affordable rate level to provide supported telecommunication services is below each provider's forward looking economic cost of the supported telecommunication services.
- (3) If an intrastate universal fund is created under this section, to the extent providers provide supported telecommunication services at an affordable rate that is below the forward looking economic cost of the supported telecommunication services, the fund shall provide a subsidy for customers in an amount which is equal to the difference between the affordable rate as determined by the commission and the forward looking economic cost of the supported services, less any federal universal service support received for those supported services.
- (4) Eligibility for customers to receive intrastate universal service support under subsection (3) shall be consistent with the eligibility guidelines of section 254(e) of the telecommunications act of 1996 and the rules and regulations of the federal communications commission. The state fund shall be administered by an independent third-party administrator selected by the commission.
- (5) To the extent an intrastate universal service fund is established, the commission shall require that the costs of the fund be recovered from all telecommunication providers on a competitively neutral basis.
- Providers contributing to the intrastate universal service fund may recover from end-users the costs of the financial support through surcharges assessed on end-users' bills.
- (6) Upon request or on its own motion, the commission, after notice and hearing, shall determine if, based upon changes in technology or other factors, the findings made under this section should be reviewed.
- (7) This section does not apply if an interstate universal service fund exists on the federal level unless otherwise approved by the commission.

PA 182 did not amend this provision. Therefore, there remains in Michigan law the ability for any carrier to petition the Michigan Public Service Commission for the implementation of a state universal service fund.

MPSC Implementation of PA 182-

Pursuant to the directives in the statute, on January 11, 2010, the MPSC issued an Order opening a docket, Case No. U-16183, to initiate the implementation of PA 182.⁶ The MPSC's Order directed all eligible and contributing providers to submit the

⁶ See Attachment 3.

necessary information to implement PA 182 by February 16, 2010.⁷ The Order was sent to all other providers that may not be contributing providers and required those providers to submit a statement addressing why they should not be considered a contributing provider. The MPSC is in the process of calculating the initial size of the Restructuring Mechanism, a process that must be completed by April 16, 2010. As noted above, by May 17, 2010, the MPSC will calculate the contribution percentage necessary to ensure full funding for the Restructuring Mechanism. The Restructuring Mechanism must be operational on or before September 13, 2010.

Preemption of State Law

Intrastate access charges fall within the jurisdiction of the state regulatory authority and as such, the Michigan legislature is well within its bounds to enact laws related to intrastate access charges.⁸ The MTA is the product of those efforts and now includes PA 182 directing the MPSC's implementation of the new statute.

Preemption under §253-

Section 253 of the federal Communications Act of 1934, as amended (Communications Act),⁹ sets forth the federal government's mandate that all state-imposed barriers to the competitive provision of telecommunications service be removed. In furtherance of that mandate, §253(d) provides that, "[i]f . . . 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), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent

⁷ The MPSC has accepted, and continues to accept, late filings submitted after the February 16, 2010 date. The MPSC is working with providers to ensure that they are aware of and understand their responsibilities under PA 182.

⁸ *Nat'l. Assn. of Regulatory Utility Commissioners v. F.C.C.*, 727 F.2d 1212, 1220 n. 30 (D.C. Cir 1984).

⁹ 47 U.S.C. §253.

necessary to correct such violation or inconsistency.”¹⁰ Relevant to that determination, §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." ¹¹ Also relevant to that determination, §253(b) states:

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.¹²

In order to enjoy the safe harbor provided under §253(b), the FCC has held that a state law must satisfy all of the three requirements that are contained in that subsection: (1) competitive neutrality, (2) consistency with §254, and (3) necessity to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.¹³

Notwithstanding the State of Michigan’s prerogative to enact laws on matters related to intrastate access charges, the Joint CLECs have alleged in their *Petition* that the particular enactment found in Act 182 should be preempted because it meets the standards for preemption found in §253(d). In particular, the Joint CLECs have argued that, contrary to the requirements of §253(a), Act 182 has the “effect of prohibiting the ability of [an] entity [such as the Joint CLECs] to provide . . . intrastate telecommunications services” because the Act’s restructuring mechanism is only available to reimburse small ILECs, but not CLECs, for the loss of revenues arising under

¹⁰ 47 U.S.C. §253(d).

¹¹ 47 U.S.C. §253(a).

¹² 47 U.S.C. §253(b).

¹³ *In the Matter of Silver Star Telephone, Inc. Petition for Preemption and Declaratory Ruling (Silver Star)*, 12 FCC Rcd. 15639, FCC 97-336, ¶ 40 (rel'd September 24, 1997).

Act 182. Furthermore, the Joint CLECs have argued that Act 182's defect cannot be saved by the safe harbor provisions of §253(b) because the restructuring mechanism also renders the Act incapable of satisfying §253(b)'s competitive neutrality requirement. Upon closer review, however, it is apparent that the Joint CLECs have really only made one argument: that Act 182 puts CLECs at a competitive disadvantage to small ILECs in Michigan. It is on this proposition alone that the Joint CLECs rely to persuade the FCC that §253(a) has been violated and that §253(b)'s safe harbor requirements are not met.

Although, as stated previously, the MPSC maintained a neutral stance on Act 182 throughout the legislative process, the MPSC nevertheless believes that the Joint CLECs' representation of the negative effects of Act 182 on the competitive telecommunications market in Michigan is inaccurate and misleading. In an effort to provide the FCC with a more correct understanding of Act 182, the MPSC offers the following information and analysis relative to Michigan's restructuring mechanism and preemption under §253(d).

Act 182's restructuring mechanism does not, as the Joint CLECs argue, have the effect of prohibiting the ability of the Joint CLECs, or any other entity, to provide telecommunications services in Michigan. The Joint CLECs were correct in pointing out that §253(a) is not limited to instances in which the prohibition on entry into the telecommunications market is express.¹⁴ But, the FCC has also made it clear that the mere allegation, without "credible and probative evidence," that the state's action has actually had the effect of prohibiting the ability of the petitioner to provide telecommunications services is insufficient to support an FCC order preempting the

¹⁴ Joint CLECs' *Petition* p. 9.

challenged state action.¹⁵ The FCC has denied requests for preemption in which the petitioner "fail[s] to make even the threshold showing that [the challenged state law] fall[s] within the proscription of entry barriers set forth in section 253(a) of the Communications Act."¹⁶ And the FCC has said that it "will exercise [its] authority only upon such fully developed factual records."¹⁷

Petitioners, in this case, have not yet met their burden. Most of the Joint CLECs' argument that Act 182 violates §253(a) is directed toward their apparent goal to persuade the FCC that precedent compels a finding of preemption. To that end, the Joint CLECs make much of the *Western Wireless* case¹⁸ – a case in which the FCC expressly acknowledges that it did not make a decision on the merits of a similar, albeit distinguishable, issue.¹⁹ But, as is apparent from the authority relied upon above, the FCC's determination about whether it is necessary to preempt state law under §253(d) is primarily a factual, not a precedential, determination. The reason for the Joint CLECs' deficit of discussion regarding the factual underpinnings for their claim of preemption is apparent. They don't have any. In support of their *Petition*, the only factual offerings that the Joint CLECs included were five substantively identical affidavits from officers in

¹⁵ *In the Matter of American Communications Services, Inc.; MCI Telecommunications Corp.; Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended (American Communications)*, 14 FCC Rcd 21579, FCC 97-100, ¶ 17 (rel'd December 23, 1999).

¹⁶ *American Communications*, 14 FCC Rcd 21579, FCC 97-100, ¶ 38 (rel'd December 23, 1999). *See also*, ¶¶ 65 & 109.

¹⁷ *American Communications*, 14 FCC Rcd 21579, FCC 97-100, ¶ 17 (rel'd December 23, 1999).

¹⁸ *In the Matter of Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Fund Pursuant to Section 253 of the Communications Act of 1934 (Western Wireless)*, 15 FCC Rcd. 16227, FCC 00-309 (rel'd August 28, 2000).

¹⁹ In *Western Wireless*, the FCC reviewed a Kansas funding mechanism that was a component of that state's Universal Service Fund. In Michigan, the state's Intrastate Universal Service Fund is a separate and distinct entity from the restructuring mechanism at issue in this case. *See Mich. Comp. Laws §484.2316a*. In *Western Wireless* the FCC repeatedly expressed its "concern about a *universal service fund mechanism* that provides funding only to ILECs." *Western Wireless*, 15 FCC Rcd. 16227, FCC 00-309, ¶ 8 (rel'd August 28, 2000) (emphasis added). *See also* ¶¶ 10 & 11.

each of the Joint CLECs' respective organizations attesting that, among other things, "the smaller ILECs will have the ability to price its [sic] services at rates lower than [the respective Petitioner] can provide," and that, as a result, customers will have a "strong incentive to choose service from the smaller ILECs" and the respective Petitioner's "ability to expand its services into additional smaller ILECs' territories in the future" will be inhibited.²⁰ But, these are bare conclusory and self-serving statements unsupported by any additional evidence from which the FCC could determine whether these claimed problems are real or fictional.

On the contrary, the Joint CLECs' unsupported claims seem to defy the MPSC's experience of the relative competitive advantage between the CLECs and the smaller, rural ILECs in Michigan. At least in Michigan, small ILECs face a number of "legacy" costs that CLECs traditionally do not. The smaller ILECs own, and must maintain, much of the rural telecommunications infrastructure in the State of Michigan. Even in the limited service areas where CLECs have their own infrastructure, the ILECs' infrastructure generally tends to be older and in greater need of repair or replacement. And, the smaller ILECs serve as "carriers of last resort" in Michigan, ensuring basic service to all comers within their service territory, unlike the selective ability of the CLECs to cherry-pick the more-attractive customers. All of these attributes of smaller ILECs represent additional costs not traditionally borne by the CLECs. These are exactly the kinds of costs that Michigan's legislature had in mind when it enacted Act 182's restructuring mechanism.

The point is that, in order to accurately assess whether Act 182 has the "effect of prohibiting the ability of [an] entity to provide . . . intrastate telecommunications

²⁰ Joint CLECs' *Petition*, Exhibits 4-8, *see* ¶¶ 6-8 in each respective Exhibit.

services" or whether Act 182 is "competitively neutral," the Joint CLECs would need to present the FCC with detailed documentary evidence concerning the relative costs, capital investments, and any other matters material to determine relative pricing circumstances of the Joint CLECs and their competing small ILECs. Absent such evidence, the Joint CLECs' claim that Act 182 violates §253(a) is raw conjecture and fails to meet the FCC's standards for petitioners putting forth a case for preemption under §253(d).

Preemption under §254-

The Joint CLECs correctly point out in their *Petition*²¹ that a state law may also be preempted under the traditional doctrine of preemption based on the supremacy clause of the U.S. Constitution.²² The U.S. Supreme Court has held that federal law preempts state law (1) when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, (2) when there is outright or actual conflict between federal and state law, (3) where compliance with both federal and state law is in effect physically impossible, (4) where there is implicit in federal law a barrier to state regulation, (5) where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the states to supplement federal law, or (6) where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.²³

Again, notwithstanding the State of Michigan's prerogative to enact laws on matters related to intrastate access charges, the Joint CLECs have alleged in their *Petition* that the particular enactment found in Act 182 should be preempted because it meets the

²¹ Joint CLECs *Petition* p. 15.

²² U.S. CONST. art. VI, cl. 2. See also, *Louisiana Public Service Comm. v. F.C.C.*, 476 U.S. 355; 106 S. Ct. 1890; 90 L. Ed. 2d 369(1986).

²³ *Louisiana Public Service Comm. v. F.C.C.*, 476 U.S. at 368-369.

standards for traditional preemption recognized by the federal courts pursuant to the supremacy clause of the U.S. Constitution. In particular, the Joint CLECs have argued that Act 182 is inconsistent with §254(f) of the Communications Act²⁴ because (1) small ILECs' eligibility for funds from the restructuring mechanism depends on whether the ILEC provides services that would be eligible for federal universal service support, (2) the statute authorizes the MPSC to open a proceeding to determine who is required to participate in a universal service fund if the FCC determines that VoIP service may be subject to state regulation for universal services purposes, and (3) the statute authorizes the MPSC to change the methodology for determining contributions to the restructuring mechanism to remain consistent with the federal methodology if the federal government changes the contribution methodology for federal universal service.²⁵

The Joint CLECs contend that these attributes of Act 182 demonstrate that at least one purpose of Act 182 is to "preserve and advance universal service."²⁶ Even accepting that the Joint CLECs' contention is true with respect to those specific provisions, however, it does not support or advance the Joint CLECs' argument in favor of preemption. The Joint CLECs' point out, correctly, that FCC regulations require that CLECs are to receive universal service support to the extent that they serve customers in

²⁴ 47 U.S.C. §254(f). Section 254(f) provides:

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

²⁵ Joint CLECs *Petition* pp. 15-16.

²⁶ Joint CLECs *Petition* p. 15.

an ILEC's service territory.²⁷ However, as previously mentioned,²⁸ Act 182 does not fall under the MTA's provision for a state universal service fund. That is a separate and distinct provision codified at §316a of the MTA.²⁹ Since the restructuring mechanism found in Act 182 is not a universal service fund, it cannot possibly fail to comply with provisions of FCC regulations that govern universal service funds.

Furthermore, concerning those provisions in Act 182 that the Joint CLECs identified as functioning to preserve and advance universal service, none of them can be said to be inconsistent with the FCC's rules to preserve and advance universal service. The first provision, making eligibility for the restructuring mechanism contingent on ILEC status as defined in Section 251 of the Communications Act, simply serves as a convenient means of identifying the ILECs who are most likely to need the funds from the restructuring mechanism. Act 182's methodology in this regard is simply Michigan's recognition that the same factors that cause a small ILEC to qualify for universal service support are also the factors that allow small ILECs to receive disbursements under Act 182.

The latter two provisions identified by the Joint CLECs in Act 182, VoIP participation in a universal service fund and the methodology for determining contributions to the restructuring mechanism, are conditional in nature. They are only activated *if* the federal government makes changes to the universal service fund, and even then, by their own terms, their only function is to keep the State of Michigan *consistent* with federal law. In *In the Matter of American Communications Services, Inc.; MCI Telecommunications Corp.; Petitions for Expedited Declaratory Ruling Preempting*

²⁷ 47 C.F.R. §54.307(a).

²⁸ See supra at footnote 18.

²⁹ Mich. Comp. Laws §484.2316a.

Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended (American Communications), the FCC declined to preempt a provision of Arkansas law that required the Arkansas Commission to approve certain resale restrictions.³⁰ The FCC's reasoning was that the Arkansas law "expressly and in unmistakable terms defers to federal limitations on resale restrictions."³¹ The FCC recognized, and it should go without saying, that any statute intentionally crafted to correspond to changes in federal law is immune from the charge that it is somehow inconsistent with that same federal law. To argue otherwise defies reason.

Conclusion

The MPSC appreciates the opportunity to file informative comments on the Joint CLECs' *Petition*. The MPSC encourages the FCC to review the MPSC's comments and offers its staff as a resource to the FCC for information regarding the development of Act 182 and the issue of intrastate access charges in Michigan. The legislative process used to craft the compromise solution for Act 182 was not taken lightly in Michigan. The resulting statute came from nearly a year's worth of debate and discussion. Given that the FCC has not yet acted on national intercarrier compensation reform, the FCC should not penalize those states that have chosen to reform intrastate access charges, without extremely compelling reason. As demonstrated in these comments, the Joint CLECs have not provided the FCC with such compelling reasons at this time. Absent additional compelling facts to substantiate the Joint CLECs' claims, the FCC should deny the *Petition* and decline to preempt Act 182.

³⁰ *American Communications*, 14 FCC Rcd 21579, FCC 97-100, ¶ 56 (rel'd December 23, 1999).

³¹ *American Communications*, 14 FCC Rcd 21579, FCC 97-100, ¶ 56 (rel'd December 23, 1999).

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

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Dated: March 9, 2010

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Linda Andreas, being first duly sworn, deposes and says that on **March 9, 2010**, she served a true copy of **Comments of the Michigan Public Service Commission** upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

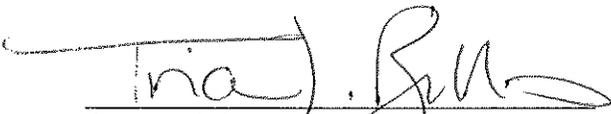
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Linda Andreas

Subscribed and sworn to before me
this 9th day of March, 2010.



Tina L. Bibbs, Notary Public
State of Michigan, County of Clinton
Acting in the County of Ingham
My Commission Expires: 11-13-2014