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

In the Matter of

Joint Michigan CLECs' 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; and

Motion for Temporary Relief

_____/

WC Docket No. 10-45

JOINT MICHIGAN CLECS' REPLY COMMENTS IN SUPPORT OF 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

March 19, 2010

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DISCUSSION 2

A. The Joint Michigan CLECs have met their burden of proof showing that Act 182 violates § 253(a) of the Act. 2

B. Section 253(b) of the Act does not save Act 182. 11

C. The Commission's cap on CETC funding does not support Act 182's restructuring mechanism subsidy. 14

D. Preemption of Act 182 in its entirety is required. 17

III. CONCLUSION. 19

EXHIBIT LIST 20

I. Introduction

On February 12, 2010, ACD Telecom, Inc. ("ACD"), DayStarr, LLC ("DayStarr"), Clear Rate Communications, Inc. ("Clear Rate"), TC3 Telecom, Inc. ("TC3"), and TelNet Worldwide, Inc. ("TelNet") (collectively the "Joint Michigan CLECs" or the "Petitioners") filed their Joint Petition for Expedited Declaratory Ruling that the State of Michigan Statute 2009 PA 182 ("Act 182") is Pre-empted Under Sections 253 and 254 of the Communications Act of 1934 (the "Act"), and Motion for Temporary Relief. As discussed in the Joint Michigan CLECs' Petition, Act 182 explicitly creates a significant monetary subsidy for the exclusive benefit of the small Michigan ILECs and explicitly excludes the Petitioners because they are not ILECs. Although Act 182 requires all Michigan LECs who had not previously done so to reduce their intrastate access rates to rate levels no higher than their interstate access rates, Act 182 establishes the "restructuring mechanism" to reimburse the small ILECs for their lost intrastate access revenues by paying them equal replacement revenues from the state fund. In contrast, small CLECs cannot draw from this state fund under any circumstances, even when they provide service in the identical territories in which the small ILECs provide service. In fact, CLECs must contribute a percentage of their intrastate revenues to maintain and support the state fund and hence their ILEC competitors.

Thus, Act 182 violates § 253(a) of the Act because it "materially inhibits or limits" the ability of the Joint Michigan CLECs and other CLECs to enter into the small ILECs' markets and to provide viable competition with the small ILECs. Also, Act 182 is not "competitively neutral," and as

such § 253(b) does not save Act 182 from preemption.[1] In addition, Act 182 is inconsistent with § 254(f) of the Act and Congress's purposes in establishing universal service funding, and thus must be preempted. The arguments of certain commenters to the contrary must be rejected.

II. Discussion

A. The Joint Michigan CLECs have met their burden of proof showing that Act 182 violates § 253(a) of the Act.

Some of the commenters contend that the Joint Michigan CLECs needed to prove that their costs are comparable to the costs of the small ILECs that will receive the subsidy under Act 182 in order to show that Act 182 has the effect of prohibiting the ability of the Joint Michigan CLECs to provide interstate and intrastate telecommunications service. *See, for example*, AT&T's Opposition at 10-15; MPSC's Comments at 9-12. Specifically, AT&T criticizes the Joint Michigan CLECs for having "made no attempt to demonstrate that their costs are comparable to, let along greater than, the costs of the small rural ILECs that are eligible for support under Michigan's [restructuring mechanism]." AT&T's Opposition at 12.

When determining whether a law has the effect of prohibiting the provision of telecommunications service, the Commission "consider[s] whether the [law] materially inhibits or limits the abil-

[1] AT&T claims that preemption would be "inconsistent with a memorandum issued last year by President Obama." AT&T's Opposition at 2, n. 4. However, the concern in President Obama's memorandum was that "executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or an otherwise sufficient basis under applicable legal principles." Presidential Documents, Memorandum of May 20, 2009, *Preemption*, 74 Fed. Reg. 24693 (May 22, 2009). In the present case, Congress *requires* the Commission to preempt Act 182 pursuant to § 253(d) of the Act, and as such preemption cannot be "inconsistent" with President Obama's memorandum.

ity of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment" *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) ("*California Payphone Order*"). By providing a subsidy to the small ILECs that is not available to CLECs, the Joint Michigan CLECs have shown that Act 182 "materially inhibits or limits" their ability to compete. It is undisputed, and undisputable, that Act 182's restructuring mechanism has been created solely for the benefit of the small ILECs, and excludes their competitors.

Certain commenters contend that the subsidy is designed to offset alleged "advantages" that CLECs have over the small ILECs. *See* MPSC's Comments at 11, AT&T's Opposition at 12-13. This allegation is smoke. No commenter has demonstrated that such an allegation was presented to the Michigan Legislature or that, if it had been, such allegation was the basis of the Legislature's exclusion of competitors from the restructuring mechanism. The purpose of the state subsidy created in Act 182 can be clearly discerned by the Act's explicit provisions. The state ILEC fund was established for one expressed purpose – "in order [to permit small ILECs] to recover the lost intrastate switched toll access service revenues resulting from rate reduction under subsection (2)." MCL 484.2310(8). The House Fiscal Agency Legislative Analysis of the house bill, page 2, attached as Exhibit 1, put it even more plainly: "The bill would essentially create a new revenue stream – 'the restructuring mechanism' – to provide financial assistance to certain [ILECs] *as a trade-off for reducing their intrastate access charges to the same level as applicable interstate access charges*." (Emphasis supplied.) Because of the clear language of Act 182, no commenter has denied (because it is indisputable) that Act

182 takes revenue away from both the CLECs and the small ILECs, but only replaces the revenue of the small ILECs. Therefore, on its face, Act 182 violates § 253(a) of the Act.[2]

The MPSC asks the Commission to consider that Act 182 was a "compromise solution" in determining whether preemption is appropriate. *See* MPSC's Comments at 4, 15. But the primary compromise was among the *ILECs*. The large ILECs such as AT&T wanted all intrastate access rates reduced, and as such they supported Michigan House Bill No. 4257 as introduced on February 11, 2009. The original bill did not include the restructuring mechanism, but instead only included the requirement that rates for intrastate access services be the same as the interstate rates. *See* Exhibit 9 to the Joint Michigan CLECs' Petition. The small ILECs did not support the original bill because it meant that they would lose significant access revenues. Accordingly, the "compromise" was to reduce all access rates, thereby pleasing AT&T and Verizon, but permit the small ILECs to recover their lost revenues through the restructuring mechanism, thereby pleasing the small ILECs. That Act 182's "compromise" was for the benefit of the ILECs is revealed by the position taken by TAM, which is an association whose members include small ILECs in Michigan. While TAM has opposed the Petition, if the Commission determines preemption is appropriate, TAM believes that

[2] AT&T also argues that the CLECs enjoy a competitive advantage over AT&T and Verizon, the two large ILECs in Michigan, and that the Commission should factor this in to its consideration of the Petition. *See* AT&T's Opposition at 9, 16, and 22. AT&T's claim is absurd. In 2004, the CLECs had 27.5% of the lines in Michigan. That number dropped to 20% in 2008, a mere four years later. Conversely, AT&T had 56.9% of the lines in Michigan in 2004. That number increased to 64.2% in 2008. MPSC Report on Status of Telecommunications Competition in Michigan, June 2, 2009, p. 8 ("Competition Report"). The Competition Report is attached as Exhibit 3 to the Telecommunications Association of Michigan's ("TAM") Opposition. Instead of showing that the CLECs have a competitive advantage over AT&T in Michigan, the data shows that the CLECs' ability to compete in Michigan is actually on the decline.

Act 182 should be preempted in its entirety rather than preempting only the restructuring mechanism. TAM's Opposition at 14-15.

AT&T tries to minimize the effect of the state ILEC subsidy. AT&T argues that the anticipated amount of the subsidy to be distributed to the small ILECs is only $16 million. AT&T's Opposition at 21. However, when considering that the small ILECs provide about 184,860 lines in Michigan,[3] the subsidy would average out to be $86.55 per line/per year, or $7.21 per line/per month. Thus, the small ILECs will have a significant revenue stream per line per month that their competitors cannot obtain, materially limiting the ability of CLECs to compete. As the Commission is fully aware, $7.21 per line/per month is substantial. Particularly in the current economy, if a customer can save $7.21 a month by obtaining service from an ILEC rather than the CLEC, the customer will likely do so.

As the Joint Michigan CLECs pointed out in their Petition, the FCC has previously indicated its concerns about a subsidy that is provided only to the ILECs and not to the CLECs.

> *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

[3] Competition Report at 5.

> 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).*

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, ¶ 8 (rel'd Aug. 28, 2000) ("*Western Wireless*").

The irrefutable express provisions of Act 182 and the proofs presented by the Joint Michigan CLECs fully satisfy their burden to demonstrate a violation of § 253(a). However, certain commenters argue that an impossible burden of proof be imposed on the Petitioners. While not disputing Act 182 would create a significant revenue stream for Petitioners' competitors that would not be available to the Petitioners, AT&T and the MPSC assert that the Petitioners ought to be required to prove that they cannot overcome this clear and substantial obstacle. For example, the MPSC has argued:

> [I]n order to accurately assess whether Act 182 has the "effect of prohibiting the ability of [an] entity to provide . . . intrastate telecommunications 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.

MPSC's comments at 11-12. Further, the MPSC contends that such detailed evidence is "absent." *Id.* Any requirement that the Joint Michigan CLECs must prove that their costs are comparable to the small ILECs would not only amount to performing five individual cost cases on each of the five Joint Michigan CLECs, but it would also require that the Joint Michigan CLECs provide evidence of

the costs of each of the 34 small ILECs[4] that will receive the subsidy. Such burden would be insurmountable. The Joint Michigan CLECs do not have available to them the cost information for each of the 34 small ILECs.[5]

Ironically, if this impossible standard were to be applied, it would be fatal to the MPSC's own position in this case. Neither the Legislature nor the MPSC engaged in such an analysis. Thus, this standard, if adopted, would be an admission that neither the MPSC nor the Michigan Legislature had any idea when Act 182 was enacted whether or not its provisions were competitively neutral. The FCC has undisputed and undisputable grounds for it to conclude that Act 182 provides an advantage to small ILECs (namely, on average an exclusive benefit of $7.21 per line/per month) that is not available to their competitors. Thus, the Joint Michigan CLECs' ability to compete is materially limited, and as such Act 182 violates § 253(a) of the Act.

Certain commenters also argue that the restructuring mechanism was meant to assist those ILECs 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." MPSC's Comments at 3. *See also* CenturyLink's Opposition at 2; TAM's Opposition at 9. However, any suggestion that there has been established in Michigan some kind of relationship between (1) the small ILECs' cost of providing service and (2) their intrastate access rates is not accurate. Except for a very minimal service that few customers take (identified as Primary Basic Local Exchange Service),

---

[4] *See* MPSC Staff Report, 10th Wireline Competitive Market Conditions Survey, June 2009, Attachment B, attached as Exhibit 2.

[5] Although AT&T identified two MPSC cost proceedings relating to the small ILECs, AT&T's Opposition at 12, n. 28, the cost studies in those proceedings are filed on a confidential basis. As such, the Joint Michigan CLECs do not have access to those cost studies.

local rates of ILECs and CLECs have been unregulated and uncapped in Michigan since 2005 with the passage of 2005 PA 235. In addition, from 1995 to 2005, Michigan providers were not regulated on a rate of return basis.[6] And as AT&T states, "prior to Act 182, the Michigan Commission had no authority to review the intrastate switched access rates of any carrier with less than 250,000 access lines." AT&T's Opposition at 9. *See also* Exhibit 2 to the Joint Michigan CLECs' Petition, deleted § 310(7). Accordingly, no one knows what rate of return the small ILECs are earning in Michigan. So to assert that the small ILECs need dollar for dollar replacement revenue in order for the small ILECs to perform any carrier-of-last-resort obligations they may have is simply an assertion that has never been established as a fact.

AT&T compares the Joint Michigan CLECs' Petition to the one filed in the *California Payphone Order*. AT&T's Opposition at 14. The Commission described the ordinance in question in the *California Payphone Order* as follows:

> Prior to the City's enactment of the Ordinance, a payphone service provider could install a payphone in three kinds of locations in the Central Business District: (1) indoors on private property (by contracting with the property owner); (2) outdoors on the public rights-of-way (by contracting with the City); and (3) outdoors on private property (by contracting with the property owner). The Ordinance eliminates the third category of locations for all providers, including Pacific Bell. The Ordinance does not, however, expressly restrict the first two categories of locations for any provider. Any payphone service provider may still seek to install payphones in the Central Business District indoors on private property and/or outdoors on the public rights-of-way. Thus, the Ordinance, by its terms, does not "prohibit" the ability of any payphone service provider to provide payphone service in the Central Business District within the meaning of section 253(a).

California Payphone Order at ¶ 28 (footnote omitted).

---

[6] *See In re Ameritech Michigan*, MPSC Case No. U-12077, at 4 (Nov. 16, 1999 Order), attached as Exhibit 3, where the MPSC stated that the Michigan Telecommunications Act "rejects the rate base,

The Commission then considered whether the ordinance in question "had the effect of prohibiting" the ability of any entity to provide payphone service because of the argument that "payphone service providers other than Pacific Bell cannot compete in the Central Business District outdoors on the public rights-of-way or indoors on private property." *Id.* at ¶ 33. The petitioner argued that "payphone service providers other than Pacific Bell cannot install payphones outdoors on the public rights-of-way in the Central Business District because the Payphone Agreement [between Pacific Bell and the City] is exclusive," but the Commission noted that the plain terms of the Payphone Agreement "allow the City to contract with providers other than Pacific Bell to install payphones outdoors on the public-rights-of-way in the Central Business District." *Id.* at ¶ 34. Nonetheless, the petitioner alleged that the City "implemented the Payphone Agreement in an exclusive manner," and made the prospect of contracting with the City to install payphones in public rights-of-way "illusory." *Id.* at ¶ 35.

The Commission found that the petitioner failed to offer evidence that the City had acted contrary to the plain terms of the Payphone Agreement by rejecting concrete contract proposals from a payphone service provider to install payphones outdoors on the public rights-of-way, or by insisting upon contract terms that would effectively prohibit payphone service providers other than Pacific Bell from providing service outdoors on the public rights-of-way. *Id.* Conversely, in the instant circumstances, the plain language of the statute itself makes it clear that the State of Michigan is providing a subsidy to the small ILECs that it is not providing to the CLECs. There is no need for the Joint Michigan CLECs to provide additional "evidence" that the subsidy is not available to

---

rate-of-return form of regulation . . . ."

them. There is no dispute that Act 182 makes the subsidy available to the small ILECs and not to the CLECs.

The petitioner also argued in the *California Payphone Order* that locating payphones indoors on private property "would be impractical and uneconomic," and that "indoor payphones generate far less revenue than outdoor payphones." *California Payphone Order* at ¶ 39. The Commission found that the petitioner had not presented sufficient evidence to permit the Commission to conclude that "payphone service providers lack a commercially viable opportunity to install payphones indoors on private property in the Central Business District." *Id.* at ¶ 41. However, the petitioner's claim that indoor payphones are "impractical and uneconomic" did not rest on the fact that some other companies were receiving subsidies for their provision of indoor payphone service, but instead rested on the petitioner's claim that providing indoor payphone service is uneconomic by its nature. Accordingly, the Commission indicated that the petitioner must show precisely why and to what extent indoor payphone service is uneconomic.

Under the current circumstances, the Joint Michigan CLECs have not argued that the nature of the telecommunications service itself is what makes the provision of services in competition with the small ILECs "uneconomic." Instead, Act 182 provides a subsidy to the small ILECs that they can use to undercut the rates of the Joint Michigan CLECs, and thereby obtain a competitive advantage over the CLECs. The Joint Michigan CLECs should not be required to show the effect of Act 182 on the costs of the Joint Michigan CLECs and the small ILECs because, as discussed, such a showing is not possible. The fact that Act 182 results in subsidizing the small ILECs on average of

$7.21 per line/per month, and does not make such subsidy available to the CLECs, is enough for the Commission to conclude that Act 182 violates § 253(a) of the Act.

The MPSC cites to *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*, 14 FCC Rcd. 21579, FCC 99-386 (rel'd Dec. 23, 1999) ("*American Communications Order*") in support of its claim that the Joint Michigan CLECs did not prove that Act 182 violates § 253(a) of the Act. However, the *American Communications Order* does not involve a situation where the state was providing a subsidy to ILECs and not to CLECs. The petitioner's failure in *American Communications Order* was that the petitioner "neither applie[d] the requirements of section 253 to the[ ] provisions of Arkansas law, nor proffer[ed] an example of an entity lacking the ability to provide a telecommunications service due to the operation of those portions of the Arkansas Act." *American Communications Order* at ¶ 38. *See also* ¶¶ 65 and 109. The Joint Michigan CLECs' Petition does not suffer from the same deficiencies as the petition discussed in the *American Communications Order*. The Joint Michigan CLECs applied the requirements of § 253 to Act 182, and provided examples of entities that Act 182 has the effect of prohibiting from providing telecommunications services. Accordingly, the *American Communications Order* does not support the rejection of the Joint Michigan CLECs' Petition.

B. Section 253(b) of the Act does not save Act 182.

As stated in the Joint Michigan CLECs' Petition, 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 uni-

versal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, or safeguard the rights of consumers. *Western Wireless* at ¶ 9. The "restructuring mechanism" of Act 182 provides to small ILECs a substantial unfair price advantage in competing for customers, and thereby acts to shield the small ILECs from competition by other LECs. Therefore, Act 182 is *not* "competitively neutral," and § 253(b) does *not* save Act 182 from preemption.

AT&T contends that because CLECs are "differently situated" than the small ILECs, Act 182 is justified in treating the two groups differently. However, the Commission's decision in *Western Wireless* clearly shows that limiting of funding to only ILECs is not competitively neutral.

> 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 at ¶ 10.

AT&T argues that Act 182 is different from the state fund in *Western Wireless* because "Act 182 provides both small rural ILECs *and* CLECs competitive advantages (albeit different ones)." AT&T's Opposition at 21. One such claimed "competitive advantage" to the CLECs is the five-year implementation of the access rate reduction, which AT&T contends "will favor [CLECs] over their main competitors, AT&T Michigan and Verizon." *Id.* As discussed, even with intrastate access rates higher than AT&T's and Verizon's, the decline in the CLECs' market share in Michigan com-

pared with AT&T's increased market share shows that the CLECs most definitely do not have a "competitive advantage" over AT&T in Michigan. But even if they did, any such competitive advantage is not relevant to whether Act 182 provides an unfair price advantage to the small ILECs as compared with the CLECs, which the Joint Michigan CLECs have shown that it does. Essentially AT&T is arguing that if Company A has an advantage over Company B, the creation of a subsidy for the exclusive benefit of Company C is competitively neutral. AT&T's argument is devoid of logic.

CenturyLink also attempts to distinguish Act 182 from *Western Wireless* by describing the five-year phase-in of the CLECs' access rates reduction as a "different access replacement path[ ] based on different regulatory burdens." CenturyLink's Opposition at 6. Act 182 requires CLECs to reduce their access rates by at least 20% a year over a 5-year period. MCL 484.2310(2). Thus, CLECs access revenues are not being replaced at all; they are only being reduced. Although the small ILECs are required to reduce their access rates all at once, the small ILECs will simultaneously receive the "restructuring mechanism" subsidy to replace such revenues. *Id.* Accordingly, it is only the small ILECs that are on an "access replacement path." The CLECs have no means to obtain any subsidy to replace their access revenues.[7]

[7] The ITTA states that the Joint Michigan CLECs were required to quantify the difference in access revenues between the small ILECs and the CLECs. ITTA's Comments at 6. No such quantification is necessary. There is no dispute that both the small ILECs and the CLECs will lose access revenues as a result of Act 182. Just because the CLECs will lose such revenues over five years instead of all at once does not change the fact that they will lose the revenues. Act 182 replaces the small ILECs' access revenues but not the CLECs' access revenues. Thus, Act 182 creates a subsidy that provides a competitive advantage to the small ILECs, regardless of the actual amount of access revenues lost.

AT&T argues that if the Joint Michigan CLECs do enter the highest-cost areas of the small ILECs' territories, the Joint Michigan CLECs "could seek CETC designation, which will make them eligible for federal high-cost support, and they could request that the Michigan [Commission] establish a state high-cost support fund as an additional source of support." AT&T's Opposition at 22. But of course neither of those actions would make up for the subsidy that the small ILECs receive as a result of Act 182. Although there are federal universal support options that some of the Joint Michigan CLECs are beginning to pursue, that does not change the fact that Act 182 makes a subsidy available to the small ILECs that will never be available to the CLECs.

As the Commission has noted, "[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." *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, ¶ 11, n. 26 (rel'd Dec. 23, 1999). No party has met its burden to prove that Act 182 is competitively neutral or otherwise comes within § 253(b) of the Act. Therefore, the Commission must preempt Act 182 pursuant to § 253(d) of the Act.

C. The Commission's cap on CETC funding does not support Act 182's restructuring mechanism subsidy.

CenturyLink contends that *Western Wireless* "was based on the concept of portability of USF support, which is predicated on the identical support rule." CenturyLink's Opposition at 6. Cen-

turyLink states that "while the facts in that case may have some facial similarities with the current situation, the Commission no longer supports portability for USF support," and that by adopting the CETC cap, "the Commission has clearly adopted precisely the opposite policy." *Id.* at 6-7. Similarly, AT&T argues that the "Michigan legislature's decision to make available [restructuring mechanism] support only to those carriers (i.e., smaller rural ILECs) that have demonstrated that their costs are high and that continue to have an obligation to serve all residential and business customers in their study areas is consistent with the Commission's decision to cap CETC funding." *Id.* at 17-18.

In capping the amount of CETC support, the Commission did not deny CETCs *all* support. Indeed, the Commission noted that although the Commission is not required to continue to provide identical levels of support to all carriers, "all ETCs must be eligible to receive support." *CETC Interim Cap Order*, 23 FCC Rcd. 8834, FCC 08-122, ¶ 17 (rel'd May 1, 2008). And the Commission's rules still require 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." 47 C.F.R. § 54.307(a). Therefore, the Commission has not rejected the conclusion reached in *Western Wireless* that a state law that provides support to ILECs but denies support to CLECs altogether is not competitively neutral, and should be preempted under § 253 of the Act.

It is also important to note that, while the Commission did not abandon its self-imposed principle of competitive neutrality as a matter of policy, the Commission recognized that the CETC

funding cap involved prioritizing the need to stabilize the fund ahead of the principle of competitively neutrality.

> We also find that the Commission's universal service principle of competitive neutrality does not preclude us from adopting an interim, limited cap under existing circumstances. As discussed above, high-cost support has increased by $ 1.7 billion - more than 65 percent - from 2001 to 2007. Continued growth at this rate would render the amount of high-cost support unsustainable and could cripple the universal service fund. To avert this crisis, it is necessary to place some temporary restraints on the fastest-growing portion of high-cost support, i.e., competitive ETC support. Moreover, as discussed above, it is not clear that identical support has, in reality, resulted in competitive neutrality. We therefore find that, rather than departing from the principle of competitive neutrality, as a matter of policy, we instead are temporarily prioritizing the immediate need to stabilize high-cost universal service support and ensure a specific, predictable, and sufficient fund.

CETC Interim Cap Order at ¶ 22 (footnote omitted). Implicit in this discussion is the Commission's recognition that the CETC funding cap is *not* competitively neutral, but that the need to stabilize the fund is currently more important than competitive neutrality. Applying this discussion to Act 182 leads to the conclusion that, if a rate cap that merely limits the amount of universal service support to CETCs but not to ILECs is not competitively neutral, then certainly Act 182's provision of a subsidy to small ILECs but not to CLECs is also not competitively neutral. Under § 253(b) of the Act, Act 182 *must* be imposed on a competitive neutral basis. The Commission has no discretion to avoid the application of competitive neutrality to Act 182.[8]

---

[8] The ITTA argues that "competitive neutrality does not require precise parity of treatment, and the Commission is not required to provide the same levels of support." ITTA's Comments at 8. The Joint Michigan CLECs are not claiming that they should be entitled to "the same levels of support" as the small ILECs. The small ILECs obtain the Act 182 subsidy based on the amount of access revenues they lost. Had the Michigan Legislature extended the subsidy to include CLECs, presumably the amount the CLECs received would be based on *their own* access rates and revenues lost, not the small ILECs' access rates. These rates are subject to other restrictions in the Michigan Telecommunications Act, such as the requirement that providers impute to themselves their access pric-

In addition, the CETC funding cap was justified by the need to halt the expanding growth of the federal universal service fund. Act 182's limitation of the subsidy to the small ILECs was not in response to an out-of-control universal service fund in Michigan – as other commenters have noted, there is no state universal service fund in Michigan. *See* MPSC's Comments at 5-6, 13-14. Also, the Commission included in the *CETC Interim Cap Order* the ability of a CETC to avoid being subject to the cap to the extent the CETC "files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent LEC." *CETC Interim Cap Order* at ¶ 31. Act 182 does not permit CLECs to demonstrate their costs in order to be eligible for the restructuring mechanism subsidy.

The Commission's CETC funding cap is not similar to, and does not support, the limitation of the restructuring method subsidy under Act 182 to the small ILECs.

D. Preemption of Act 182 in its entirety is required.

As discussed in the Joint Michigan CLECs' Petition, the Michigan Legislature would not have passed Act 182 without the inclusion of the restructuring mechanism. Because the establishment of the "restructuring mechanism" to subsidize the small ILECs for their lost intrastate access amounts, while failing to make such subsidy available to any CLECs, is contrary to §§ 253 and 254 of the Act, Act 182 must be preempted in its entirety under Michigan law. AT&T states that the Commission "should agree that it is in no position to opine on Michigan law governing the severability of a statute and thus must respectfully decline Petitioners' request to invalidate Act 182 in its

---

ing. MCL 484.2311. Thus, while the small ILECs' and CLECs' amounts would be comparable, they would not necessarily be the same.

entirety." AT&T's Opposition at 7. However, the United States Supreme Court has stated that "[s]everability is of course a matter of state law." *Leavitt v. Jane*, 518 U.S. 137, 139 (1996). Thus, it is fully appropriate, and necessary, for the Commission to consider the extent to which Act 182 is severable under Michigan law.

AT&T questions the Joint Michigan CLECs' "sincerity" in their support of the preemption of Act 182 in its entirety. AT&T's Opposition at 7. However, TAM, which otherwise opposes the Joint Michigan CLECs' Petition, agrees that if the Commission decided to preempt portions of Act 182, "the entire Act should be preempted." TAM's Opposition at 14-15. In addition, AT&T does not propose a workable alternative. AT&T suggests that just the definition of "eligible provider" would need to be preempted. AT&T's Opposition at 7. But without the definition of "eligible provider," Act 182, which uses the term no less than 14 times, no longer makes sense. CenturyLink proposes that if "Act 182 creates a barrier to entry, the remedy logically would not be preemption but, rather, a very limited change permitting [CLECs] to draw from the access replacement fund only for lines in areas served by small ILECs, which is only a small number of lines." CenturyLink's Opposition at 3. But CenturyLink's solution is a legislative one that would need to be undertaken by the Michigan Legislature in re-crafting Act 182 – it is not a solution available to the Commission under § 253(d) of the Act.

As stated in the Petition, the Commission should preempt Act 182 in its entirety. At that point, the Michigan Legislature will be free to revise the language of Act 182 to ensure that it is not contrary to §§ 253 and 254 of the Act.

III. Conclusion.

For all of the reasons stated above and in the Petition, the Joint Michigan CLECs respectfully request that the Commission, on an expedited basis, preempt in its entirety Michigan's statute 2009 PA 182.

Respectfully submitted,

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

Dated: March 19, 2010

/s/ Gary L. Field

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. House Fiscal Agency Legislative Analysis of the House Bill, later passed as Act 182
2. MPSC Staff Report, 10th Wireline Competitive Market Conditions Survey, June 2009
3. *In re Ameritech Michigan*, MPSC Case No. U-12077 (Nov. 16, 1999 Order)

Exhibit 1

Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

INTRASTATE ACCESS RATES

House Bill 4257 (Substitute H-3)
Sponsor: Rep. Tim Melton
Committee: Energy & Technology

Complete to 8-31-09

A REVISED SUMMARY OF HOUSE BILL 4257 (SUBSTITUTE H-3):

Federal and state law both contain highly complex systems of payments between telecommunications companies designed, among other things, to compensate telecommunication companies when other companies use their networks. After the breakup of AT&T, federal access charges were established to compensate local exchange carriers (LECs) for the use of what has been described as the "vital, expensive and relatively unprofitable local access network." The Federal Communications Commission (FCC) governs *interstate* access charges and Michigan law governs *intrastate* access charges. Generally speaking, intrastate access charges are paid by long distance providers to local exchange providers for calls carried by the long distance providers that begin and end in different local calling areas within Michigan.

Currently, Michigan law allows local exchange providers to set their own intrastate access charges. Companies with more than 250,000 customers generally adopt intrastate access rates no higher than federal interstate levels because such rates are presumed just and reasonable. Local exchange providers with 250,000 or fewer customers are currently allowed to charge intrastate access rates that exceed federal interstate levels. Among other things, some larger companies would like to see the intrastate access charges they pay eliminated, reduced to federal levels, or spread to other providers who currently do not pay them. Long distance calls made using wireless or voice over Internet protocol (VoIP) providers are generally not subject to intrastate access charges although wireless providers may be subject to reciprocal compensation agreements. Although wireless (commercial mobile telephone providers) and interconnected VoIP providers do not currently pay access charges, they would be subject to restructuring assessments under the bill.

House Bill 4257 would amend Section 310 of the Michigan Telecommunications Act to prohibit any provider, including small providers, from charging intrastate access rates higher than federal interstate access rates. Small incumbent local exchange carriers (ILECs) required to lower their intrastate access rates would receive partial compensation under a so-called "restructuring mechanism" created by the bill. [Note: Somewhat confusingly, the bill refers to both the fund into which the new provider assessments would be made and the compensatory payments received by individual small providers as the "restructuring mechanism."] For qualifying small ILECs, the access rate reductions and compensatory payments would begin no later than 270 days after the bill's effective date. Competitive local exchange carriers (CLECs) would be required to reduce their intrastate

access rates in no more than five steps, with the first reduction required within 30 days of the bill's effective date. CLECs would receive no compensatory payments.

Other features of the bill include:

- In general, small ILECs required to reduce their current intrastate access rates would be partially compensated for lost revenue by payments paid for by assessments on all providers of retail intrastate telecommunications services (including the small ILECs themselves), commercial mobile providers, and interconnected VoIP service providers. (Requiring the recipients to pay into the fund will result in their receiving a net amount from the fund that is less than what would initially appear.)
- An existing provision that requires that any access rate reductions be passed along to customers (and for the PSC to investigate and ensure that this is done) would be repealed.
- The restructuring mechanism fund would be run by a third-party administrator selected by the Public Service Commission (PSC) based on a competitive bidding process recommended by an oversight committee composed of five telecommunication company representatives.
- The third-party administrator's financial records could be audited by an auditor agreed to by the PSC but company-specific information submitted to the PSC or the third-party administrator would be deemed confidential information exempt from public disclosure.
- An ILEC with a weighted average rate for residential basic local exchange service with unlimited local calling of less than $19.25 on January 1, 2009 would receive lower restructuring payments.
- Every three years, the payments due to small ILECs would be reviewed and adjusted for the percentage change in the number of that provider's access lines.
- Section 316a of the act, which authorizes a state fund to support universal, affordable basic telephone service, would be repealed. The state fund created under that section does not go into effect if a federal universal service fund continues to exist (unless the PSC authorizes it). At present, a federal universal access program exists and this state fund is not operational.

MCL 484.2310 & 484.2316a

FISCAL IMPACT:

The bill would essentially create a new revenue stream – the "restructuring mechanism" – to provide financial assistance to certain incumbent local exchange carriers (ILECs) as a trade-off for reducing their intrastate access charges to the same level as applicable interstate access charges. The initial amount in the fund would be first determined based on the amount of revenue lost by reducing intrastate access charges. The Telecommunications

Association of Michigan (TAM)[1] estimates this amount to be, on an aggregate basis, between $15.0 million and $20.0 million. That amount is then adjusted downward, based on the annual revenue that eligible providers charging local rates of less than a benchmark rate of $19.25/month could have received had it been charging its customers at least $19.25 per month as of July 1, 2009, rather than a lower amount. The amount of this adjustment is not immediately available. These two calculations, taken together, would approximately equate to the total amount of payments from the restructuring mechanism to eligible providers. The restructuring mechanism would also consist of projected working capital requirements, administrative expenses, projected uncollectible contribution assessments, and projected audit expenses. The amount of the restructuring mechanism would be assessed against all providers of retail intrastate telecommunications services, commercial mobile service (cellular telephone), and voice over Internet protocol (VoIP) service, based initially on CY 2008 billed retail intrastate telecommunications services revenue in the state (or similar calculation for VoIP providers), less projected uncollectible revenue. The administrative expenses (incurred by a third party administrator) would vary depending on the complexity of administering the restructuring mechanism, with initial costs potentially higher than ongoing administrative costs, to get the process up and running. The costs for ongoing administration would likely be around $130,000 per year, with separate audit costs totaling less than $25,000.[2] Again, these costs would be paid from the restructuring mechanism itself, supported by assessments against contributing providers.

By tasking a third-party administrator to administer and have oversight over the restructuring mechanism, as many other states have done in creating Universal Service

---

[1] See testimony of Scott Stevenson, President, Telecommunications Association of Michigan (TAM) before the House of Representatives, Committee on Energy and Technology, July 14, 2009, available at [http://www.house.mi.gov/SessionDocs/2009-2010/Testimony/Committee6-7-14-2009-20.pdf].

[2] Many states have contracted with third-party administrators in administering state-level Universal Service Funds. Presumably, the basic processes employed in administering the restructure mechanism established under the bill would be very similar to those used in administering a state Universal Service Fund. See, for example, the Pennsylvania Public Utilities Commission (PUC) Universal Service Fund website, [http://www.puc.state.pa.us/telecom/telecom_univservfund.aspx]. The PUC contracted with Solix, Inc, a national "administrative process outsourcing firm" to administer the state's USF. According to an independent audit of the USF, administrative expenses paid to Solix in 2008 totaled $124,476, with allowable expenses (provided under the contract) rising to $127,588 in 2009 and $130,778 in 2010. Separate independent audit expenses totaled $23,380 in 2008 and $23,400 in 2007. The audit is available on the PUC website at, [http://www.puc.state.pa.us/telecom/pdf/PaUSF_External_Audit_Rpt_07-08.pdf]. A November 2001 audit of the state USF by PUC, Bureau of Audits reported that start-up costs totaled $31,300. See also, Solix's proposal to serve as the fiscal agent of the Vermont Universal Service Fund submitted on April 13, 2009 to the Vermont Public Service Board. Under the proposal, Solix's fixed costs would be $78,000 in state FY 2010, $80,000 in FY 2011, and $82,000 in FY 2012. Additional costs would be incurred, on a per-diem basis, for conducting reviews of telephone service providers, (up to $100/hour) necessary legal expenses (up to $235/hour), and other consulting services (up to $150/hour). Solix also estimates that the estimated cost of an independent audit would be between $20,000 and $25,000. [http://www.state.vt.us/psb/RFP/VUSF_Fiscal_Agent_2009/Solix%20Proposal%20(Redacted%20Version)%20-%20VT%20USF%20Fiscal%20Agent.pdf]. See, also, Solix's proposal submitted on October 7, 2007, to the Indiana Utility Regulatory Commission to administer the state Universal Service Fund, which provided a two-year cost estimate of $252,700, [http://www.in.gov/iurc/files/solixproposal_100807.pdf]. See, also, the proposal submitted to the IURC on October 4, 2007 by Rolka Loube Saltzer Associates, [http://www.in.gov/iurc/files/rolkaproposal_100407.pdf].

Funds, it appears that the revenue generated to support the restructure mechanism would not actually be considered "state revenue" or subject to annual appropriation by the Legislature. [3]

The Public Service Commission (MPSC) would incur some additional administrative expenses relative to determining the amount of selection of oversight committee members, reviewing the RFP to select an administrator (in conjunction with the oversight committee), determining the amount of the initial restructuring mechanism payment to eligible providers, approving the contribution assessment, resolving disputes through the contested case process, enforcing payment of required contribution assessments, assessing penalties for non-compliance, and other oversight of the restructuring mechanism. At present, the MPSC has not provided an estimate of costs. The activities of the MPSC are supported by an assessment against regulated public utilities under the authority of Section 211 of the Michigan Telecommunications Act (MCL 484.2211) and Public Act 299 of 1972 (MCL 460.111 et seq.), subject to appropriation by the Legislature. The bill provides that contributing providers that fail to make the required payments or otherwise fail to comply with requirements of the bill would be subject to the penalties imposed under Section 601 of the Michigan Telecommunications Act (MCL 484.2601). Any additional fine revenue would be credited to the General Fund.

The bill would also have an impact on local units of government to the extent restructuring intrastate access charges affects local telephone rates. In general, it seems that reducing intrastate access charges might exert an upward pressure on local telephone rates in areas where ILECs will be required to reduce intrastate access rates. That upward force, however, is mitigated, to a large extent, by the restructuring mechanism established in the bill.

DETAILED SUMMARY:

<u>Limit intrastate switched toll access service charges to federal levels for interstate services for all providers, including small ones</u>; <u>repeal the requirement that access rate reductions be passed along to customers</u>. Currently, except as provided by law, telecommunications providers (not the PSC) set the rates they charge other companies for intrastate toll access services. For companies with more than 250,000 customers, rates and charges that are no higher than the rates allowed by the federal government for the same interstate services are presumed "just and reasonable." Companies with 250,000 or fewer customers are exempt from Section 310. The bill would:

- Prohibit providers, no matter how few customers they have, from charging more for *intrastate switched* toll access services than the federal government allows for the same interstate services. Providers with 250,000 or fewer

[3] A similar example could be the Michigan Catastrophic Claims Association (MCCA) assessments imposed under Section 3104 of the Insurance Code, MCL 500.3104, against the association's members (insurers). Moreover, the bill does not explicitly establish a "fund" that would be established within the state treasury.

customers could continue to adopt joint toll access service rates and to pool intrastate toll access service revenues.

- Require a provider to use the "access rate elements" for intrastate switched toll access services that are in effect for that provider and allowed by the federal government for the same interstate services.
- Continue to authorize providers to adopt lower rates than the maximum allowed by the federal government.
- Retain and expand to small providers the requirement that all providers of toll access service must make available for intrastate access services any technical interconnection arrangements, including colocation required by the federal government for the identical interstate access services.
- Retain and expand to small providers the requirement that they offer 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, must be offered to all providers under the same rates, terms, and conditions.

Access rate reductions not required to be passed along to customers. The bill would eliminate a provision currently found in Section 310 [§310(6)] that requires that if a toll access service rate is reduced, the provider receiving the reduced rate must pass along the reduction to its customers, and the PSC must investigate and ensure that providers do so.

Effective date of intrastate access charge reductions. The deadline for the required intrastate access charge reductions would depend on whether or not a provider qualified as an "eligible provider" under the bill:

- An "eligible provider" would have to comply with the new limit on intrastate access charge rates **as of the date set for the restructuring mechanism created by the bill to begin**. [The bill does not set a date certain for the mechanism to begin; rather, it allows a third-party administrator to start the mechanism on any date within 270 days after the bill's effective date.]
- An **"eligible provider"** would mean (1) an incumbent local exchange carrier (ILEC), as defined in the federal Telecommunications Act of 1996 (Section 251, 47 USC 251[4]) (2) that charged higher rates for intrastate switched toll access services than for the same interstate switched toll access services on January 1, 2009; and (3) that provides "services and functionalities identified by rules of the Federal Communications Commission described at 47 CFR 54.101(a)."[5]

[4] Under Section 251 of that act, an incumbent local exchange carrier (ILEC) means, for a given area, the local exchange carrier that provided telephone exchange service in the area and was a member of the exchange carrier association under a specified FCC regulation (or is a successor to such a member) on February 8, 1996. In addition, FCC rules may treat other carriers as ILECs.

[5] The services or functionalities described by 47 CFR 54.101(a)(1)-(9) are those supported by the federal universal service support programs: (1) voice grade access to the public switched network; (2) local usage (a certain number of local minutes provided free of charge to the customer); (3) dual tone multi-frequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, such as

- A provider that must reduce its access charge levels but that is not eligible for compensatory payments (presumably a small CLEC) could phase in its access charge reductions in no more than five steps. The first reduction would be due 30 days after the bill's effective date, followed by additional reductions on July 1 in years 2010 to 2013. Each step would have to reduce the differential between the provider's intrastate and interstate switched toll access rates as of July 1, 2009 by at least 20 percent.

Restructuring mechanism; purposes. The bill would establish an "intrastate switched toll access rate restructuring mechanism" for restructuring intrastate switched toll access rates. An eligible provider (a qualifying ILEC) would be entitled to receive monthly distributions as provided in the restructuring mechanism to replace lost revenues resulting from the required access rate reductions.

Third-party administrator; mechanism starting date. The restructuring mechanism would be administered by a neutral third-party administrator selected by the Public Service Commission (PSC) using a competitive request-for-proposal process developed by an oversight committee. The restructuring mechanism would have to be established and begin operation within 270 days after the bill's effective date. The third-party administrator would set the date on which the mechanism would begin operating, within the 270-day deadline, and give participants 30 days' advance notice of the starting date. The administrator would be compensated on a periodic basis from assessments collected for the operation of the restructuring mechanism in an amount approved by the PSC.

Administrator's duties. [§310(9)] The administrator would have to do the following things:

- Establish the procedures and timelines for organizing, funding, and administering the restructuring mechanism.
- Report to the oversight committee and PSC at least annually on (1) the total amount of money collected from each contributing provider; (2) the total amount of money disbursed to each eligible provider; (3) administrative expenses; and (4) any other information considered relevant by the administrator, the oversight committee, or the PSC.

Audits, confidentiality. [§310(9)] The administrator's financial records with regard to the operation of the restructuring mechanism would be made available to the PSC, and, at the PSC's request, could be audited by an independent auditor acceptable to the PSC, with the audit costs paid out of the restructuring mechanism. Any company-specific information about access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenues submitted to the administrator, oversight committee, or commission under this

---

911 or enhanced 911; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. These are the minimum characteristics of any retail local service offering which must be met before the Lifeline discount for eligible low-income persons may be applied to the service.

subsection would be deemed confidential commercial or financial information exempt from public disclosure under Section 210. [Under Section 210, MCL 484.2210, trade secrets and commercial or financial information submitted under the Telecommunications Act are generally exempt from the Freedom of Information Act, except under the terms of a mandatory protective order.]

Oversight committee. The PSC would select and approve a five-member oversight committee, composed of persons with expertise in the telecommunications industry from candidates proposed by industry representatives. The oversight committee would advise the PSC as to the ongoing operation of the restructuring mechanism and supervise the administrator's activities. The oversight committee would have one representative from each of following classes:

- The two largest incumbent basic local exchange providers (currently, AT&T and Verizon).
- Eligible providers (small ILECs)
- Other basic local exchange providers (CLECs)
- Interexchange carriers (long-distance providers)
- Commercial mobile service providers (wireless/cell phone companies).

There would be no representative of consumers or interconnected VoIP providers on this committee.

Within 14 days after the bill's effective date, a provider could nominate a candidate for the oversight committee by providing the PSC with the name, qualifications, and experience of the candidate. Within 21 days after receiving the nominations, the PSC would appoint the initial members of the oversight committee from the proposed candidates for three-year terms. The PSC would fill any vacancies in the same manner. Members of the oversight committee would not receive any compensation from the restructuring mechanism.

RFP to select administrator. Once appointed, the oversight committee would have 30 days to issue a request for proposal (RFP) for selection of the administrator. Interested parties would have 45 days to respond to the RFP to the oversight committee and the PSC. Within 21 days after receiving the responses, the oversight committee would submit its recommendations for the position of administrator to the PSC, and the PSC would be required to issue an order naming the administrator within 30 days after receiving those recommendations.

Oversight committee's duties. The oversight committee would have to monitor and review the operations of the restructuring mechanism on an ongoing basis and review issues it considered advisable and necessary to further the purposes and objectives of the restructuring mechanism and to make recommendations to the PSC. If the committee did not agree on a recommendation to the PSC, the committee could provide a majority recommendation as well as one or more minority recommendations.

Calculation of initial payments. The initial size of the restructuring mechanism would be calculated as follows:

- Within 60 days after the bill's effective date, each eligible provider would have to submit to the PSC information and supporting documentation to establish the amount of its reduction in annual intrastate switched toll access revenues resulting from the required reduction in rates.
- The formula for calculating the reduction would be "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."
- The PSC would compute the size of the initial restructuring mechanism for each eligible provider within 60 days after the date established for receiving information and supporting documentation from the eligible providers.

Reduced payments to providers with basic plans costing less than $19.25 per month. If an eligible provider's weighted average monthly recurring rate on July 1, 2009 for single-party residential basic local exchange service with unlimited local calling was less than $19.25 per month, it would receive reduced "restructuring mechanism" payments. Its mechanism would be reduced by the annual revenue that it could have received had it been charging its customers at least $19.25 per month as of July 1, 2009, rather than a lower amount. However, this reduction would not apply to eligible providers charging less than $19.25 per month whose only exchanges did not have extended area service and land-based contiguous exchanges. (Reportedly, the providers to whom this reduction would not apply are certain providers operating on islands.)

Providers subject to the assessments; PSC authority over commercial mobile and VoIP providers. The restructuring mechanism would be created and supported by the following:

- All providers of retail intrastate telecommunications services.
- All providers of commercial mobile service.
- All providers of interconnected voice over internet protocol (VoIP) services.

Nothing in the act, however, would grant the PSC authority over commercial mobile service providers or VoIP providers except as strictly necessary for administration of the restructuring mechanism.

Contributing provider reports. Within 60 days of the bill's effective date, each contributing provider would have to report its 2008 intrastate retail telecommunications services revenues to the PSC and to the administrator.

Calculation of intrastate revenue by VoIP providers. A VoIP provider could use any of the following three methods for calculating its intrastate retail revenue subject to the assessment: (1) direct assignment; (2) a company-specific traffic study, or (3) the inverse of the interstate jurisdictional allocation established by the Federal Communications

Commission. Revenue calculations using the direct assignment or a traffic study methods would use primary physical service addresses identified by customers.

Initial contribution assessment percentage. The formula for determining the initial contribution assessment percentage would be:

Projected funds needed for disbursements for 12 months
(including working capital requirements, actual and projected administrative costs, projected uncollectible assessments, and projected audit expenses)

÷

2008 total billed retail intrastate telecommunications revenues (less projected uncollectible revenues) **reported to the PSC and administrator**

Monthly contribution. Each contributing provider would have to remit to the administrator on a monthly basis an amount equal to its billed intrastate retail telecommunications services revenues, less uncollectible revenues, multiplied by the contribution assessment percentage described above.

Recalculation of size of restructuring mechanism payments. The administrator would be required to recalculate the size of the restructuring mechanism payment for each eligible provider three years after the mechanism first became operational, and every three years thereafter, according to the following process:

- Step 1. The restructuring mechanism payment would be recalculated as the difference between the intrastate switched toll access rates in effect on July 1, 2009 and the federal 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 calendar year 2008, reduced as to eligible providers that did not charge its retail residential customers at least $19.25 per month for basic local exchange service on January 1, 2009.
- Step 2. The recalculated restructuring mechanism would be further adjusted 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.
- Step 3. The administrator would recalculate the size of the restructuring mechanism and submit its results to the oversight committee within 30 days after the end of the three-year period. The oversight committee would review the administrator's calculations and would be required to make recommendations to the PSC for approval or modification within 21 days of receipt of the calculations. The administrator and the oversight committee would forward to the PSC all information used to recalculate the restructuring mechanism under Steps 1 and 2. The PSC would inform the administrator of the size of the recalculated restructuring mechanism within 30 days after the oversight committee made its recommendations.

Replacement of administrator. After notice and opportunity to comment by interested persons, the PSC could terminate its designation and authorization of the current administrator. The PSC would select a successor administrator through the competitive RFP process developed by the oversight committee. Upon the selection of a successor administrator, the terminated administrator would have to transfer all money in the intrastate access rate restructuring mechanism to the successor administrator. The successor administrator would be accountable only for the money transferred to it.

Effect of changes in federal interstate access rates. If the federal government adopted intercarrier compensation reforms or took any action resulting in a significant change in interstate switched toll access service rates, the PSC could initiate, or any interested party could file an application for, a proceeding under Section 203 within 60 days of the federal action to determine whether any modifications to the size, operation, or composition of the restructuring mechanism were warranted. While such a proceeding was pending, the requirement that eligible providers set intrastate switched toll access service rates equal to federal interstate access rates would be temporarily suspended and their intrastate access rates would frozen at the levels in place at the time of the suspension. Following notice and hearing, upon a showing of good cause, the PSC could stop or place conditions on the temporary suspension.

Effect of changes in federal universal service contribution methodology. If the federal universal service contribution methodology is modified so that it is no longer based on a percentage of total interstate telecommunications services revenues, the PSC would modify the contribution methodology for the restructuring mechanism to be consistent with the federal methodology. It would initiate a proceeding to modify the restructuring methodology and set a reasonable time period for the transition to the new methodology.

Dispute resolution. Disputes arising under Section 340 could be submitted to the PSC for resolution under Sections 203 and 204 of the Michigan Telecommunications Act, 484.2203 and 2204. [Section 203 allows the PSC to conduct investigations, hold hearings, and issue findings and orders under the contested hearings provisions of the Administrative Procedures Act, upon receipt of a complaint or on its own motion. It also provides for emergency relief in appropriate cases and prescribes procedures and appeal rights. Section 203 provides that in cases involving interconnection disputes, the alternative dispute resolution process found in Section 203a must be followed. Section 204 states that "[i]f 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication service or a matter prohibited by Section 305, then either telecommunication provider may file with the commission an application for resolution of the matter."]

If any contributing provider failed to make required contributions or failed to provide required information to the PSC, administrator, or oversight committee, the administrator would file an application or complaint for an enforcement proceeding under Section 203.

Remedies and penalties. If the PSC found that a contributing provider failed to make a contribution or to perform any action required under Section 310, it would be subject to

the remedies and penalties under Section 601 of the Telecommunications Act, MCL 484.2601. In general, Section 601 provides that if the PSC finds that a person has violated the act, after notice and a hearing, the PSC must order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation. Remedies and penalties may include fines, refunds to ratepayers of any excessive rates collected, license revocations, cease-and-desist orders, and attorney fees and actual costs to persons and providers with fewer than 250,000 end users, except in certain arbitration cases. The following fines may be assessed:

Providers with at least 250,000 access lines:

- First offense: $1,000 to $20,000 per day of violation.
- Subsequent offense: $2,000 to $40,000 per day of violation.

Providers with fewer than 250,000 access lines:

- First offense: $200 to $500 per day of violation.
- Subsequent offense: 500 to $1,000 per day of violation.

Confidentiality of information. Eligible providers and contributing providers would have to provide information to the administrator, the oversight committee, and the PSC required for the administration of the restructuring mechanism. Company-specific information as to the following items submitted to the administrator, oversight committee, or PSC would be deemed confidential commercial or financial information exempt from public disclosure under Section 210 of the Telecommunications Act (which provides a Freedom of Information Act exemption for certain commercial or financial information):

- Access lines.
- Switched toll access minutes of use.
- Switched toll access demand quantities.
- Contributions.
- Intrastate telecommunications services revenues.

Definitions.

"Commercial mobile service" would mean "that term as defined in Section 332(d)(1) of the [federal] Telecommunications Act of 1996, 47 USC 332." [Under that Section, "commercial mobile service" means any mobile service (as defined in 47 USC 153) that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by FCC regulation.]

"Contributing provider" would mean "an entity required to pay into the restructuring mechanism." [Under the bill, the following entities are required to pay into the restructuring mechanism: (1) all providers of retail intrastate telecommunications

services; (2) all providers of commercial mobile services; and (3) all providers of interconnected voice over Internet protocol (VoIP) services.]

"Eligible provider" would mean "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)" [as described above, these services and functionalities are the minimum that must be offered to Lifeline customers].

"Interconnected voice over internet protocol service" would mean "that term as defined in 47 CFR 9.3." [Under that federal regulation, an interconnected Voice over Internet protocol (VoIP) service is one that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.]

"**Restructuring mechanism"** would mean the "intrastate switched toll access restructuring mechanism established in this section" [As mentioned previously, this term appears to be used in various places in the bill to describe either the fund into which assessments paid by contributing providers would be deposited or the compensatory payments made to eligible providers.]

Repealer. The bill would repeal Section 316a of the Michigan Telecommunications Act, MCL 484.2136a. That section authorizes a state "Intrastate Universal Service Fund" to support universal basic service at affordable rates in Michigan. Under current law, unless approved by the PSC, this state fund does not come into existence if a federal universal fund service fund remains in effect. A federal universal service fund is currently in effect and so this state fund has never become operational. By repealing this section, the bill would keep this fund from ever becoming operational due to an elimination of the federal program or a PSC determination that it was needed.

Legislative Analyst: Shannan Kane
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Exhibit 2

Michigan Public Service Commission

Staff Report

10th Wireline Competitive Market Conditions Survey

June 2009

The Michigan Public Service Commission staff (Staff) has conducted its 10th Information/Data Request of AT&T Michigan, Verizon, small incumbent local exchange carriers (ILECs) and all licensed Competitive Local Exchange Carriers (CLECs). This annual survey gathers information that allows the Michigan Public Service Commission (Commission) to evaluate the status of local wireline telecommunications competition in Michigan. The original survey vehicle was developed through a collaborative process set forth in the Commission's order in Docket No. U-12320 in 2000. Case No. U-12320 was initiated to review AT&T Michigan's application for Section 271 long distance authority.[1] The survey was further modified when the Michigan Telecommunications Act (MTA)[2] was amended in November of 2005 to incorporate a requirement for providers to submit all information required by the Commission for purposes of the preparation of the annual *Status of Telecommunications Competition in Michigan* report. To obtain data for the 2008 calendar year, the survey was sent to the 40 ILECs and 203 CLECs licensed in the state of Michigan as of December 31, 2008. Initial notification was sent to the companies January 16, 2009, noting that the survey was available on the Commission's website and needed to be completed by February 27, 2009. Companies were able to complete the survey online and, for confidential filings, submit it in paper form to the Commission.

All of the ILECs and 122 of the CLECs responded to the survey. As the survey requests information that some companies consider confidential, portions of the results are reported as aggregates to maintain the confidentiality of the individual company data. Of the 122 CLECs that responded to the survey, 67 were actively serving customers as of December 31 and reported

[1] Section 271 of the Federal Telecommunications Act of 1996 describes the conditions that must be met in order for a Bell Operating Company (BOC) to enter the market as a provider of interLATA services, long distance in particular, within the region where the company operates as the dominant local telephone service provider.

[2] The MTA is Public Act 235 of 2005 (MCL 484.2103).

line counts. Companies with no line counts are either companies that have recently begun to offer service and had no active lines for 2008 or are providing services other than local exchange service, such as resold long distance service. As presented on the lower portion of Attachment A, of the responding CLECs, 31 are providing service to both residential and business customers, 7 to residential only, and 27 to business only. In addition to the data provided by the responding CLECs, AT&T Michigan and Verizon report on the data they collect pertaining to the number of lines they are providing to CLECs. The data is also reported by the type of lines provided and serves as another tool for evaluating the number and type of CLEC lines in Michigan. There is some discrepancy between the CLEC survey data and the data provided by AT&T Michigan, but it can be attributed to AT&T Michigan relying on estimates for the number of lines provided over a CLEC's own facilities.

Staff's compilation of the data from the CLEC responses, as presented on the upper portion of Attachment A, shows that the total number of lines provided by all CLECs was 859,370. This represents 20% of the 4,286,071 total wireline lines in Michigan. Staff has also prepared a chart that shows the number of access lines provided by the incumbent local telephone companies in Michigan (Attachment B). As Attachment C shows, AT&T Michigan's share of the wireline telecommunications market is 64.2%. Verizon's share represents 11.5% and the smaller independent ILECs had 4.3% of the market. The geographic areas in which CLECs had lines include the Detroit, Grand Rapids, Lansing, Saginaw and Upper Peninsula LATAs. The data that AT&T Michigan and Verizon provide shows that approximately 53.3% are provided in the Detroit LATA, 28.1% are provided in the Grand Rapids LATA, 7.2% in the Lansing LATA, 9.7% in the Saginaw LATA, and only 1.7% in the Upper Peninsula LATA. The results of this survey also indicate that the majority of the CLEC lines are provided in AT&T

Michigan's service territory, while a small but growing percentage of the competitive lines are provided in the service territory of Verizon.

The 2008 Survey Results Show:

CLECs with No Lines	55	45.08%
CLECs with 1 – 1,000 Lines	32	26.23%
CLECs with 1,001 – 10,000 Lines	20	16.39%
CLECs with over 10,000 Lines	15	12.30%
Total CLECs Responding to the Survey	122	100.00%

The preceding chart illustrates the number of CLECs by the amount of lines provided. As shown on the chart, the majority of the responding CLECs are actively providing lines. In addition, the number of lines provided by the majority of individual CLECs continues to remain fairly low. Of the competitive companies responding to the survey, 26% were serving no more than 1,000 lines, 16% were serving between 1,001 and 10,000 lines, and only 12% were serving over 10,000 lines, while the remaining 45% served no customers in 2008.

Michigan CLECs are using several methods of entry in order to compete in the wireline telecommunications market. Competitive providers are using one or more of the following to provide lines to Michigan customers: the CLECs' own facilities, unbundled network element-loops (UNE-L), unbundled network elements including switching, now provided at unregulated rates,[3] referred to in this report as local wholesale arrangements, and resale of other providers' offerings. As can be seen on the upper portion of Attachment A, 32.5% of the competitive lines are provided over CLEC-owned facilities, 35.1% using UNE-L, 17.8% using local wholesale arrangements, and 7.2% using resale. The survey results also indicate that 4.3% of the CLEC lines are xDSL lines. The CLECs are also continuing to use Voice over Internet Protocol (VoIP)

[3] This type of service used to be referred to as the unbundled network element-platform (UNE-P). The FCC no longer requires incumbent providers to offer this service at regulated rates.

technology to provide lines. These VoIP lines represent 3.1% of the total CLEC lines reported in this survey.

Staff strives to keep current its listing of viable CLECs in order to obtain accurate line counts. As noted earlier, of the 203 CLECs to which the survey was sent, 122, or 60% responded to the survey. The group of non-responding companies likely consists of CLECs that are not yet providing service, do not currently have tariffs on file, are providing other services which are not necessarily local exchange service or are no longer in business but still have an active license. Staff will continue to monitor these companies to ensure they are meeting all the requirements to maintain a license to provide basic local exchange in Michigan. Staff is confident that the majority of viable CLECs have reported through this survey process.

Attachment A

Competitive Market Conditions
10th Information/Data Request
CLEC Access Line Data for Michigan
For the Period Ending December 31, 2008
As Reported by the Responding CLECs

1. Lines Served via Resale of ILECs Service	62,030	7.2%
2. Lines Served via Unbundled Network Element-Loop (UNE-L)	301,410	35.1%
3. Lines Served via Wholesale Arrangements	152,690	17.8%
5. **Total via ILEC Facilities** = Lines (1 + 2 + 3)	516,130	
6. Lines Served via CLEC Facilities	278,847	32.5%
7. xDSL Lines	37,308	4.3%
8. Voice over Internet Protocol (VoIP) Lines	27,085	3.1%
Total CLEC Lines Served = Lines (5 + 6 + 7 + 8)	859,370	

Number of CLECs by Type of Customer Served:

Residential Customers Only	9	7%
Business Customers Only	27	22%
Residential and Business Customers	31	26%
Serving No Lines	55	45%
Total CLECs Responding	122	

Attachment B

Michigan ILECs Access Lines

December 31, 2008

ILEC	Access Line Count			Total Access Lines
	Residential	Business	Payphone	
Ace Telephone Company of MI, Inc.	3,900	871	11	4,782
Allband Communications Cooperative	81	0	0	81
Allendale Telephone Company	3,700	1,564	6	5,270
AT&T Michigan	1,433,891	1,316,576	71	2,750,538
Baraga Telephone Company	3,195	1,253	61	4,509
Barry County Telephone Company	5,407	1482	27	6,916
Blanchard Telephone Association, Inc.	994	261	3	1,258
Bloomingdale Telephone Company, Inc.	1,349	237	3	1,589
Carr Telephone Company	1,414	67	0	1,481
CenturyTel Midwest Michigan, Inc.	19,331	4,203	74	23,608
CenturyTel of Michigan, Inc.	37,627	11,664	202	49,493
CenturyTel of Northern Michigan, Inc.	2,115	509	4	2,628
CenturyTel of Upper Michigan, Inc.	7,939	2,461	59	10,459
Chapin Telephone Company	564	54	0	618
Chippewa County Telephone Company	879	376	9	1,264
Climax Telephone Company	897	375	3	1,275
Deerfield Farmers Telephone Company	1,784	301	8	2,093
Drenthe Telephone Company	586	127	0	713
Frontier Communications of Michigan, Inc.	14,222	4,121	134	18,477
Hiawatha Telephone Company	3,228	1,324	61	4,613
Huron Mountain Communications Co.	0	0	0	0
Kaleva Telephone Company	1,647	354	0	2,001
Lennon Telephone Company	891	237	0	1,128
Midway Telephone Company	651	87	3	741
Ogden Telephone Company	311	38	0	349
Ontonagon County Telephone Company	2,670	957	33	3,660
Peninsula Telephone Company	1,072	187	0	1,259
Pigeon Telephone Company	2,041	1,009	0	3,050
Sand Creek Telephone Company	918	119	0	1,037
Springport Telephone Company	1,321	232	0	1,553
TDS Telecom/Chatham Telephone Co.	2,235	344	1	2,580
TDS Telecom/Communications Corp. of MI (CCM)	2,856	1019	2	3,877
TDS Telecom/Island Telephone Company (MI)	951	263	0	1,214
TDS Telecom/Shiawassee Telephone Co.	4,049	806	9	4,864
TDS Telecom/Wolverine Telephone Co.	6,854	1,150	6	8,010
Upper Peninsula Telephone Company	5,560	653	13	6,226
Verizon	351,561	137,937	1,805	491,303
Waldron Telephone Company	413	75	0	488
Westphalia Telephone Company	846	157	3	1,006
Winn Telephone Company	537	152	1	690
Total	**1,930,487**	**1,493,602**	**2,612**	**3,426,701**

Attachment C

Michigan Access Lines
December 31, 2008

Provider	Lines	Percentage
Verizon	**491,303**	***11.5%***
AT&T Michigan	**2,750,538**	***64.2%***
Independent Telcos	**184,860**	***4.3%***
CLECs	**859,370**	***20.0%***
Total Lines in Michigan	***4,286,071***	***100.0%***

Exhibit 3

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **AMERITECH MICHIGAN** for modification of the requirement to provide adjacent exchange toll calling plans.	)))))	Case No. U-12077

At the November 16, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On August 25, 1999, Ameritech Michigan filed an application to increase the rates for its adjacent exchange toll calling plan (AETCP) options. Under the AETCP, customers pay a monthly charge that entitles them to place calls to adjacent exchanges without paying the per-minute toll rates that would otherwise apply. Ameritech Michigan proposes to increase the rate for the residential half-hour option from $1.25 to $1.75 per month, the rate for the residential two-hour option from $5.00 to $7.00 per month, and the rate for the residential unlimited calling option from $15.00 to $35.00 per month. It does not propose to change the 30% discount on toll rates for calls beyond the half-hour and two-hour limits. After the increases, residential customers would pay the same rates as business customers for the first two options. Business customers cannot subscribe to the unlimited calling option. Ameritech Michigan also

proposes to increase the AETCP surcharge from $0.02 to $0.07 per month on its toll customers residing in its own exchanges and those served by the members of the Michigan Exchange Carriers Association (MECA).

Ameritech Michigan provided notice of the proposed increases to its customers. The Commission received hundreds of comments from customers, overwhelmingly against the proposed increases. MECA and the Commission Staff (Staff) filed comments on October 25, 1999.

Ameritech Michigan offers the AETCP pursuant to the Commission's June 19, 1991 order in Cases Nos. U-9568 and U-9569. Ameritech Michigan acknowledges that current rates exceed the cost of providing the service, but says that the Commission order authorized full recovery of the toll revenue that was lost due to the implementation of the AETCP options. It says that it almost recovered its lost toll revenues only in the first year because the plan quickly proved to be more popular than expected. Further, it says that a pattern of usage is developing that is inconsistent with the original goal of the AETCP, which it describes as allowing people to avoid toll rates for necessary and reasonable calls to bordering exchanges. It says that 6 of its high usage customers pay $15 per month to make 275 hours of calls when the toll charges for those calls would be $2,958, and suggests that "excessive" residential usage is consistent with the increase in access to the Internet. Application, p. 8. It calculates that its proposed rates will recover only 60% of the current revenue shortfall and that the $0.07 surcharge will still be less than the surcharge paid by the customers of GTE North Incorporated (GTE) since 1991.[1]

---

[1]Ameritech Michigan also says that the existence, format, and application of the AETCP are contrary to the stated objectives of the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., but will address those issues at another time.

The Staff says that the AETCP addresses some of the disparity in local calling areas across the state by offering an alternative to authorizing new extended area service (EAS) . It notes that Ameritech Michigan is not claiming that current rates do not cover the cost of providing the AETCP, but rather is basing its application on a comparison of current AETCP revenues to the revenues that the company would receive if the same calls were handled at toll rates, which are not designed to address the needs of customers to have expanded local calling areas. The Staff says that a comparison of AETCP revenues and lost toll revenues is problematic because the number of customers subscribing to the AETCP has increased, subscribing customers have increased their usage since 1991, and Ameritech Michigan has essentially doubled its basic toll rates during that same period. Finally, the Staff notes that Ameritech Michigan has not offered a solution to the issue of the highest use customers, but instead simply proposes to increase everyone's rates.

MECA says it is important that Ameritech Michigan continue to provide the AETCP at reasonable rates as an alternative to EAS. It says that the AETCP should not be changed without a consideration of comparable changes to EAS for which it is a substitute. MECA also notes Ameritech Michigan's admission that current rates cover the cost of the service, and says that the company's request to recover its lost toll revenues has no place under the current statutory and regulatory scheme, which does not rely on revenue requirements, embedded costs, or prescribed rates of return. Finally, it asks the Commission to reaffirm that customers in MECA member company exchanges who receive toll service from Ameritech Michigan are Ameritech Michigan's toll customers and are entitled to the same level of toll service as customers in Ameritech Michigan's exchanges.

The Commission created the AETCP in its June 19, 1991 order in Cases Nos. U-9568 and U-9569. The Michigan Telecommunications Act continues the plan, and requires Commission approval for any changes:

> Adjacent exchange toll calling plans as ordered by the commission on June 19, 1991 shall remain in effect under this act until altered by order of the commission.

MCL 484.2312(4); MSA 22.1469(312)(4). The Commission concludes that it should deny Ameritech Michigan's application. There is no claim that current rates do not cover the total service long run incremental cost of the service. There is only a claim that Ameritech Michigan is entitled to recover something closer to the revenues it would receive if the AETCP calls were handled at Ameritech Michigan's toll rates. The AETCP was created as a mechanism to expand local calling areas at a reasonable cost to customers without an undue loss of toll revenues to the toll providers. Although the Commission's order that created the AETCP discussed a funding mechanism for the foregone toll revenues, revenue neutrality is not a necessary component of the plan, particularly after the enactment of the Michigan Telecommunications Act, which rejects the rate base, rate-of-return form of regulation that existed when the Commission authorized the AETCP. In any event, there is no showing that current AETCP rates are preventing Ameritech Michigan from earning a fair return. Furthermore, Ameritech Michigan's presentation does not clearly explain the derivation of its revenue shortfall calculation and does not consider alternatives to a substantial increase in the rate for the unlimited calling option. The application should therefore be denied.[2]

---

[2]MECA's concern about discrimination against its customers may be overstated in this case, but the Commission agrees that the AETCP customers who receive local exchange service from MECA's members are as much Ameritech Michigan's toll customers as those customers who receive local exchange service from Ameritech Michigan.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The application should be denied.

THEREFORE, IT IS ORDERED that the application of Ameritech Michigan to increase the rates for the adjacent exchange toll calling plan options is denied.

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, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of November 16, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The application should be denied.

THEREFORE, IT IS ORDERED that the application of Ameritech Michigan to increase the rates for the adjacent exchange toll calling plan options is denied.

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, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

_____
Chairman

_____
Commissioner

_____
Commissioner

By its action of November 16, 1999.

_____
Its Executive Secretary

In the matter of the application of	)	
AMERITECH MICHIGAN for modification of	)	
the requirement to provide adjacent exchange	)	Case No. U-12077
toll calling plans.	)	
	)	

Suggested Minute:

> "Adopt and issue order dated November 16, 1999 denying the application of Ameritech Michigan to increase the rates for the adjacent exchange toll calling plan options, as set forth in the order."