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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.

WC Docket No. 10-45

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

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OPPOSITION OF THE TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN TO THE MOTION FOR TEMPORARY RELIEF OF PETITIONERS ACD TELECOM, INC.; DAYSTARR, LLC; CLEAR RATE COMMUNICATIONS, INC.; TC3 TELECOM, INC.; AND TELNET WORLDWIDE, INC.

SUMMARY

Pursuant to 47 C.F.R. §1.45(d), the Telecommunications Association of Michigan[1] ("TAM") hereby submits this Opposition to the Motion for Temporary Relief ("Motion") dated February 9, 2010 filed with the Federal Communications Commission ("FCC" or "Commission") by Petitioners ACD Telecom, Inc.; DayStarr, LLC; Clear Rate Communications, Inc.; TC3 Telecom, Inc. and TelNet Worldwide, Inc. (collectively "Petitioners") in the above-captioned case.

In their Motion for "temporary" relief, Petitioners ask the FCC to grant the ultimate relief sought in their Joint Petition – the total preemption of Michigan's 2009 Public Act 182 (Act

[1] TAM is a trade association whose principal members include 37 incumbent local exchange companies ("ILECs") providing local exchange and other telecommunication services in different areas throughout Michigan. All of TAM's ILEC members, other than AT&T Michigan, serve exclusively rural and small town areas of Michigan.

182).[2] As will be explained in more detail below, granting the extraordinary relief sought in the Motion, is premature, based upon an incomplete and inadequate record, and unwarranted both factually and legally.

The principle provision of Act 182 which the Petitioners want the FCC to preempt is the requirement to begin a five year phased reduction of intrastate switched toll access rates to interstate rate levels without the receipt of disbursements from the "restructuring mechanism" created by Act 182 to offset the reduction. None of the Petitioners, either individually or collectively, attempted to quantify the financial impact which would allegedly result from Act 182. Instead, they offered only generalized, unsupported assertions of competitive harm.

Moreover, for providers such as Petitioners, Act 182 does not require the first step of the five step intrastate switched access rate reduction of the differential between intrastate and interstate rates until January 1, 2011. This January 1, 2011 deadline for Petitioners is so far in the future that it is unnecessary, inappropriate and unjust for the Commission to consider whether to invalidate Act 182 without the benefit of the usual cycle of comments and reply comments by interested parties. Under the usual comment cycle, the FCC will have ample time and an adequate record to fully consider and rule on the Petitioners' request.

The only other action required of Petitioners before January 1, 2011 of which they complained is the submission of certain data to the Michigan Public Service Commission ("MPSC") on a confidential basis.[3] The deadline for this data submission was February 16, 2010

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[2] 2009 P.A. 182 amended §310 of the Michigan Telecommunications Act (MTA), MCL 484.2310.

[3] See MPSC Opinion and Order ("Order") dated January 11, 2010 in Case No. U-16183 at pages 6-7. The Order is attached as Exhibit 3 to Petitioner's Motion. Petitioners and all other providers will be required to make monthly contributions to fund the restructuring mechanism starting on or before September 13, 2010. (See Section 310(12) of Act 182, MCL 484.2310(12) attached as Exhibit 1 to Petitioner's Motion. The contribution is a percentage of intrastate retail telecommunications services revenues to be determined by the MPSC, and it is assessed on a competitively neutral basis on all providers of intrastate retail telecommunications services. Petitioners do not appear to separately challenge this requirement.

– before any oppositions to Petitioners' Motion are even due.[4] The Petitioners have all completed their February 16th submissions and will not suffer any harm, much less irreparable harm, if the FCC takes the customary time period to give interested parties an adequate opportunity to draft and submit comments. Absent that opportunity the FCC is being asked to make a hasty decision without a full and complete presentation of arguments and evidence by all interested parties.

Statement of Facts

Act 182 has the following principle components:

1. Act 182 requires providers of intrastate switched toll access services to set the rates for such services "at rates that do not exceed the rates allowed for the same interstate services by the federal government...."[5] For providers such as Petitioners, which are not "eligible providers,"[6] the reductions to intrastate switched access rates are to be made in five steps of 20% each of any existing rate differential between intrastate and interstate rates.[7] To the extent that the intrastate switched toll access rates of a CLEC or any other LEC already "mirrors" its interstate switched access rates, no rate reductions will be required.

2. For "eligible providers" the entire access rate reductions are to be made at a date established by the MPSC, but the reductions must be made in a single step on or before September 13, 2010.[8]

3. Act 182 creates an "intrastate switched toll access restructuring mechanism" ("restructuring mechanism") to be administered by the MPSC.[9] The mechanism is funded by monthly contributions by all providers of retail telecommunication services and commercial mobile services on a competitively neutral basis.[10]

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[4] *Id.*
[5] Section 310(2), MCL 484.2310(2).
[6] An "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)." Section 310(23)(c) MCL 484.2310(23)(c).
[7] See Footnote 5.
[8] *Id.*
[9] Sections 310(7) and (9), MCL 484.2310(7) and (9), respectively.
[10] "Providers of interconnected voice over internet protocol services shall not be considered an intrastate telecommunication services for purposes of this section and such provider shall not be required to pay directly or indirectly monthly contributions". Sections 310(12) and (15), MCL 484.2310(12) and (15), respectively.

Contributions are based upon a percentage of intrastate retail telecommunications services revenues, with the percentage to be determined by the MPSC.[11]

4. Eligible providers are entitled to receive monthly disbursements from the restructuring mechanism in amounts to be determined by the MPSC.[12] The determinations are to be based on data submitted by eligible providers documenting the revenue reductions which will result from reducing intrastate switched toll access rates to interstate levels, using calendar 2008 usage data.[13] The disbursements will commence on or before September 13, 2010, on a specific date to be established by the Commission.[14]

5. Act 182 authorizes the MPSC to administer the restructuring mechanism and grants the MPSC various powers and duties including: (1) to request data from contributing and eligible providers,[15] (2) to make the necessary calculations of reimbursement levels to eligible providers, and contribution percentages by all contributing providers (including eligible providers);[16] (3) to recover the MPSC's costs of administration as part of the contribution assessment;[17] (4) to grant confidential treatment to any company-specific information pertaining to switched toll access minutes of use, other demand quantities, contributions and intrastate telecommunications revenue submitted to the MPSC;[18] (5) to initiate enforcement proceedings to collect required contributions or information;[19] (6) to resolve disputes arising under this Act;[20] (7) to conduct subsequent proceedings if the federal government adopts "intercarrier compensation reforms" or takes any other action that causes or requires a "significant change" in interstate switched toll access rates;[21] and (8) to change the restructuring mechanism contribution methodology if the federal government changes the federal universal service contribution methodology.[22]

On January 11, 2010, the MPSC issued an Opinion and Order ("Order") in Case No. U-16183 initiating the implementation of Act 182. The MPSC Order is attached as Exhibit 3 to the Joint Petition. The Order sets forth the MPSC's understanding of its responsibilities for

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[11] Sections 310(14)-(15), MCL 484.2310(14)-(15), respectively.
[12] Section 310(8), MCL 484.2310(8).
[13] Section 310(11), MCL 484.2310(11).
[14] See Order at pp 2 and 5.
[15] Sections 310(11) and 310(13), MCL 484.2310(11) and 484.2310(13), respectively.
[16] Sections 310(11) and 310(14), MCL 484.2310(11) and 484.2310(14), respectively.
[17] Section 310(9), MCL 484.2310(9)
[18] Section 310(22), MCL 484.2310(22).
[19] Section 310(21), MCL 484.2310(21).
[20] Section 310(20), MCL 484.2310(20).
[21] Section 310(18), MCL 484.2310(18).
[22] Section 310(19), MCL 484.2310(19).

administration of Act and establishes certain deadlines for various activities by eligible and contributing providers.

Chronologically, the first action required of all providers was to submit data to the MPSC by February 16, 2010.[23] In general, all providers were required to submit data on their July 1, 2009 intrastate and interstate switched toll access rates, on a rate element-by-rate element basis. If a provider is not providing toll access service, a statement to that effect was to be provided to the MPSC. All providers, including contributing providers were required to submit the following information to the Commission by February 16, 2010 as three separate numbers:

> "1. The contributing providers 2008 total intrastate retail telecommunications service revenues.
> 2. The contributing providers 2008 uncollectable intrastate retail telecommunications service revenues, actual or projected.
> 3. The contributing providers' 2008 total intrastate retail telecommunication service revenues minus uncollectibles. (No. 1 minus No. 2.)" See Order pp 6-7.

Only eligible providers were required to submit additional information to the Commission by February 16, 2010, demonstrating the amount of the reduction in annual intrastate switched toll access revenues which will result from the reduction in intrastate switched access rates to interstate rate level.[24] The Petitioners filed the required February 16th data, and they do not complain of any other information to be submitted or other acts required of Petitioners by Act 182 or the Order before January 1, 2011.[25]

Argument

A. Petitioners have not proven Act 182 violates 47 U.S.C. §253(a).

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[23] See Order at pp 6 and 7.

[24] *Id.*

[25] All contributing providers, including Petitioners and all eligible providers will be required to begin monthly contributions to the MPSC of a percentage of intrastate telecommunications services revenues beginning on or before September 13, 2010 and on a date to be established by the MPSC. This requirement applies on a non-discriminatory, competitively neutral basis, See Sections 310(12), 310(14), and 310(15), MCL 484.2310(12), (14) and (15) respectively.

Petitioners have not demonstrated in their Motion that they are likely to succeed on the merits. Petitioners rely primarily on §253(a) of the Communications Act, 47 U.S.C. §253(a) which 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 telecommunication service."

Act 182 on its face, does not prohibit "the ability of any entity to provide any interstate or intrastate telecommunication service". Act 182 only requires CLECs such as Petitioners to reduce intrastate switched access rates to interstate rate levels on a phased-in basis over five years. In contrast, ILECs have to "flash cut" a reduction in intrastate switched access rates to interstate levels in one step no later than September 13, 2010, 270 days after the effective date of Act 182.

The legal requirements for a CLEC to serve any geographic area in Michigan are minimal, and were not increased or enlarged whatsoever by Act 182. MTA §301 provides that a "telecommunications provider shall not provide or resell basic local exchange service in the state, without a license issued from the Commission under this Act."[26] MTA §302(1)[27] contains the only statutory requirements which a CLEC must meet to obtain a license to serve in Michigan:

> "After notice and hearing, the commission shall approve an application for a license if the commission finds both of the following:
>
> (a) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service within the geographic area of the license and that the applicant intends to provide service within 1 year from the date the license is granted.

[26] MCL 484.2301
[27] MCL 484.2302(1)

(b) The granting of a license to the applicant would not be contrary to the public interest."

B. Act 182 does not have the effect of prohibiting the ability of Petitioners to compete.

The demonstration of the ability to provide basic local exchange service within the geographic area of the requested license is an easy showing for a CLEC to make. Note that MTA §302(1) does not require an ability to serve all customers within the geographic area of the license, or any particular class of customers. Thus, CLECs in Michigan are free to pick and choose (1) the geographic areas they want to serve, (2) the classes of customers they want to serve, eg, business, institutional or residential, and (3) the types of services they want to offer. For example, CLECs are free to target and serve only high volume business customers or only institutional customers such as government agencies, colleges, universities, libraries or public schools. CLECs are free to offer no service to residential customers at all.[28]

If a CLEC chooses to offer residential service, the only legal requirement they would have is to offer one type of service called "primary basic local exchange service."[29] Moreover, this service does not have to be offered ubiquitously; a CLEC may selectively choose which residential customers to target market.

In most ways, CLECs choosing to enter Michigan are at parity with ILECs or have significant competitive advantages as a result of the lack of traditional ILEC obligations. Specifically, CLECs have no facilities "buildout" requirements, no "carrier of last resort" duties, nor any of the other "legacy" obligations that ILECs have in Michigan.

The situation CLECs face upon market entry in Michigan is vastly different than that present in other states in most of the cases cited by Petitioner. For example, unlike the case cited

[28] To the best of TAM's knowledge none of the Petitioners is offering residential basic local exchange service whatsoever except in the service territory of AT&T Michigan.
[29] MCL 484.2301a.

by Petitioners of *In the Matter of Silver Star Telephone, Inc. Petition for Preemption and Declaratory Ruling,* 12 FCC Rcd. 15639, FCC 97-336 (1997) ("*Silver Star*"), Michigan ILECs have no ability whatsoever to block the MPSC's granting of licenses to CLECs to serve anywhere they choose in Michigan. The MPSC has granted more than 200 licenses to CLECs.[30]

In addition, unlike the case of *In the Matter of the Petition of the State of Minnesota for 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 (1999), CLECs have exactly the same rights to use public right-of-way to place facilities and pay no greater use fees than any ILEC under applicable Michigan law.[31] In fact, if a CLEC also provides video or cable services using the same facilities, it will pay a lower fee or perhaps no fee whatsoever to use public rights-of-way.[32]

Moreover, unlike the case in *Matter of the Public Utility Commission of Texas, etc.,* 13 FCC Rcd. 3460, FCC 97-346 (1997), in Michigan CLECs face no facilities build out requirements of any kind, and they may choose to provide their services entirely on a resale basis. In addition, Act 182 has no effect whatsoever on CLEC's ability to obtain the Eligible Telecommunications Carrier (ETC) designation and to receive associated federal universal service support funds. *See* 47 C.F.R. 54.307(a) cited by the Petitioner at p. 16.

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[30] See Basic Local Exchange Service Providers Licensed in Michigan, February 8, 2010. List prepared by MPSC Staff attached hereto as Exhibit 1.

[31] The Metropolitan Extension Telecommunications Right-of-Way Act (METRO Act), M.C.L. 484.3101 *et. seq.* authorizes providers to use public rights-of-way to place their facilities, see MCL 484.3115, and it prohibits municipalities from assessing other fees or imposing other local requirements on the use of public rights-of-way. MCL 484.3104.

[32] M.C.L. 484.3108.

Finally, Act 182 left untouched the existing provisions of the MTA which authorized any provider, including CLECs, such as one of the Petitioners to seek the establishment by the MPSC of an intrastate universal service fund.[33]

C. Petitioners have not demonstrated that they will suffer competitive harm, much less irreparable harm.

Petitioners have asserted that they will suffer competitive harm if Act 182 goes into effect. Conspicuous by its absence from all of the Petitioners filings is any attempt to quantify the financial harm which will allegedly result. Instead, petitioners offer conclusory statements to the competitive harms that will occur.

The Petitioners assert without any documentation whatsoever that as a result of Act 182 an ILEC will somehow have the ability to price its services at lower rates than those to be charged by CLECs competing for the same customers. That assertion is unfounded and, in all likelihood, is incorrect. The small rural ILECs which are "eligible providers" under the restructuring mechanism typically have substantially higher operating, maintenance and repair costs than CLECs resulting from (1) older network facilities, (2) longer loop lengths from central office to customer premise, (3) more extensive distribution facilities in place to meet their "carrier of last resort obligations" reach all residential and business customers within their exchange territories, and (4) other legacy obligations. No evidence whatsoever has been offered to demonstrate that the reimbursements received by ILECs from the restructuring mechanism may be used to offer lower prices or otherwise offset the significant cost disadvantages ILECs face because of their legacy obligations and higher costs to repair and maintain their network facilities.

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[33] Section 316a, MCL 484.2316a.

In addition, much of the competition that CLECs will face in areas served today by rural ILECs is from different providers using alternative technologies such as wireless, cable telephony, and IP telephony. None of these latter providers is an "eligible provider" under Act 182 entitled to receive fund disbursements from the restructuring mechanism. Thus, CLECs contemplating entry in these areas will not face any significant or demonstrated competitive disadvantage resulting from the restructuring mechanism created by Act 182.[34]

The extent to which Petitioners may have overstated the competitive harms which they allege will result from Act 182 is demonstrated by the position they took as part of the "Michigan Internet & Telecommunications Alliance" during the legislative process which led to the passage of Act 182. Rather than urge complete defeat of HB 4757 in its then "current form," this coalition to which each Petitioner belonged merely urged an amendment to HB 4257 that would allow CLECs to set their intrastate switched [access] rates "at the state wide average [rate] of eligible providers as defined in the bill."[35] Most importantly, there is no record whatsoever that Petitioners urged the Legislature to expand the definition of "eligible providers" to include CLECs. Instead, they sought a different ceiling for CLEC intrastate switched access rates without arguing that reimbursements were necessary. Only now are the Petitioners making the argument that the resulting law is anti-competitive.

Local service competition has thrived in Michigan. In the June 2, 2009 Report, "*Status of Telecommunications Competition in Michigan*" (Competition Report)[36] the MPSC reported that

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[34] Also, as a result of Act 182, CLECs will receive the benefit of paying reduced intrastate switched access rates to all ILECs and CLECs with which they exchange toll calls.

[35] See December 2, 2009 letter from Michigan Internet & Telecommunications Alliance, attached hereto as Exhibit 2.

[36] The Competition Report and cover letter are attached hereto as Exhibit 3.

"while the total number of wire lines continues to decrease, competitive providers are maintaining a 20 percent market share."[37] The MPSC further noted:

> "the total number of customer wirelines continues to follow a trend of decrease that began in 2002. Historically, providers have asserted that the decline in total wirelines was due to the increase in mobile wireless users and the use of other types of telephony including VoIP; as well as a movement away from using dial-up Internet to high speed connections. As noted last year, the Commission believes there is merit in this argument."[38]

In addition, the alleged anti-competitive impacts of Act 182 will have no effect whatsoever on CLECs in the vast majority of Michigan. According to the Competition Report[39] two large ILECs serve the vast majority of Michigan in terms of both geography and number of access lines. AT&T Michigan serves approximately 64.2% of the access lines and the vast majority of the geography in Michigan. Verizon serves 11.5% of the access lines.[40] Neither AT&T Michigan nor Verizon will be an "eligible provider" entitled to receive disbursements from the restructuring mechanism under Act 182, because the intrastate access rates for both providers are already at interstate levels.[41] Thus, Petitioners will not face any competitive disadvantage against AT&T or Verizon as a result of Act 182.

Moreover, CLECs in Michigan today have almost 5 times the market share of the small rural ILECs which will be receiving disbursements from the restructuring mechanism. The MPSC found that the ILECs other than AT&T Michigan and Verizon serve only 4.3% of the access lines in Michigan, compared to the 20% market share of CLECs.[42] In addition to their larger market share, the CLECs will have all the competitive advantages identified above in deciding whether and how to compete in areas served not by those two large ILECs.

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[37] Competition Report, cover letter p 1
[38] Competition Report, p 6
[39] Competition Report, p 8.
[40] *Id.*
[41] The definition of an eligible provider includes a requirement that interstate switched toll access rates exceed interstate rate levels as of July 1, 2009. Section 310(23)(c), MCL 484.2310(23)(c).
[42] Competition Report, page 8.

D. Western Wireless does not govern the outcome of this proceeding.

Petitioners rely primarily on the FCC's decision on *In the Matter of Western Wireless Competition 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. 16 227, FCC 00-309 (rel'd Aug. 28, 2000) "Western Wireless." TAM submits that the *Western Wireless* decision does not control the outcome of the present proceeding for several reasons.

First, the portions of the Western Wireless opinion on which Petitioners rely are merely dictum. The FCC concluded that the Western Wireless petition "has been rendered moot" by a subsequent order of the Kansas Corporation Commission (KCC).[43] The language cited by Petitioners was described by the FCC as merely providing "guidance," and was not necessary to a disposition of the proceeding.[44]

Second, there are many factors present in Michigan which may not have present in Kansas in the *Western Wireless* case which level the competitive playing field and even provide competitive advantages to CLECs. These have been discussed above at pp 6-9.

Third, in the Western Wireless case the FCC expressed concerns with a program "that provides universal service funding only to ILECs."[45] TAM will not debate here whether Act 182 provides for "universal service funding" as that term is understood in the industry. The fact is, Act 182 left untouched the existing provisions of MTA Section 316a by which the MPSC may establish "an intrastate universal service fund."[46] Thus, CLECs would be entitled to receive the same level and type of universal service support as ILECs under any intrastate universal service fund created by the MPSC.

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[43] Western Wireless, ¶6.
[44] *Id*; ¶7.
[45] Western Wireless, ¶11.
[46] MTA Section 316a(1)(b), MCL 484.2316a(1)(b).

Fourth, while not dispositive, the size of the restructuring mechanism to be created under Act 182 is a small fraction of the size of the funds at issue in *Western Wireless*. The MPSC estimated the intended size of the restructuring mechanism to be $16 million.[47] In contrast, the initial size of the fund at issue in *Western Wireless* was $111.6 million.[48]

Petitioners cite also to *In the matter of Access Change Reform*, 12 FCC Rcd. 10175, FCC 97216 (rel'd June 18, 1997) in support of the proposition that "the threat of unrecoverable economic loss does qualify as irreparable harm." What Petitioners leave out from their discussions of this case is that the FCC denied the injunctive relief sought, holding "we believe that neither the claimed decrease in access revenues nor the potential loss of customers to competition in this case, even if they were certain to occur, would constitute 'irreparable' harm under the applicable standards."[49]

Conclusion

The facts and circumstances in Michigan present a far different situation than these cases such as *Western Wireless* and others cited by Petitioners where the FCC has decided to preempt state or local law. The competitive balance which exists today and will still exist in Michigan after the restructuring mechanism created by Act 182 begins operation provides a strong factual and legal basis for the FCC to deny the relief requested by Petitioners.

For almost one year, the Michigan Legislature carefully considered the legal, financial and public policy issues presented by HB 4257 which became Act 182. As discussed above, Petitioner's participated in the legislative process and presented their concerns about the alleged impacts of the bill. At no time did the CLECs urge that they should receive disbursements from

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[47] See Senate Fiscal Agency Analysis dated December 2, 2009 at page 2. This analysis is attached hereto as Exhibit 4.
[48] See *Western Wireless*, paragraph 3.
[49] 12 FCC Rcd 10175, ¶30.

the restructuring mechanism. Their main concerns were addressed in the manner described above, primarily the five year phase of the access rate reductions in contrast to the ILECs requirement to flash cut the reduction.

In the Joint Petition, Petitioners argue that "the FCC must preempt Act 182 in its entirety." Petition at p 18. The rationale for this argument is that under Michigan law Act 182 is not severable so as to preserve the requirement to reduce intrastate switched toll access rates while preempting only the restructuring mechanism to offset the reduction in intrastate access revenues. TAM agrees that Act 182 is not severable. If, despite the opposition of TAM and other interested parties, the FCC determines to preempt portions of Act 182, the entire Act should be preempted.

Act 182 began as HB 4257. As originally introduced; this legislation would merely eliminate the exemption in MTA Section 310[50] for providers with less than 250,000 access lines to set their intrastate switched total access rates at levels no higher than the rates allowed by the federal government. There was no restructuring mechanism created in the original version of HB 4257, and that original version was not voted out of the House Energy and Technology Committee. The legislative history demonstrates that HB 4257 was passed only when it combined an intrastate switched access rate reduction with a restructuring mechanism to reimburse ILECs for the access revenue reductions. The overwhelming support for Act 182 as enacted is reflected in House passage by a 101-5 vote and Senate passage by a 37-0 vote.[51]

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[50] MCC 484.2310. The exemption before its repeal was codified at 484.2310(7).

[51] See links to House Journal and Senate Journal, respectively.
http://www.legislature.mi.gov/(S(f3w4o52qmkwlthysrg4mrl55))/mileg.aspx?page=shortlinkdisplay&docname=2009-SJ-12-09-102
http://www.legislature.mi.gov/(S(f3w4o52qmkwlthysrg4mrl55))/mileg.aspx?page=shortlinkdisplay&docname=2009-HJ-12-03-104

Under the test for severability established by the Michigan Court of Appeals In *Platz v Secretary of State* 125 Mich App 335, 375; 336 N.W2d 789 (1983) quoted by Petitioners, the restructuring mechanism is not severable from the balance of Act 182, because the Michigan Legislature would not have enacted this bill without both access rate reductions and the restructuring mechanism.

The FCC needs to obtain a complete factual record by means of the usual cycle of comments and reply comments to determine based on all of the facts and circumstances whether any relief is warranted for Petitioners. The FCC should only preempt Act 182 and the public policy decisions of the Michigan Legislative reflected in the Act under the most compelling circumstances. As described above, those circumstances have not been demonstrated by Petitioners. Petitioners are not required by Act 182 or the Order to begin the five year phase down of their intrastate switched access rates to interstate levels until January 1, 2011.

Respectfully submitted,

TELECOMMUNICATIONS ASSOCIATION
OF MICHIGAN
By: Scott Stevenson, President
600 W. Shiawassee St.
Lansing, MI 48933

PLUNKETT COONEY

By: Michael A. Holmes
Michael A. Holmes (P24071)
38505 Woodward Avenue
Suite 2000
Bloomfield Hills, MI 48304
(248) 901-4049

Dated: February 18, 2010

TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN'S

EXHIBIT LIST

EXHIBIT 1	Basic Local Exchange Service Providers Licensed in Michigan as of February 8, 2010. List prepared by MPSC Staff
EXHIBIT 2	Letter on behalf of Michigan Internet & Telecommunications Alliance regarding House Bill No. 4257 to House Energy and Technology Chairman and Vice Chairman, dated December 2, 2009
EXHIBIT 3	Report, Status of Telecommunications Competition in Michigan dated June 2, 2009
EXHIBIT 4	Senate Fiscal Agency Analysis of House Bill No. 4257, dated December 2, 2009

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EXHIBIT 1

TO

OPPOSITION OF THE TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN TO THE MOTION FOR TEMPORARY RELIEF OF PETITIONERS ACD TELECOM, INC.; DAYSTARR, LLC; CLEAR RATE COMMUNICATIONS, INC.; TC3 TELECOM, INC.; AND TELNET WORLDWIDE, INC.

Dated February 18, 2010

BASIC LOCAL EXCHANGE SERVICE PROVIDERS LICENSED IN MICHIGAN

as of February 8, 2010

CLEC = Competitive Local Exchange Carrier
ILEC = Incumbent Local Exchange Carrier

Note: If your company's email address is not listed or corrections need to be made to this list, please contact Wendy Thelen at: thelenw@michigan.gov

Company Name and Address	Contact Information	CLEC	ILEC
1-800-Reconex, Inc., dba USTel 2500 Industrial Ave. Hubbard, OR 97302	William Braun Vice President, General Counsel Phone: (503) 982-5573 Fax (503) 982-6077 Email: Bill.Braun@Reconex.com	☑	☐
360networks (USA) inc. 370 Interlocken Blvd. Ste. 600 Broomfield, CO 80021	Charles Forst Compliance & Reg. Affairs Mgr. Phone: (303) 854-5210 Fax (303) 854-5100 Email: charles.forst@360.net	☑	☐
A.R.C. Networks, Inc. 2100 Renassiance Blvd. King of Prussia, PA 19406	Steve Bogdan Director of Reg. & Compliance Phone: (610) 755-4877 Fax (267) 537-0074 Email: sbogdan@broadviewnet.com	☑	☐
AboveNet Communications, Inc. 360 Hamilton Ave. White Plains, NY 10601	Jill Sandford Phone: (914) 421-7585 Fax Email: jsandford@above.net	☑	☐
Access One, Inc. 820 W. Jackson Blvd Suite 650 Chicago, IL 60607	Mark Jozwiak V.P. Phone: (312) 441-1000 Fax Email: markj@accessoneinc.com	☑	☐
Access Point, Inc. 1100 Crescent Green Suite 109 Cary, NC 27518	Jason Brown Regulatory Affairs Phone: (919) 851-0443 Fax (919) 851-5442 Email: jason.brown@accesspointinc.com	☑	☐
AccuTel of Texas, Inc. 7900 Carpenter Freeway Ste. 200 Dallas, TX 75247	Sharon Litke EVP - Operations Phone: (214) 630-6700 Fax (214) 678-9429 Email: sharonl@accutel.net	☑	☐
ACD Telecom of the North, LLC 1800 N. Grand River Ave. Lansing, MI 48906	Kevin Schoen President Phone: (517) 333-0900 Fax (517) 333-8552 Email: schoen.kevin@acd.net	☐	☑
ACD Telecom, Inc. 1800 N. Grand River Ave. Ste. 1 Lansing, MI 48906-6200	Kevin Schoen President Phone: (517) 333-0900 Fax (517) 333-8552 Email: schoen.kevin@acd.net	☑	☐

BASIC LOCAL EXCHANGE SERVICE PROVIDERS LICENSED IN MICHIGAN

as of February 8, 2010

CLEC = Competitive Local Exchange Carrier
ILEC = Incumbent Local Exchange Carrier

Note: If your company's email address is not listed or corrections need to be made to this list, please contact Wendy Thelen at: thelenw@michigan.gov

Company Name and Address	Contact Information	CLEC	ILEC
Ace Telephone Company of Michigan, Inc. 102 E. Mesick Avenue P.O. Box 69 Mesick, MI 49668-0069	Tony Ruskowski Chief Executive Officer Phone: (231) 885-1000 Fax (231) 885-9915 Email: truskowski@acecomgroup.com	☐	☑
ACN Communication Services, Inc. 1000 Progress Place NE Concord, NC 28025	Julie Mueller General Counsel Phone: (704) 260-3433 Fax (704) 632-8072 Email: jmueller@acninc.com	☑	☐
Advanced Integrated Technologies, Inc. 9855 W. 78th Street Suite 300 Eden Prairie, MN 55344	Greg Lohrenz President Phone: (952) 829-5511 Fax Email: gregl@goait.com	☑	☐
Affordable Voice Communications, Inc. 1000 N. Main St. Las Cruces, NM 88001-1126	Charles R. Combs President Phone: (505) 523-7500 Fax (505) 525-2720 Email: mpsc@avcinc.com	☑	☐
Airdis, LLC, dba Airdis Telecom 2215 Enterprise Dr. Ste. 1512 Westchester, IL 60154	Scott Sinclair COO Phone: (630) 925-4140 Fax (630) 925-4445 Email: ssinclair@airdis.com	☑	☐
Airespring, Inc. 6060 Sepulveda Blvd. Van Nuys, CA 91411	Avi Lonstein President Phone: (818) 786-8990 Fax (818) 786-6637 Email:	☑	☐
Allband Communications Cooperative P.O. Box 8 Curran, MI 48728	Ron Siegel Gen. Manager Phone: (989) 369-9870 Fax (989) 369-9998 Email: ron.siegel@allband.org	☑	☑
Allendale Telephone Company 6568 Lake Michigan Dr. P.O. Box 509 Allendale, MI 49401	Mike Osborne General Manager Phone: (616) 895-9911 Fax (616) 895-9932 Email: mike.osborne@allcom.net	☑	☑
American Broadband and Telecommunications Company 104 N. Summit St. Fl. 3 Toledo, OH 43604-2306	Jeffrey S. Ansted President Phone: (419) 824-5810 Fax (419) 885-1553 Email: jsa@ambt.net	☑	☐

BASIC LOCAL EXCHANGE SERVICE PROVIDERS LICENSED IN MICHIGAN

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Company Name and Address	Contact Information	CLEC	ILEC
American Fiber Network, Inc. 9401 Indian Creek Pkwy. Suite 140 Overland Park, KS 66210	Rob Heath Vice President Phone: (913) 338-2658 Fax (913) 661-0538 Email: rob.heath@afnltd.com	☑	☐
Arialink Telecom, LLC 822 Centennial Way. Ste. 250 Lansing, MI 48917-8244	Jason Schreiber Manager Phone: (517) 492-1300 Fax (517) 492-1398 Email: jason@arialink.com	☑	☐
AT&T Communications of Michigan, Inc. 225 W. Randolph 25D130 Chicago, IL 60606	Candice Glover Manager - External Affairs Phone: (312) 727-0127 Fax Email: clglover@att.com	☑	☐
AT&T Michigan 221 N. Washington Sq. Ground Floor Lansing, MI 48933	Robin Gleason V.P. Regulatory Michigan Phone: (517) 334-3704 Fax (517) 334-3429 Email: rg1467@att.com	☑	☑
ATI Networks, Inc. 10431 Highland Rd. White Lake, MI 48386	Matthew Schultz President Phone: (248) 698-8868 Fax (248) 698-8869 Email: matt-schultz@comcast.net	☑	☐
B&S Telecom, Inc. 5850 Dixie Hwy. Clarkston, MI 48346	Bruce Yuille Phone: (248) 623-9500 Fax (248) 623-0655 Email: byuille@800goquick.com	☑	☐
Bandwidth.com CLEC, LLC 4001 Weston Pkwy. Ste. 100 Cary, NC 27513	David Morken President & Chairman Phone: (919) 297-1100 Fax (919) 297-1101 Email: dmorken@bandwidth.com	☑	☐
Baraga Telephone Company 204 State St. Baraga, MI 49908	Paul Stark President Phone: (906) 353-6644 Fax (906) 353-7550 Email: pwstark@up.net	☑	☑
Barry County Telephone Company P.O. Box 128 Delton, MI 49046	Robert Fisher Manager Phone: (269) 623-2311 Fax (269) 623-8033 Email: refisher@mei.net	☐	☑

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BCN Telecom, Inc. 550 Route 202/206 Bedminster, NJ 07921	Richard F. Nacchio Director - Reg. Affairs Phone: (908) 470-4780 Fax (908) 470-4707 Email: rnacchio@bcntele.com	☑	☐
BCR Network Services, Inc., dba The Data Warehouse P.O. Box 56 Battle Creek, MI 49016	Bret Seely President Phone: (269) 288-4300 Fax (269) 288-1111 Email: bseely@bcrnsi.com	☑	☐
Bell South Long Distance, Inc., dba AT&T Long Distance Service 2180 Lake Boulevard Ste. FL 5C48 Atlanta, GA 30319-6004	Thomas Margavio Regulatory Operations Phone: (404) 829-8269 Fax (404) 829-6370 Email: tm5886@att.com	☑	☐
Birch Telecom of the Great Lakes, Inc. 2300 Main St. Fl. 600 Kansas City, MO 64108-2415	Tara Jackson Sr. Manager, Legal & Regulatory Phone: (816) 300-1677 Fax (816) 300-3350 Email: tjackson@birch.com	☑	☐
Blanchard Telephone Association, Inc. P.O. Box 67 425 Main St. Blanchard, MI 49310	Duane Bronson Manager Phone: (989) 561-9930 Fax (989) 561-9933 Email: dbronson@blanchardtel.com	☑	☑
Blanchard Telephone Co. 425 Main St. Blanchard, MI 49310	Duane Bronson General Manager Phone: (989) 561-9930 Fax Email: dbronson@blanchardtel.com	☑	☑
BLC Management LLC, dba Angles Communication Solutions, Mexica 11121 Highway 70 Suite 202 Arlington, TN 38002	Ryan Wilson Operations Manager Phone: (901) 867-7193 Fax (901) 758-4511 Email:	☑	☐
Bloomingdale Telephone Company, Inc. P.O. Box 187 Bloomingdale, MI 49026	Joe Snyder General Manager Phone: (269) 521-7300 Fax (269) 521-7370 Email: jsnyder@btc-bci.com	☑	☑
Borderland Communications, LLC 1133 Main P.O. Box 3 Niagara, WI 54151	Lee Norton General Manager Phone: (800) 648-3526 Fax (715) 251-1119 Email: leen@borderlandnet.net	☑	☐

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Bright House Networks Information Services (Michigan), LLC 12985 N. Telecom Pkwy. Temple Terrace, FL 33637	Marva Brown Johnson Director Carrier Svcs. & Vendor Mgmt. Phone: (813) 387-3651 Fax (813) 472-1160 Email: marva.johnson@bhnis.com	☑	☐
Broadview Networks, Inc. 2100 Renaissance Blvd. King of Prussia, PA 19406	Steve Bogdan Regulatory Manager Phone: (215) 293-8773 Fax (215) 293-8750 Email: sbogdan@broadviewnet.com	☑	☐
Broadvox-CLEC, LLC 1228 Euclid Ave. Ste. 390 Cleveland, OH 44115	Eugene Blumin COO Phone: (216) 373-4663 Fax (216) 373-4818 Email: eblumin@broadvox.net	☑	☐
Broadwing Communications, LLC 1025 Eldorado Blvd. Broomfield, CO 80021	Rogelio Pena Corporate Counsel Regulatory, Level 3 Phone: (720) 888-7043 Fax (720) 888-5134 Email: rogelio.pena@level3.com	☑	☐
BT Communications Sales LLC 11440 Commerce Park Dr. Reston, VA 20191	Linda Cicco Reg. Compl. Manager Phone: (703) 755-6733 Fax (703) 755-6740 Email: linda.cicco@bt.com	☑	☐
Buckeye Telesystem, Inc. 5555 Airport Hwy. Ste. 110 Toledo, OH 43615	Thomas K. Dawson Regulatory Affairs Phone: (419) 724-9881 Fax (419) 724-7074 Email: askus@buckeye-telesystem.com	☑	☐
Budget PrePay, Inc., dba Budget Phone 1325 Barksdale Blvd. Ste. 200 Bossier City, LA 71111	Lakisha Taylor Product Coordinator Phone: (318) 671-5736 Fax (318) 671-5024 Email: lakishat@budgetprepay.com	☑	☐
BullsEye Telecom, Inc. 25900 Greenfield Road Suite 330 Oak Park, MI 48237	Dave Bailey Phone: (248) 784-2544 Fax (248) 784-2501 Email: dbailey@bullseyetelecom.com	☑	☐
Call Giant, Inc. 220 E. Huron St. Suite 260 Ann Arbor, MI 48104	Ben Carrasco CEO Phone: (734) 527-2100 Fax (734) 527-2101 Email: mpsc-itsp@callgiant.com	☑	☐

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Campus Communications Group, Inc. P.O. Box 85 Champaign, IL 61824	Robin Brown Accountant Phone: (217) 353-3019 Fax (217) 398-1429 Email: robin.brown@fusionbroadband.com	☑	☐
Carr Telephone Company 4325 Masten Road Branch, MI 49402	Mitch Bogner Manager Phone: (231) 898-2244 Fax (231) 898-3900 Email: ten@carrinter.net	☑	☑
Castle Wire, Inc. 23420 Lorraine Rd. Unit 200, No. 227 North Olmstead, OH 44070	Christopher A. Porter CEO Phone: (440) 371-3391 Fax (440) 937-4899 Email: chris@castlewire.com	☑	☐
Cbeyond Communications, LLC 320 Interstate North Pkwy. SE Ste. 300 Atlanta, GA 30339	William H. Weber V.P. & Corporate Counsel Phone: (678) 370-2327 Fax (678) 990-9919 Email: william.weber@cbeyond.net	☑	☐
Celerity Telecom, Inc. P.O. Box 628 Bridgeport, MI 48722-0628	Joseph R. James Regulatory Manager Phone: (989) 746-3355 Fax (989) 746-3356 Email: jjames@iti.net	☑	☐
CenturyTel Acquisition LLC 100 CenturyTel Park Dr. Monroe, LA 71203	Ron Johnson Phone: (318) 340-5588 Fax (318) 388-9562 Email: ron.p.johnson@centurytel.com	☑	☐
CenturyTel Midwest -- Michigan, Inc., dba CenturyLink 17 S. High Street Suite 600 Columbus, OH 43215	Vickie Norris Director, State Government Relations Phone: (614) 221-5354 Fax (614) 221-5227 Email: vickie.norris@centurytel.com	☐	☑
CenturyTel of Michigan, Inc., dba CenturyLink 17 S. High Street Suite 600 Columbus, OH 43215	Vickie Norris Director, State Government Relations Phone: (614) 221-5354 Fax (614) 221-5227 Email: vickie.norris@centurytel.com	☐	☑
CenturyTel of Northern Michigan, Inc., dba CenturyLink 17 S. High Street Suite 600 Columbus, OH 43215	Vickie Norris Director, State Government Relations Phone: (614) 221-5354 Fax (614) 221-5227 Email: vickie.norris@centurytel.com	☐	☑

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Company Name and Address	Contact Information	CLEC	ILEC
CenturyTel of Upper Michigan, Inc., dba CenturyLink 17 S. High Street Suite 600 Columbus, OH 43215	Vickie Norris Director, State Government Relations Phone: (614) 221-5354 Fax (614) 221-5227 Email: vickie.norris@centurytel.com	☐	☑
CenturyTel Solutions, LLC 100 Century Tel Drive Monroe, LA 71203	Ron Johnson Phone: (318) 340-5588 Fax (318) 388-9562 Email: ron.p.johnson@centurytel.com	☑	☐
Chapin Telephone Company 19994 W. Ridge Road Elsie, MI 48831	Greg Ringle Manager Phone: (989) 661-2476 Fax (989) 661-2500 Email: chapintel@power-net.net	☐	☑
Charter Fiberlink - Michigan, LLC 12405 Powerscourt Dr. St. Louis, MO 63131-3674	Carrie L. Cox Dir. Of Legal & Reg. Affairs Phone: (314) 543-2567 Fax (314) 965-6640 Email: CFL.Regulatory@chartercom.com	☑	☐
Charter Fiberlink CC VIII, LLC 12405 Powerscourt Dr. St. Louis, MO 63131-3674	Carrie Cox Director Legal & Reg. Affairs Phone: (314) 543-2567 Fax (314) 965-6640 Email: cfl.regulatory@chartercom.com	☑	☐
Chippewa County Telephone Company 108 W. Superior St. Munising, MI 49862-1192	James P. Brogan III President Phone: (906) 387-9911 Fax (906) 387-9919 Email: jbrogan@jamadots.net	☐	☑
CIMCO Communications, Inc. 1901 S. Meyers Rd. Suite 700 Oakbrook Terrace, IL 60181	William A. Capraro President & CEO Phone: (800) 662-4626 Fax (630) 691-8788 Email: bcapraro@cimco.net	☑	☐
Cincinnati Bell Any Distance, Inc. 221 E. 4th Street Room 1280 Cincinnati, OH 45201	D. Scott Ringo, Jr. Assistant Corp. Sec/Dir. of Reg. Affairs Phone: (513) 397-1354 Fax (513) 421-1376 Email: scott.ringo@cinbell.com	☑	☐
Clear Rate Communications, Inc. 24700 Northwestern Hwy Ste. 340 Southfield, MI 48075	Thane Namy President Phone: (877) 877-7599 Fax Email: tnamy@clearrate.com	☑	☐

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Climax Telephone Company 110 North Main Street Climax, MI 49034	Jim Burnham President and CEO Phone: (269) 746-2500 Fax (269) 746-9914 Email: jburnham@ctstelecom.com	☑	☑
CloseCall America, Inc. 101 Log Canoe Circle Stevensville, MD 21666	Courtenay Schroeder Director Regulatory Affairs Phone: (410) 819-8082 Fax (800) 503-1982 Email: cschroeder@closecall.com	☑	☐
CMC Telecom, Inc. 51151 Pontiac Trail Wixom, MI 48393	Craig Champagne President Phone: (248) 668-2800 Fax (248) 668-2812 Email: cchamp@cmctelecom.net	☑	☐
Coldwater Telecommunications Utility 1 Grand St. Coldwater, MI 49036-1620	Jim Royer Network Operations Engineer Phone: (517) 279-9531 Fax (517) 278-5107 Email: jroyer@muni.cbpu.com	☑	☐
Comcast Business Communications, LLC 12 Tozer Rd. Beverly, MA 01915	Stacey L. Parker Sr. Director - Regulatory Affairs Phone: (978) 927-5700 Fax (978) 927-2603 Email: stacey_parker@cable.comcast.com	☑	☐
Comcast Phone of Michigan, LLC 12 Tozer Rd. Beverly, MA 01915	Stacey L. Parker Sr. Director - Regulatory Affairs Phone: (978) 927-5700 Fax (978) 927-2603 Email: stacey_parker@cable.comcast.com	☑	☐
Comlink, L.L.C. 1515 Turf Lane Ste. 100 East Lansing, MI 48823-6393	John Summersett General Manager Phone: (517) 664-1900 Fax (517) 324-8900 Email: jsummersett@comlink.biz	☑	☐
CommPartners, LLC 8350 S. Durango Dr. Ste. 200 Las Vegas, NV 89113	Kristopher E. Twomey Regulatory Counsel Phone: (702) 367-8647 Fax (702) 365-8647 Email: ktwomey@commpartners.us	☑	☐
Communication Lines Inc. 3800 A Bridgeport No. 158 University Place, WA 98466	Stan Efferding Regulatory Attorney Phone: (253) 830-0056 Fax (253) 584-7766 Email: contact@cli-inc.com	☑	☐