Glenn A. Wilson Sr.

From: "Ancona, Robin (DELEG)" <anconar1@michigan.gov>
Date: Monday, November 08, 2010 3:02 PM
To: <glenn@customsoft.net>
Cc: <Tracie@CustomSoft.net>; <gary.seigel@fcc.gov>; "Isiogu, Orjiakor (DELEG)" <isioguo@michigan.gov>; "Pearce, Christina (DELEG)" <pearcec@michigan.gov>; "Norcross, Karen (DELEG)" <norcrossk@michigan.gov>
Subject: Michigan Access Request for ILEC Status

Glenn,

This is to summarize our conversation earlier today regarding your request for ILEC status for Michigan Access. Today, I had Karen Norcross resend you the information we originally provided to you on September 30th regarding the issue of ILEC status in the unserved areas of Michigan. This information is similar to that provided to you in 2009. That information basically states that:

1. Under the Michigan Telecommunications Act, the MPSC does not determine the "incumbent" status of a carrier, only granting of licenses as a local exchange carrier.
2. The FCC must determine approval of petitions for waivers of Sections 36.611 and 36.612 of the FCC rules.
3. The ability to request/receive number resources is based on FCC Orders and subsequent Industry Numbering Guidelines. A petition to the FCC (under CC Docket 99-100) to waive the rules mandating that numbering resources must come from rate centers, may be your best option.
4. There are two families in the "unserved areas" that cannot get 9-1-1 service without telephone numbers. Telephone numbers are necessary for the Master Street Address Guide, used to locate the wireline caller. The use of a "dedicated 9-1-1 line" would need to go through the Ogemaw 9-1-1 switch (AT&T) to reach the county public safety answering point.

Again, the best information that we have is that a petition to the FCC for a waiver for the numbering rules may be your best option. It is our understanding that this would be the first waiver of its kind.

The original e-mail also provided information that indicated that Michigan Access had not file the appropriate paperwork, with the USAC, within 60 days of the Michigan Public Service Commission Order (deadline would have been April 9, 2010). Without this paperwork, even though you are waiting for your SAC code, Michigan Access will not be able to receive reimbursement for the 2010 fiscal year. To appeal the process, you must petition the FCC (under CC Docket 96-45 and 09-197).

Please let me know if you have any updates or if you have any questions.

Thank you,

Robin Ancona, Director
Telecommunications Division
Michigan Public Service Commission
517-241-6200
anconar1@michigan.gov

VERIZON
STATE OF MICHIGAN
UNE COST RESULTS SUMMARY

	Description	Total Costs
1	**Loops**	
2	2 Wire Analog Loop	$34.44
3	2 Wire Digital Loop	$55.92
4	4 Wire Analog Loop	$77.23
5	4 Wire Digital Loop	$82.17
6	DS1 Loop	$114.97
7	DS3 Loop	$1,725.75
8	ADSL Loop	$34.44
9	SDSL Loop	$34.44
10	IDSL Loop	$34.44
11	HDSL Loop	$34.44
12		
13	**Network Interface Device (NID)**	
14	Basic NID	$1.22
15		
16	**SubLoop**	
17	2-Wire Distribution	$17.78
18	4-Wire Distribution	$35.56
19	2-Wire Drop	$3.88
20	4-Wire Drop	$7.77
21		
22	**Interoffice Dedicated Transport Facility (IDT)**	
23	IDT - DS-0/Voice Facility	
24	Transport Facility Per ALM	$0.26
25	Transport Termination	$26.03
26	IDT - DS-1	
27	Transport Facility Per ALM	$6.35
28	Transport Termination	$41.31
29	IDT - DS-3	
30	Transport Facility Per ALM	$13.20
31	Transport Termination	$181.64
32		
33	**Multiplexing**	
34	DS1 to Voice Grade Multiplexing	$529.67
35	DS3 to DS1 Multiplexing	$969.31
36	DS1 Clear Channel Capability	$0.00
37		
38	**Unbundled Dark Fiber**	
39	Unbundled Dark Fiber Dedicated Transport	
40	Dark Fiber IDT - Facility	$48.89
41	Dark Fiber IDT - Termination	$14.44
42		
43	Intermediate Office Cross Connect	$33.08
44		
45	**OSS**	
46	Access to OSS	$1.25
47		
48	**Reciprocal Compensation**	
49	Recip Comp Traffic End Office rate - per MOU	$0.004052
50	Recip Comp Traffic Tandem rate - per MOU	$0.005155
51	Tandem Transit Traffic Service Charge - per MOU	$0.001007

Note - Refer to VzCost document set, Section 4.1 for the VzCost output report.

VERIZON
Case No. U-15210 - CRITICAL ELEMENTS SENSITIVITY ANALYS

Description	Estimated Verizon Costs Based on the MPSC's March 18, 2009 Cost Order
(A)	(B)
UNEs	
Loops	
2 Wire Analog Loop	$21.90
2 Wire Digital Loop	$32.98
4 Wire Analog Loop	$46.88
4 Wire Digital Loop	$47.70
DS1 Loop	$71.93
DS3 Loop	$1,004.32
ADSL Loop	$21.90
SDSL Loop	$21.90
IDSL Loop	$21.90
HDSL Loop	$21.90
Interoffice Dedicated Transport Facility (IDT)	
IDT - DS-0/Voice Facility	
Transport Facility Per ALM	$0.18
Transport Termination	$17.62
IDT - DS-1	
Transport Facility Per ALM	$1.15
Transport Termination	$27.97
IDT - DS-3	
Transport Facility Per ALM	$8.82
Transport Termination	$122.97
Multiplexing	
DS1 to Voice Grade Multiplexing	$358.58
DS3 to DS1 Multiplexing	$656.21
Reciprocal Compensation	
Recip Comp Traffic End Office rate - per MOU	$0.003319
Recip Comp Traffic Tandem rate - per MOU	$0.004149
Tandem Transit Traffic Service Charge - per MOU	$0.000765

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Petition of	)	
	)	
MICHIGAN ACCESS, INC.	)	
	)	
Emergency Petition for Waiver of the Commission's Rules to Designate Michigan Access an Incumbent Local Exchange Carrier in Two Unserved Areas in Northeast Michigan	)	CC Docket No. 96-45
	)	
Petition for Waivers of the Commission's Rules to Allow New Local Exchange Carrier to Participate in NECA Tariffs and Pools and Obtain Accelerated USF Support	)	

REPLY COMMENTS OF MICHIGAN ACCESS, INC.

Michigan Access, Inc. ("Michigan Access"), through its undersigned counsel, hereby submits these reply comments in the above-captioned proceeding in response to the Commission's public notice requesting comment on Michigan Access's petition for waiver.[1]

I. INTRODUCTION

In this proceeding, the Commission is perhaps confronted with an issue of first impression. Three carriers -- Michigan Access, Osirus and Allband -- seek to be designated the incumbent local exchange carrier (ILEC) in remote areas throughout Northeast Michigan, which currently are unserved. Osirus seeks to serve eight

[1] *See* Comment Sought on the Petition of Michigan Access, Inc. for Waiver of Commission Rules to Become an Incumbent Local Exchange Carrier in Michigan, to Participate in the National Exchange Carrier Association Pools, and to Receive Accelerated Universal Service Fund Support, CC Docket No. 96-45, Public Notice (rel. Oct. 21, 2009).

unassigned areas.[2] Allband seeks to serve seven of the eight areas also proposed by Osirus.[3] Thus, as between Osirus and Allband, seven areas are "in dispute."

Michigan Access seeks ILEC designation for only two of the eight unserved areas that are at issue in the Osirus and Allband proceedings.[4] Michigan Access has named these proposed service areas the "Kirtland" and "Red Dog" exchanges. Maps depicting Michigan Access's proposed service areas are attached hereto as "Attachment A."

To the extent that Osirus and Allband have raised arguments that address issues that are not directly related to the Kirtland and Red Dog exchanges, Michigan Access expressly declines to comment on those issues and concerns. Specifically, Michigan Access expresses no comment as to whether either Osirus or Allband, or any other carrier, should be designated the ILEC in any area(s) other than the Kirtland and Red Dog exchanges.

In addressing the issues raised in this proceeding, Michigan Access urges the Commission to be guided, first and most importantly, by reaching a decision that is in the public interest, with a particular focus on the best interests of the residents of the Kirtland and Red Dog exchanges. And, the record in this proceeding overwhelmingly demonstrates that the interests of the public are best served by a decision in favor of Michigan Access.

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[2] *See* Osirus Communications, Inc. Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support, CC Docket No. 96-45 (filed Oct. 1, 2007) (Osirus Petition).

[3] *See* Allband Communications Cooperative, Petition for Waiver of Sections 36.11 and 36.612 and Associated Provisions of the Commission's Rules, CC Docket No. 96-45 (filed Sept. 5, 2006) (Allband Petition).

[4] *See* Michigan Access, Inc., Emergency Petition for Waiver of the Commission's Rules to Designate Michigan Access an Incumbent Local Exchange Carrier in Two Unserved Areas in Northeast Michigan, Petition for Waivers of the Commission's Rules to Allow New Local Exchange Carrier to Participate in NECA Tariffs and Pools and Obtain Accelerated USF Support, CC Docket No. 96-45 (filed Sept. 30, 2009) (Michigan Access Petition).

Osirus and Allband spend the bulk of their comments addressing the legal, regulatory, and procedural issues related to their respective positions. Yet, remarkably, neither carrier can dispute the fact that Michigan Access has taken the most significant steps to serve the residents of the Kirtland and Red Dog communities. Nor can either carrier challenge the fact that Michigan Access has garnered the unequivocal support of the residents and townships of the communities it seeks to serve.[5]

Michigan Access notes that, once all the regulatory issues before the Michigan Public Service Commission (MPSC) have been resolved, which should occur in the very near future – Michigan Access, Osirus, and Allband – will stand in the same position from a regulatory standpoint. Regardless of which carrier was the "first" to receive regulatory approvals, the fact remains that, at present, no carrier has been designated the ILEC for the Kirtland and Red Dog exchanges. Therefore, Michigan Access urges the Commission to issue a decision regarding incumbent carrier status based on the record before it. The prior and pending proceedings before the MPSC should have no bearing on the analysis required in order for this Commission to reach a decision as to which carrier satisfies the standards for waiver required by the Commission's rules.

[5] *See* Comments of Michigan Access, Inc., CC Docket No. 96-45 (filed Nov. 20, 2009) (attaching letters and petitions in support of its Petition for Waiver) (Michigan Access Comments).

II. MICHIGAN ACCESS IS IN THE BEST POSITION TO SERVE THE RESIDENTS OF THE KIRTLAND AND RED DOG EXCHANGES WITHIN A REASONABLE TIME FRAME

A. Michigan Access Has Installed Necessary Facilities

At present, Michigan Access has installed underground copper to serve 69.5% of the privately-owned parcels in the Kirtland Exchange.[6] Michigan Access made an informed decision to serve the residents of the Kirtland and Red Dog exchanges via underground copper in view of the fact these parcels are not wired for electrical service.[7] In the absence of electricity, it is not possible to serve these residents over Michigan Access' extensive wireless network or via optical fiber.

On this point, Michigan Access takes specific exception to Allband's reference in its comments to a statement on Michigan Access' website that wireless service to all customers who request such service is "sometimes impossible."[8] Allband's attempt to link this statement to a lack of desire or intent on behalf of Michigan Access to serve all customers within its service area is disingenuous. Wireless service to certain areas within Michigan Access's territory, indeed, is impossible, due to factors such as interference from the terrain, such as hills and trees. The impossibility of serving certain customers over a wireless network is a fact that is not unique to Michigan Access. Accordingly, the statement on Michigan Access's website regarding some of the

[6] The remaining parcels are located several miles from one another in extremely remote, rural areas of Michigan. While Michigan Access desires to serve these additional parcels, it cannot do so in an economically feasible manner in the absence of additional outside funding.

[7] In fact, because many of these residents previously did not have any utilities running to their homes, most of these houses did not have addresses. As further evidence of its commitment to these areas, and as part of its efforts to offer telephone service to these residents, Michigan Access secured addresses for these residents.

[8] *See* Allband Comments at 6.

technological limitations of wireless service implies nothing with regard to Michigan Access's intent to provide ubiquitous service to these areas.[9]

Remarkably, Allband contrasts Michigan Access' statement that wireless service to certain areas is "sometimes impossible" with Allband's own plans to serve the residents of Kirtland and Red Dog exchanges over a "quality, high-speed fiber to the home network."[10] According to Allband, providing service in this manner is "never 'impossible."[11]

Contrary to Allband's assertions, however, Michigan Access is aware that, except in limited circumstances, a fiber-based telephone service would require electrical power. In view of the fact that most of the private parcels within Kirtland and Red Dog exchange do not have access to electrical power, Michigan Access questions how Allband intends to provide a fiber-based telephone service to these customers. Indeed, it is possible that Allband's own entry strategy may be "impossible," thereby making Allband's criticism of the technological limitations associated with wireless service even more striking. Michigan Access's current wireless network, as provided by Michigan Access sister company, M33 Access, is inclusive of both the Kirtland and Red Dog exchanges.[12] If the residents of the Kirtland and Red Dog exchanges were wired for electricity, Michigan Access could have, and indeed would have, extended wireless Internet and voice over Internet protocol (VoIP) services to these customers several years ago.

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[9] *Compare* Allband Comments at 6.

[10] Allband Comments at 6.

[11] *Id.*

[12] *See* Michigan Access, http://www.m33access.com/WirelessCoverageArea.asp

B. Michigan Access is Capable of Exchanging Traffic with Adjacent ILECs

In its comments, Osirus challenges Michigan Access' readiness to serve customers.[13] According to Osirus, "Michigan Access' purported preparedness to serve the unserved areas is...unpersuasive."[14] In support of its own ability to provide service, Osirus notes that it has interconnection agreements with AT&T Michigan, Verizon North, Inc., and Contel of the South, Inc.[15] Osirus further notes that it has been using the network of its affiliate, CynergyComm.Net, Inc. (f/k/a United Telecomm, Inc.), to provide service in Northern Michigan since August 2001.[16]

Contrary to Osirus' assertions, an accurate assessment of Michigan Access' "preparedness" reveals that Michigan Access is more prepared than any other carrier to serve the residents of the Kirtland and Red Dog exchanges. AT&T Michigan ("AT&T") and Verizon, North, Inc. ("Verizon") are the ILECs serving the exchanges immediately adjacent to the Kirtland and Red Dog exchanges. Michigan Access has interconnection agreements with both AT&T and Verizon. In addition, Michigan Access is collocated in six Verizon central offices and one AT&T central office in the exchanges immediately surrounding Kirtland and Red Dog. A map illustrating the central offices in which Michigan Access is collocated is attached hereto as "Attachment B." Finally, through an interconnection agreement with 123Net, Inc., Michigan Access has access to a statewide network. Thus, Michigan Access is a statewide carrier that is operationally ready to serve customers throughout the state of Michigan.

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[13] Osirus Comments at 8.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 8-9.

To Michigan Access knowledge and belief, neither Osirus nor Allband are collocated in the exchanges immediately adjacent to Kirtland and Red Dog. Moreover, unlike Osirus and Allband, Michigan Access has been serving the areas immediately surrounding Kirtland and Red Dog for several years. In fact, between itself and its sister company, M33 Access, Michigan Access already serves several hundred customers in the exchanges immediately surrounding Kirtland and Red Dog.[17] A illustrative sample of Michigan Access' service area is set forth in "Attachment C."

On the issue of operational readiness, Michigan Access notes that Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems (collectively "Verizon") submitted comments to the MPSC in connection with Allband's license expantion application. Although Verizon stated that it did not oppose Allband's application, Verizon noted that it was "not clear how Allband will serve its new local exchanges." More specifically, Verizon noted that it was "not clear from Allband['s] Application that Allband will have the necessary facilities within its service area adjacent to Verizon's exchanges to interconnect with Verizon at the exchange boundaries."[18] Michigan Access similarly questions how Osirus and Allband intend to serve the Kirtland and Red Dog exchanges when neither carrier is collocated with the ILECs serving the adjacent exchanges.

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[17] *See* Letter from Audrey Glenn, Compliance Partners, LLP, Attorney for Michigan Access, Inc. to Marlene H. Dortch, Secretary, FCC (filed Sept. 18, 2009), at 4 (providing a summary of the services currently provided by Michigan Access and M33 Access in the areas surrounding the proposed Kirtland and Red Dog exchanges).

[18] Verizon Comments, In the Matter of the Application of Allband Communications Cooperative for a Temporary and Permanent License to Provide Basis Local Exchange Service in Seven Unserved Service Territories in Northeast Lower Michigan, Case No. U-15385, (Michigan PSC Oct. 29, 2007) ("Verizon Comments"), at 1-2.

C. Michigan Access is Licensed to Serve All Exchanges and Zones in the State of Michigan

Michigan Access was granted authority to provide basic local exchange service throughout the state of Michigan on August 22, 2006.[19] The company began providing telephone services to customers throughout Northeast Michigan almost immediately after its license was granted, and has continuously provided telephone services in this area ever since. Michigan Access has interconnection agreements in place with AT&T and Verizon, and is collocated in one AT&T central office, and six Verizon central offices. Michigan Access currently provides traditional, wireline telephone service to several hundred customers throughout Michigan. In addition, M33 Access, Michigan Access' sister company, provides high-speed Internet access and Voice over Internet Protocol service to numerous residents and businesses throughout Northeast Michigan.

Allband and Osirus each were granted a license to serve customers in several "unserved" areas in Northeast Michigan, including the Kirtland and Red Dog exchanges, nearly two years ago. Yet, to date, these carriers have not commenced service to even a single customer in either the Kirtland or Red Dog exchanges.

Considering that neither Allband nor Osirus has rolled out service to these areas since they were licensed to do so two years ago, Michigan Access believes that neither company should be permitted to stake any claim whatsoever in the "unserved" areas. On this point, language from the Michigan PSC orders granting a license to each carrier is relevant. Both orders include the following language:

> [T]he expansion of the license is conditioned upon the provision of service to customers in the added exchanges within a reasonable time. Failure to comply

[19] Application of Michigan Access, Inc. for Temporary and Permanent Licenses to Provide Local Exchange Services in All Zone and Exchange Areas Throughout the State of Michigan, Case No. U-14896, Opinion and Order (Michigan PSC Aug. 22, 2006) ("Michigan Access License").

fully with those procedures may result in revocation of the license and other penalties.[20]

Allband's and Osirus' failure to provide any services to any customers in the added exchanges two years after each carrier was granted authority to do so does not satisfy the "within a reasonable time" requirement set forth in the order.

Michigan Access further notes that a license granted under the Michigan Telecommunications Act is premised on a finding by the Michigan PSC that the applicant "intends to provide service within 1 year from the date the license is granted."[21] As noted, in the two years since they received authority to serve several areas in rural Northeast Michigan, neither Allband nor Osirus has provided service to customers in the unserved areas. Therefore, it is clear that neither Allband nor Osirus intended to serve these areas within the one-year timeframe provided under the statute.

Both Osirus and Allband challenge Michigan Access' license to serve the Kirtland and Red Dog exchanges.[22] While both carriers acknowledge that Michigan Access is, in fact, licensed to provide basic local exchange service "in all exchanges and zones throughout the state of Michigan," Osirus and Allband nevertheless claim that Michigan Access' operating authority does not extend to any unserved areas.[23]

As an initial matter, Michigan Access stands in a much different position than Osirus and Allband with respect to its MPSC license. Unlike Osirus and Allband, Michigan Access' permanent license authorizes the company to provide local exchange

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[20] *See* Allband License Expansion Order at 3; Osirus License Expansion Order at 2.

[21] MICH. COMP. LAWS § 484.2302(1)(a)(2009).

[22] Osirus Comments at 4-5.

[23] Osirus Comments at 4-5; Allband Comments at 7.

service throughout the state. By contrast, both Osirus' and Allband's were initially licensed only for specific service areas. In its initial licensing application, Osirus sought, and was subsequently granted, a license to provide basic local exchange service in the areas served by Verizon and other ILECs.[24] Similarly, Allband's initial license extended only to the Robbs Creek Exchange.[25] Consequently, when Osirus and Allband sought to provide service to areas other than the specific service areas covered by their initial licenses, each carrier was required to file a subsequent application to expand their geographical service areas.[26]

This is not the case for Michigan Access. In its application for a permanent license, Michigan Access requested, and was subsequently granted on August 22, 2006, a license to serve the entire state. Specifically, in the order granting its permanent license, the MPSC granted Michigan Access a license "to provide basic local exchange service in all exchanges and zones throughout the state of Michigan."[27] With respect to the Kirtland and Red Dog exchanges, it is Michigan Access' position that zones and exchanges were created when the MPSC granted on October 9, 2007, Osirus' license to serve eight previously unassigned services areas, including the Kirtland and Red Dog exchanges. Accordingly, by virtue of its license to serve the entire state, Michigan

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[24] *See* Application of Osirus Communications, Inc. for a License to Provide Basic Local Exchange Service in the Areas Currently Served by Verizon North, Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, CenturyTel of Michigan, Inc., CenturyTel Midwest-Michigan, Inc., CenturyTel of Northern Michigan, Inc., CenturyTel of Upper Michigan, Inc., and SBC Michigan, Case No. U-14494, Opinion and Order (Michigan PSC Aug. 1, 2005).

[25] *See* Application of Allband Communications Cooperative for a Temporary and Permanent License to Provide Basic Local Exchange Service in the Proposed Robbs Creek Exchange, Case No. U-14200, Opinion and Order (Michigan PSC Dec. 2, 2004).

[26] *See* Application of Allband Communications Cooperative for a License to Provide Basic Local Exchange Service in Seven Currently Unserved Areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda Counties, Case No. U-15385 (Michigan PSC Nov. 8, 2007); Application of Osirus Communications, Inc. for a License to Provide Basic Local Exchange Services in Eight Currently Unserved Areas in the Lower Peninsula of Michigan, Case No. U-15356, Opinion and Order (Michigan PSC Oct. 9, 2007).

[27] Michigan Access License at 3.

Access was not required to submit a new application to the MPSC in order to serve these areas.

Notwithstanding its position that it currently possesses the authority to serve all zones and exchanges in Michigan, including all eight previously unserved territories, at the request of the MPSC, Michigan Access has submitted an application to expand the geographical service area of its license to include specifically the Kirtland and Red Dog exchanges.[28] Michigan Access expects its application to be granted, and its associated tariff to be approved, in the near future.

D. Neither Osirus Nor Allband is Entitled To a Priority Position with Respect to the Kirtland and Red Dog Exchanges

Osirus' basic argument is that it is entitled to ILEC status because it was the first carrier to: (1) apply for and receive from the Michigan Public Service Commission (MPSC) a license to serve the unserved areas; (2) receive the MPSC's designation as an eligible telecommunications carrier; and (3) file a waiver petition with the FCC.[29] Similarly, Allband claims that it is entitled to preferred status because it was the first carrier to apply for, and to subsequently receive, waivers of certain FCC rules.[30]

Osirus' and Allband's arguments that they should be designated the ILEC on the basis that they were "first" is contrary to the public interest, and contradicts the meaning of section 251(h)(2).[31] Importantly, neither Osirus nor Allband has been

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[28] Application of Michigan Access, Inc. to Amend its License by Expanding Geographic Service Area to Include Two Unserved Service Territories, Michigan PSC Case No. U-16137 (filed Nov. 25, 2009).

[29] Osirus Comments at 4.

[30] *See* Reply Comments of Allband Communications Cooperative, Michigan Access, Inc. Emergency Petition for Waiver of the Commission's Rules to Designate Michigan Access and Incumbent Local Exchange Carrier in Two Unserved Areas in Northeast Michigan, Petition for Waivers of the Commission's Rules to Allow New Local Exchange Carrier to Participate in NECA Tariffs and Pools and Obtain Accelerated USF Support, CC Docket No. 96-45 (filed Nov. 20, 2009) (Allband Comments).

[31] *See* 47 U.S.C. § 251(h)(2).

designated the ILEC for the Kirtland or Red Dog exchanges. Thus, their claims to any type of preferred or superiority status with respect to these areas is a matter of their subjective self-assessment only.

Assuming *arguendo*, however, that either carrier had already achieved ILEC status, the plain meaning of section 251(h)(2) expressly contemplates that such incumbent status is not indefinite. Section 251(h)(2) provides that:

> The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if –
>
> (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in [section 251(h)(1)];
>
> (B) such carrier has substantially replaced an incumbent local exchange carrier described in [section 251(h)(1)]; and
>
> (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.[32]

Thus, pursuant to section 251(h)(2), even an ILEC, as that term is defined in section 251(h)(1), could be stripped of such status in certain circumstances. If this is true for an incumbent carrier that was already operational and serving customers, then it certainly is true with respect to a carrier whose "ILEC" status is in the "decisional" or "pending" stage only.

Michigan Access' petition should be afforded priority status on the basis that it has actually installed underground copper in order to serve 69.5% of the private parcels in the Kirtland exchange. In addition, Michigan Access has interconnection agreements in place with the adjacent ILECs and is collocated in seven adjacent ILEC central offices. To Michigan Access' knowledge and belief, neither Osirus nor Allband

[32] 47 U.S.C. § 251(h)(2).

can claim to have achieved any of these steps towards serving customers in the Kirtland and Red Dog exchanges. Specifically, unlike Michigan Access, Osirus and Allband are not collocated in the adjacent ILECs' central offices, and have not installed any facilities in order to serve customers. On this basis alone, Michigan Access should be designated the incumbent carrier for these areas.

Osirus asserts that Michigan Access' petition must be denied because Osirus has already established itself as the ILEC in the Kirtland and Red Dog exchanges.[33] Contrary to its assertions, however, Osirus clearly is not an ILEC as that term is defined in the statute. Moreover, in view of the fact that Osirus' waiver petition remains pending, it has not otherwise been designated an ILEC by the FCC with respect to these areas. Therefore, Osirus' claim that it is the ILEC for the Kirtland and Red Dog exchanges is simply erroneous.

Citing the *WeavTel*[34] and *Adak*[35] orders, Osirus further claims that the Kirtland and Red Dog exchanges became a part of its study area immediately upon the MPSC's approval of its license expansion application.[36] Osirus then maintains that Michigan Access was wrong to assert that the Kirtland and Red Dog exchanges have "never been a part of an existing study area."[37]

Osirus' reliance on the *WeavTel* and *Adak* orders to support its position is misplaced. In the *WeavTel Order*, the Commission concluded that a study area waiver is not required in cases where the proposed service area "has never been previously

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[33] Osirus Comments at 2; *see also id.* at 9 (stating that Osirus "is the ILEC" in the Kirtland and Red Dog exchanges).

[34] *See id.* at 11.

[35] *See id.*

[36] *Id.* at 4, 12.

[37] *Id.* at 12.

served by any certificated LEC or designated ETC."[38] Although Osirus is a licensed LEC and designed ETC in Michigan, Osirus has *never provided any service* within the Kirtland or Red Dog exchanges. On this basis, Osirus cannot claim that these areas are a part of its "study area." Indeed, because these areas remain unserved, no "study area" has been established by any carrier. Accordingly, Michigan Access is not required to seek a study area waiver in order to include these areas as part of its own study area.

[38] *See WeavTel Order* ¶ 6.

III. CONCLUSION

The record in this proceeding overwhelmingly demonstrates that it is in the public interest to grant Michigan Access' petition:

- ***Michigan Access is operationally ready to serve customers within the Kirtland exchange:***
  - Michigan Access has installed underground copper within the Kirtland exchange, and is operationally ready to serve 69.5% of the privately-owned land parcels in the Kirtland exchange;
  - Michigan Access is collocated in the central offices of seven adjacent exchanges;
  - Customers within the unserved areas have already placed orders with Michigan Access;
  - Michigan Access intends to fulfill all pending orders for service upon receiving appropriate regulatory approvals and waivers.
- ***Michigan Access has the support of the communities it seeks to serve. Michigan Access' petition is supported by:***
  - The private landowners, the townships, the Sheriff's department, and the 911 centers within the Kirtland and Red Dog exchanges;[39]
  - Members of the Michigan Legislature, including a state representative and the chairman of the telecommunication subcommittee; [40]

[39] *See* Michigan Access Comments.

[40] *Id.*

- ***Michigan Access, together with its sister company M33 Access, have been the dominant carriers in the areas surrounding the Kirtland and Red Dog exchanges for over a decade. The companies are growing and are constantly striving to serve the residents of these remote, rural areas. Given the company's commitment to this area, it would be contrary to the public interest to award ILEC status in favor of any carrier other than Michigan Access.***

On the basis of the foregoing, Michigan Access urges the Commission to grant immediately its petition for waiver so that it can begin to serve the customers, and fulfill the orders that have already been placed for its service.

Respectfully submitted,

Audrey Glenn

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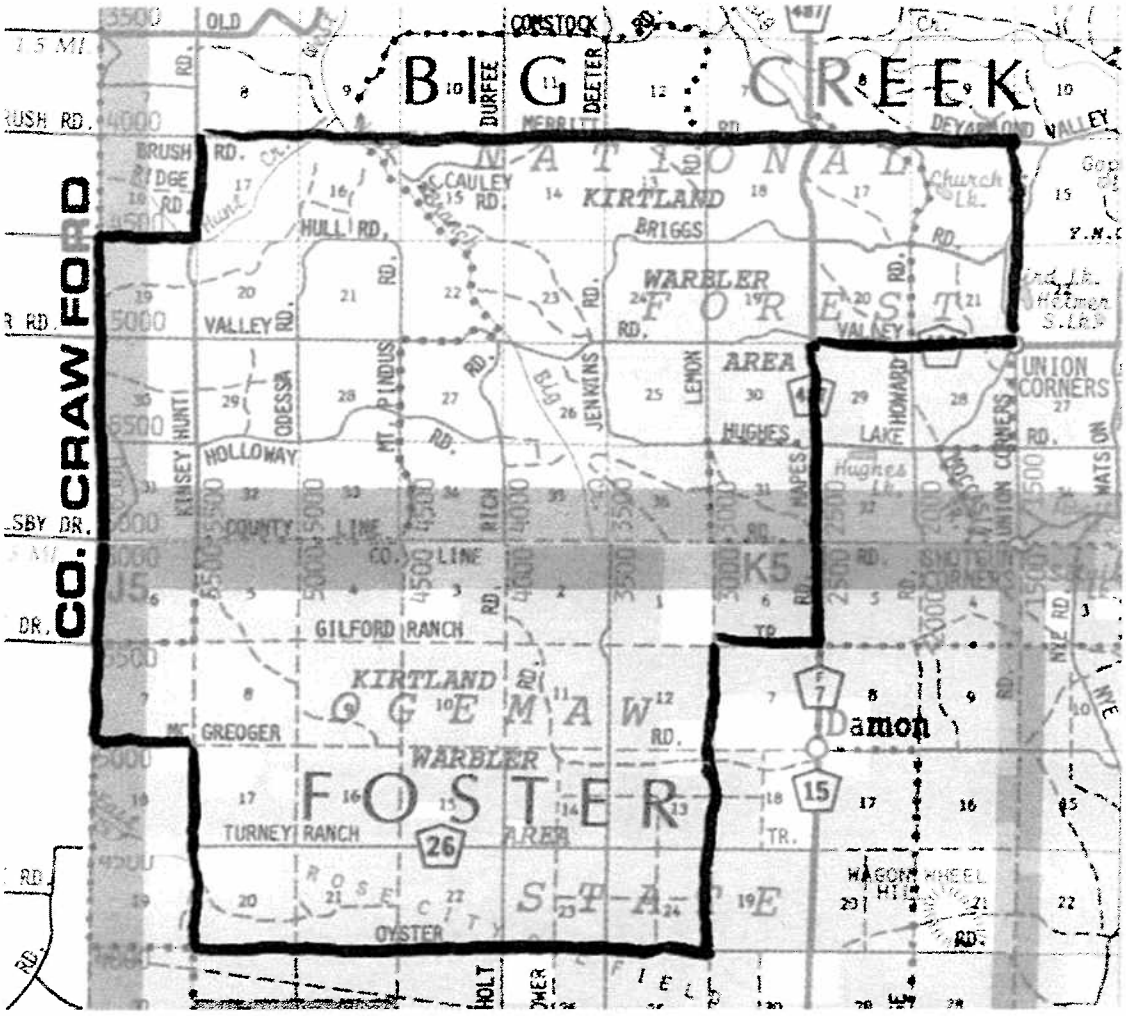
ATTACHMENT A

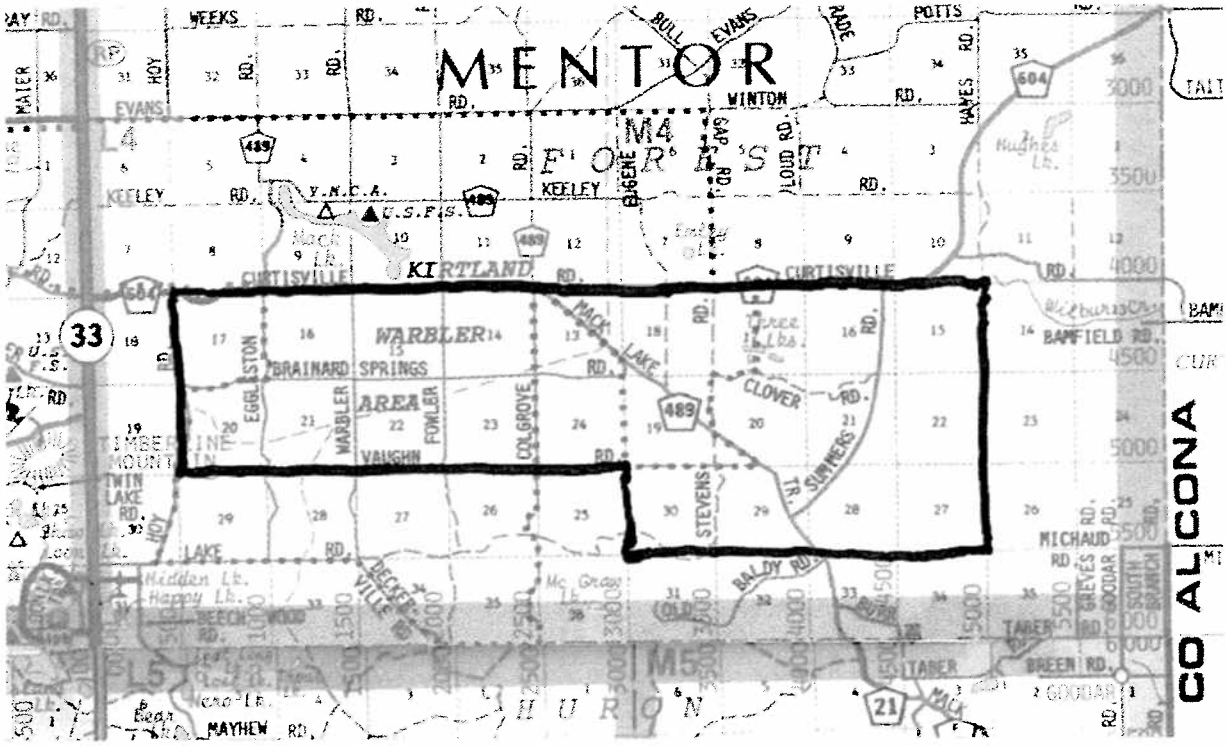
Kirtland Exchange Boundaries



Property Description:

Commencing at the Northeast corner of Section 16, Big Creek Township, T25N-R2E, Oscoda County thence South to the Southeast corner of Section 21, West to the Southwest corner of Section 20 thence South to the Southeast corner of Section 6, Foster Township, T24N-R1E, Ogemaw County, West to the Southwest corner of Section 6, South to the Southwest corner of Section 19, West to the Southwest corner of Section 20, North to the Northwest corner of Section 17, West to the Southwest corner of Section 7, North to the Northwest corner of Section 19, Big Creek Township, T25N-R1E, Oscoda County, East to the Northeast corner of Section 19, North to the Northwest corner of Section 17, East to the point of beginning.

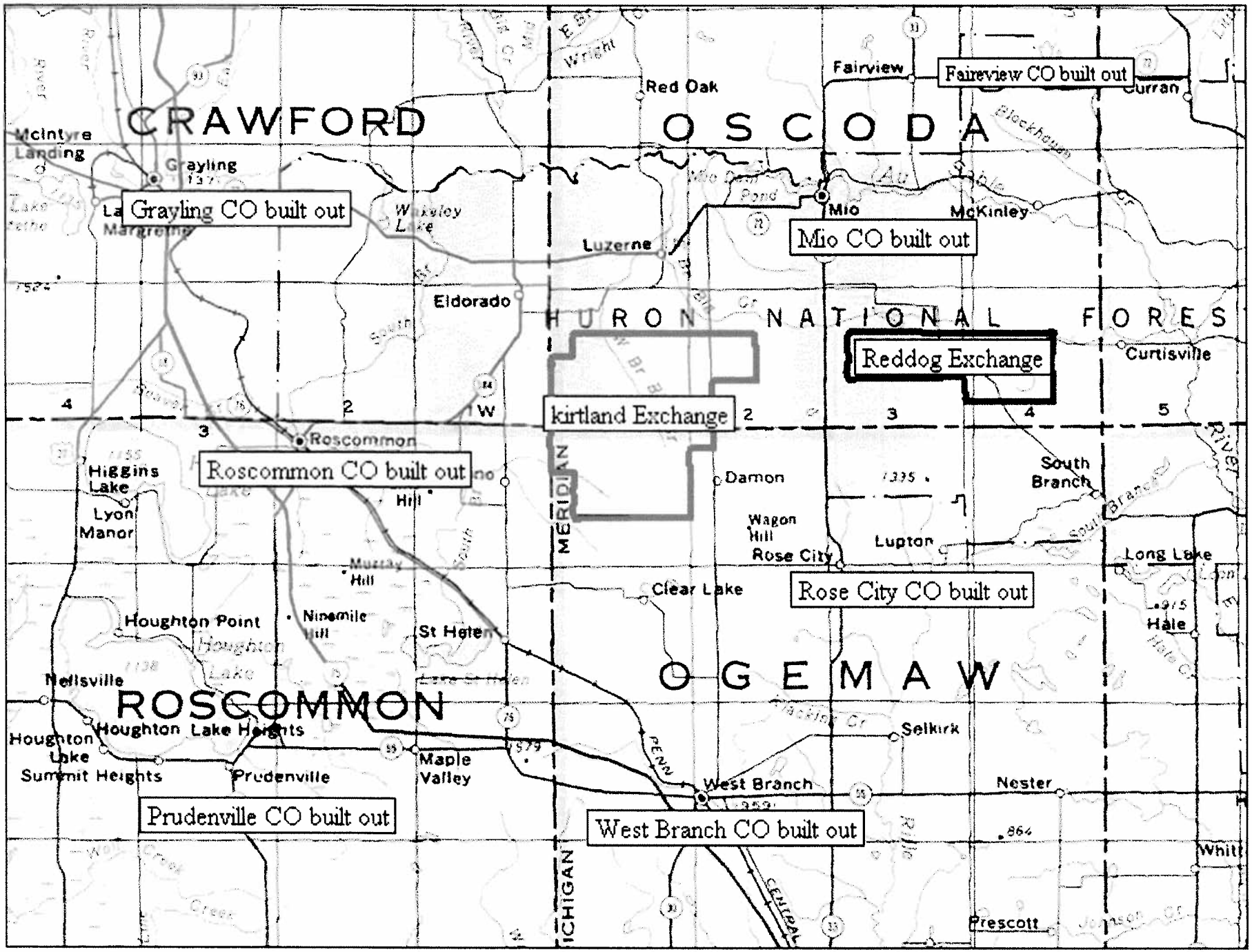
Red Dog Exchange Boundaries



Property Description:

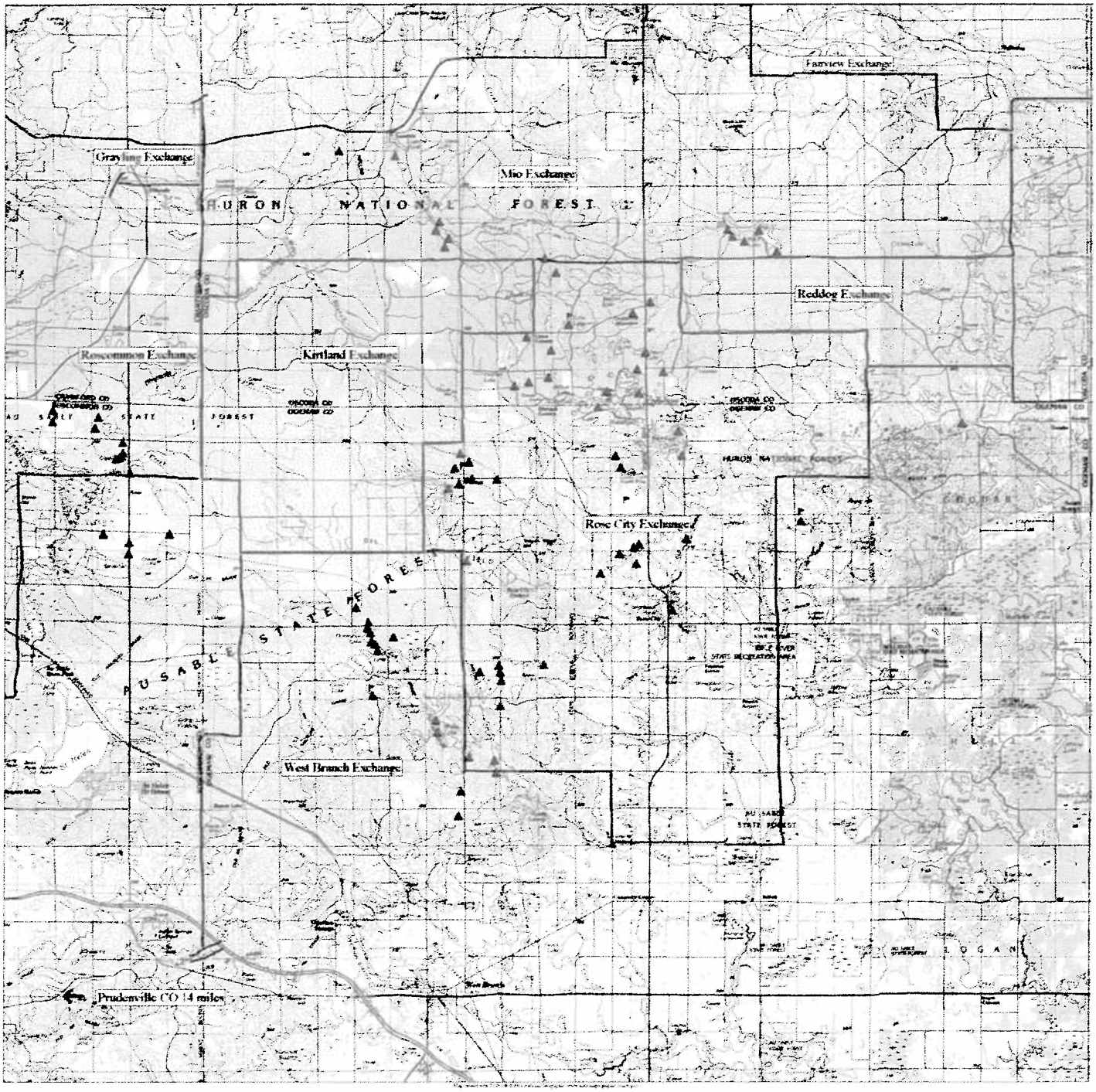
Commencing at the Northwest corner of Section 17, Mentor Township, T25N-R3E, Oscoda County, East to the Northeast corner of Section 15, Mentor Township, T25N-R4E, Oscoda County, South to the Southeast corner of Section 27, West to the Southwest corner of Section 30, North to the Northwest corner of Section 30, West to the Southwest corner of Section 20, North to the point of beginning.

ATTACHMENT B



Map created with TOPO!® ©2003 National Geographic (www.nationalgeographic.com/topo)

ATTACHMENT C



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September 16, 2009

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

Re: *In re Petition of Allband Communications Cooperative for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules to Allow New Local Exchange Carrier to Participate in NECA Tariffs and Pools, CC Docket No. 96.45*[1]

In re Osirus Communications, Inc. Petition for Waiver of Commission's Rules to Participate in the NECA Pools and Tariffs and to Obtain Accelerated USF Support, CC Docket No. 96-45[2]

Dear Ms. Dortch:

On behalf of Michigan Access, Inc. ("Michigan Access"), and Custom Software, Inc. d/b/a M33 Access ("M33 Access"), this letter is submitted in the above-referenced dockets to provide additional information relative to these proceedings, and to correct certain factual discrepancies.

Background:

There are many issues involved in this proceeding. However, for M33 Access and Michigan Access, there is only one: bringing the benefits of Internet and telephone connectivity to the people of rural Northeast Michigan. A quote from Mr. Glenn Wilson, the president and founder of M33 Access and Michigan Access encapsulates the spirit underlying these companies:

> When I get it so that every kid has high-speed Internet in my area, I'll feel good...I want digital learning for every kid, period. End of story. ... In order for our kids to compete tomorrow, we need the technology now.[3]

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[1] *In re Petition of Allband Communications Cooperative, Waiver of Sections 36.611 and 36.612 and Associated Provisions of the Commission's Rules*, CC Docket No. 96-45 (filed Sept. 6, 2005).

[2] *In the Matter of Osirus Communications, Inc., Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support*, CC Docket No. 96-45 (filed Oct. 2, 2007).

[3] Keith Cave, *Wired*, TRUE NORTH, Spring 2006, at 16 (TRUE NORTH), attached hereto as Attachment 1.

In areas hit hard by the recession and unemployment, Mr. Wilson feels a deep sense of personal responsibility: "We need two things desperately here: infrastructure and the population to drive it with a good labor force. ... My part is to make sure we have the technological infrastructure."[4] From its inception to the present, the sole motivating factor behind M33 Access' success is Mr. Wilson's personal commitment to ensuring broadband connectivity for each and every home in rural Northeast Michigan. Mr. Wilson's dedication and commitment to Northeast Michigan is widely-praised and well-documented.[5]

The Internet in Northeast Michigan was started, quite literally, in Mr. Glenn Wilson's backyard. Frustrated by the LEC's high rates and lack of progress and interest in providing broadband service in rural Northeast Michigan, Mr. Wilson found an innovative way to obtain high-speed Internet connectivity. Mr. Wilson called up the incumbent, wireline provider and ordered a T-1 line to his home. He then erected a tower, assembled the necessary equipment, and built his own network. Thereafter, Mr. Wilson began sharing the Internet with his neighbors. Today, it is M33 Access' goal to provide Internet service to every resident in Northeast Michigan who requests such service. In certain areas in Northeast Michigan, the term "Internet" is synonymous with M33 Access. One magazine labeled Mr. Wilson as "the guy who brought the 21st century to Northeast Michigan."[7] Given his commitment to this area, even in the face of tremendous personal and financial sacrifice, Mr. Wilson could be the "poster child" for a successful and effective rural broadband access strategy.

Not only did Mr. Wilson find an innovative way of deploying the Internet in rural areas, he found a way to do so cost-effectively. To initiate service, the company installs a small antenna, among other receiving equipment, at the customer's location. The antenna communicates with M33 Access' access point, which then connects the customer to the Internet through M33 Access' high-speed backbone. Using this service configuration, the company offers a full range of affordable services to customers, including dial-up Internet, high-speed wireless services, DSL, broadband and T-1 lines. The company also provides digital voice and interconnected voice over Internet protocol (VoIP) telephone services. Michigan Access, M33 Access' sister company, provides wireline and wireless telephone exchange services.[8] M33 Access' network is comprised of over 50 towers that serve as the

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[4] *Id.*

[5] *See* M33 Access' website at http://www.m33access.com/PressBox.asp and http://www.m33access.com/AboutUsHeadlines.asp to view excerpts from recent news articles regarding M33 Access and Mr. Wilson. Customer testimonials are also available at http://www.m33access.com/AboutUsTestimonials.asp.

[7] TRUE NORTH, *supra* note 3, at 16.

[8] Michigan Access is the sister company to M33 Access. The telephone services referred to throughout this document are provided solely by Michigan Access under Michigan Access's tariff. M33 Access provides Internet and other broadband services only, and does not provide telephone or other telecommunications services. Michigan Access is currently licensed to provide local exchange services throughout the state of Michigan. *See In the Matter of the Application of Michigan Access, Inc. for Temporary and Permanent Licenses to Provide Local Exchange Services in All Zone and Exchange Areas Throughout the State of Michigan*, Case No. U-14896 (Michigan PSC Aug. 22, 2006), attached hereto as Attachment 2. On September 11, 2009, Michigan Access submitted an application for designation as an Eligible Telecommunications Carrier ("ETC") throughout its service area. *See Application of Michigan Access, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Case No. 16085 (Michigan PSC Sept. 11, 2009), attached hereto as Attachment 3.

backbone of a wireless grid that covers several thousand square miles throughout rural Northeast Michigan.[9] It is one of the largest contiguous wireless grids in the world.[10]

The M33 Access service model has proven to be an efficient and cost-effective way of rolling-out broadband in rural areas. If implemented across the country, this model could permit rural citizens an opportunity to experience broadband now – as opposed to waiting until the large incumbents to decide to make investments in these areas. As Michigan Governor Jennifer Granholm has stated: "M33 Access is a fast-growing, Michigan-based company that is revolutionalizing how broadband can be delivered to users in a cost-effective manner. I am thrilled with the entrepreneurial spirit behind this company."[11]

FCC Rules & Proceedings:

The legal issues set forth in this proceeding have been briefed at length by both Allband and Osirus. Yet, when stripped to their core, the real issue here is funding. Washington, DC, and the Federal Communications Commission ("FCC") are a long way from the rural areas of Northeast Michigan that are the subject of this proceeding. However, the fate of the Internet and telephone access in Northeast Michigan could very well rest in the FCC's hands. Through the decisions rendered in this proceeding, the Commission will effectively decide which company is entitled to additional funding to pursue its telephone and broadband access roll-out strategy. Both history and the current state of the market in Northeast Michigan unequivocally demonstrate that Michigan Access is the company most qualified, and indeed, most likely, to bring telecommunications services to Northeast Michigan. Accordingly, to the extent that the FCC must make a choice as to which carrier qualifies, or is entitled to such additional funding, then the only possible answer to this question is Michigan Access.

Despite Mr. Wilson's personal and financial commitment to rural Northeast Michigan, under the current USF funding structure, Mr. Wilson is not able to recoup any of his personal investment, which at least one publication has estimated to be between $5,000,000 and $10,000,000 million.[13] In fact, two companies, namely Allband and Osirus, threaten to step in and claim a stake in Michigan Access' service areas. These companies both seek waivers of certain FCC rules, which would essentially permit them to claim incumbent status in several areas in rural Northeast Michigan. Presumably, Allband and Osirus are seeking these waivers in order to assume a priority position for USF funding purposes.[14]

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[9] *See* M33 Access, http://www.m33access.com/WirelessInfo.asp (last visited Sept. 14, 2009).

[10] *Id.*

[11] State of Michigan Broadband Development Authority, Press Release, *$1.3 Million Loan Advances Governor's Broadband Goal* (rel. Apr. 22, 2004), attached hereto as Attachment 4.

[13] TRUE NORTH, *supra* note 3, at 18.

[14] *In re Petition of Allband Communications Cooperative for Waiver of Sections 69.2(bb) and 69.601 of the Commission's Rules to Allow New Local Exchange Carrier to Participate in National Exchange Carrier Association Tariffs and Pools*, CC Docket No. 96-45 (filed Sept. 5, 2006); *In the Matter of Osirus Communications, Inc. Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support*, CC Docket No. 96-45 (filed Oct. 2, 2007). In 2005, Allband received FCC waivers for the Robbs Creek Exchange. *See* Petition of Allband Communications These waivers permitted Allband: (1) to receive universal service support based on its own costs; (2) to be treated as an incumbent LEC for

Contrary to Allband's and Osirus' assertions, however, both Michigan Access and M33 Access already provide services to several customers in the very same areas these companies claim to be "unserved." The following table provides a visual summary of the services currently provided by Michigan Access and M33 Access:

County	Michigan Access				M33 Access	
	POTS Res.	POTS Bus.	PRI	DSO TI	VoIP Res.	VoIP Bus.
Alcona*	6			4	7	
Alpena	1					
Arenac	15					
Bay					1	
Cheboygan*				4		
Chippewa					1	
Crawford	14			22	2	
Emmet				1		
Genesee				4		
Gladwin	2	1		6		
Iosco*	6			21	22	2
Montmorency*	3				1	
Oakland	1			5	61	
Ogemaw*	150	44	75	36	38	
Oscoda*	201		16	50		4
Otsego				3		
Presque Isle*	4					
Roscommon	4	15	96		21	
Shiawassee				2		
Total:	**407**	**60**	**187**	**158**	**154**	**6**

*Portions of this area classified as unserved.

Michigan Access was granted authority to provide basic local exchange service throughout the state of Michigan on August 22, 2006.[20] The company began providing telephone services to customers throughout Northeast Michigan almost immediately after its license was granted, and has continuously provided telephone services in this area ever since. Michigan Access has interconnection agreements in place with AT&T and Verizon, and is collocated in one AT&T central office, and four Verizon central offices. By mid-November 2009, the company will add two additional Verizon central offices, bringing its total central office count in the region to seven. Michigan Access currently provides traditional, wireline telephone service ("POTS") to a total of 843 customers throughout Northeast Michigan. In Ogemaw County, Michigan Access overbuilt Verizon's outdated facilities by installing new underground copper and fiber lines.

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purposes of receiving universal service support; (2) to participate in NECA tariffs and pools; and (4) to receive universal service support on an accelerated basis. *See In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules*, WC Docket No. 05-174 (WCB Aug. 11, 2005). Allband seeks to include unserved areas in Oscoda, Ogemaw, Presque Isle, Alcona, Iosco, Gladwin, and Montmorency counties within its existing study area. In a petition filed in 2005, Osirus requested waiver of certain FCC rules to permit it to receive accelerated high-cost loop support payments based on the projected costs of serving these areas. Osirus' petition, which was filed in 2007, seeks virtually the exact same relief requested by Allband. To date, both petitions remain pending before the FCC.

[20] *In the Matter of Application of Michigan Access, Inc. for Temporary and Permanent Licenses to Provide Local Exchange Services in All Zone and Exchange Areas Throughout the State of Michigan*, Case No. U-14896 (Michigan PSC Aug. 22, 2006).

Currently, M33 Access provides high-speed Internet access and Voice over Internet Protocol service to numerous residents and businesses throughout Northeast Michigan. Several critical care facilities and agencies rely on its services, including a number of regional police and sheriffs' departments, 911 emergency call centers, medical care facilities, fire departments and dozens of public and private schools, and one community college.[21] As of 2006, one community college in the region had attributed over $548,000 in savings directly to its relationship with M33 Access.[22] Given its importance to the area, M33 Access is listed as an "essential service" by the Ogemaw County Government.[23] And, in Roscommon County, Mr. Wilson was named "Citizen of the Year," in recognition of his service to the community.

Beyond providing telephone and Internet connectivity, Michigan Access and M33 Access have been beneficial to Northeast Michigan in many other ways. At least one publication noted that M33 Access "opened the floodgates for the kind of economic growth the region has struggled for decades to achieve."[24] It is possible that Allband's and Osirus' recent interest in this area is attributable to the economic growth that M33 Access and Michigan Access were instrumental in achieving. This, of course, would make the grant of ILEC status in favor of Allband or Osirus not merely ironic, but also unjust, unreasonable, and contrary to the public interest. To permit a subsequent carrier to come in and strip the incumbent carrier of its service area based solely on a regulatory war of words is a result the universal service funding rules should seek to avoid. To date, M33 Access and Michigan Access have invested millions of dollars to provide facilities-based services throughout Northeast Michigan. To the extent that any funding is available for these areas, Michigan Access should be the first carrier in line to receive those funds.

Allband and Osirus each were granted a license to serve customers in several "unserved" areas in Northeast Michigan nearly two years ago.[25] Yet, to date, these carriers have not commenced service to even a single customer in some of these areas. In fact, in this record, both carriers have clearly stated that their plans to serve these areas are on hold.[26] Unlike Allband and Osirus, M33 Access and Michigan Access have approached each

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[21] *See* M33 Access, http://www.m33access.com/WirelessInfo.asp (last visited Sept. 14, 2009).

[22] *See* Kirtland Community College, *Kirtland Internet Services, Past, Present, Future* (2007), at p. 7 (attached hereto as Attachment 2).

[23] *See* M33 Access, http://www.m33access.com/WirelessInfo.asp (last visited Sept. 14, 2009).

[24] TRUE NORTH, *supra* note 3, at 18.

[25] *See* In the Matter of the Application of Allband Communications Cooperative for a License to Provide Basic Local Exchange Service in Seven Currently Unserved Areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda Counties, Case No. 15385 (Michigan PSC Oct. 25, 2007) ("Allband License Expansion Order:"); In the Matter of the Application of Osirus Communications, Inc. for a License to Provide Basic Local Exchange Services in Eight Currently Unserved Areas in the Lower Peninsula of Michigan, Case No. 15356 (Michigan PSC Sept. 28, 2007)("Osirus License Expansion Order").

[26] *See* Letter to Michael Copps, Interim FCC Chairman, FCC, from Ron K. Siegel, General Manager, John M. Reigle, President, Allband Communications Cooperative, CC Docket No. 96-45 (dated May 11, 2009), at 2 (stating that it "cannot proceed without a decision form the FCC."); Letter to Marlene H. Dortch, Secretary, FCC, from Tom Karalis, Fred Williamson & Associates, Inc., CC Docket No. 96-45 (dated March 25, 2009), Attachment at p. 9 ("...without knowing the outcome of this Petition, any further plans for expansion to meet the needs of customers in unserved areas will have to be put on hold"); Comments of Allband Communications Cooperative in Opposition to Petition for

obstacle in their paths as yet another challenge to overcome. Together, these companies have rolled-out both broadband and telephone services to rural Northeast Michigan in the face of obstacles that would have been deemed insurmountable by many other companies. M33 Access and Michigan Access willingly assumed such risks because the lives of the citizens of Northeast Michigan literally depend upon this level of dedication.

Allband's failure to provide service in certain areas is especially perplexing given that the company was approved for a USDA loan for over $8,000,000 million in 2005.[27] In its Rural Development Progress Report for 2005-2006, the USDA noted that Allband's loan would permit the company to serve 309 residential subscribers, 18 commercial business subscribers, and 290 gas well subscribers.[28] To date, however, over four years after its USDA loan was approved, it is Michigan Access' understanding that Allband serves only 88 customers.

Considering that neither Allband nor Osirus has rolled out service to these areas since they were licensed to do so two years ago, Michigan Access believes that neither company should be permitted to stake any claim whatsoever in the "unserved" areas. On this point, language from the Michigan PSC orders granting a license to each carrier is relevant. Both orders include the following language:

> [T]he expansion of the license is conditioned upon the provision of service to customers in the added exchanges *within a reasonable time*. Failure to comply fully with those procedures may result in revocation of the license and other penalties.[29]

Allband's and Osirus' failure to provide any services to any customers in the added exchanges two years after each carrier was granted authority to do so does not satisfy the "within a reasonable time" requirement set forth in the order. Michigan Access, therefore, submits that Allband's and Osirus' licenses should be revoked on that basis.

Michigan Access further notes that a license granted under the Michigan Telecommunications Act is premised on a finding by the Michigan PSC that the applicant "intends to provide service within 1 year from the date the license is granted."[30] As noted, in the two years since they received authority to serve several areas in rural Northeast Michigan, neither Allband nor Osirus has provided service to customers in these areas. Therefore, it is clear that neither Allband nor Osirus intended to serve these areas within the one-year timeframe provided under the statute. For this reason, the operating licenses

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Waivers and Allband Request for Clarification, CC Docket No. 96-45 (filed Jan. 3, 2008)(stating that FCC delay "will deny Allband the opportunity to move forward with the provisioning of service to these unserved areas..."); Letter to Gary Seigel, FCC, from Michael R. Witulski (dated May 21, 2008), at 1 ("Osirus has temporarily placed its work on this project on hold pending the Commission's resolution of this matter.").

[27] USDA, *Conner Announces $34.6 Million in Rural Technology Development Funds for Rural America*, Release No. 0317.05 (Aug. 18, 2005).

[28] USDA, Rural Development, 2005-2006 Progress Report (2006), at 24. Retrieved Sept. 17, 2009 from http://www.rurdev.usda.gov/rd/pubs/2005_06_Prog_Report.pdf.

[29] Allband License Expansion Order at 3 (emphasis added); Osirus License Expansion Order at 2 (emphasis added).

[30] MICH. COMP. LAWS § 484.2302(1)(a)(2009).

of both carriers should be declared null and void. Both Allband and Osirus have effectively abandoned Northeast Michigan, which makes their bickering as to which among them is entitled to "incumbent" status in this area difficult to fathom.

In reaching a decision regarding incumbency, Michigan Access urges the Commission to render its decision based on the facts, and the state of the markets at issue. Indeed, the Commission should reject outright Allband's and Osirus' positions that this proceeding should be decided on the basis of which carrier wins the battle of "firsts." Allband states that it is entitled to incumbent status in these areas because it was the first carrier to apply for and receive FCC waivers of certain rules.[31] Osirus, on the other hand, claims incumbent status because it was the first carrier to apply for, and subsequently receive, a CLEC license, and designation as an ETC in Michigan.[32] Deciding this matter on the basis of the regulatory timeline, however, could lead to the anomalous result where a true incumbent like Michigan Access could be stripped of its service areas for no other reason than the fact that another company decided to pursue a roll-out strategy through the regulatory and legal processes, while the true incumbent in the area was instead focused on actually serving customers.

The record in this proceeding demonstrates that both Allband and Osirus "plan" to serve these areas at some unspecified future date. While these companies remain in the planning stage, Michigan Access is already serving customers in these very same areas. Therefore, as both a legal and factual matter, to the extent that the FCC and NECA can recognize only one incumbent in Northeast Michigan, this status should be granted to the carrier that has moved beyond the planning stage, and has already demonstrated that service to these areas is technically and economically feasible by successfully serving customers in these areas. In rural Northeast Michigan, the only carrier that satisfies these criteria is Michigan Access.

Summary & Conclusion:

The Commission's current universal service funding structure favors an incumbent LEC that provides service through wire-based methods and technology. Wireline, however, has proven to be an outdated, cost-inefficient, and ineffective method of providing service in remote, rural areas. Under the traditional model, rural citizens are at the mercy of wireline-based incumbents who, in their sole discretion, decide whether or not to roll-out services, even including basic telephone service, to rural areas. Placing the future of broadband in the hands of the incumbent, wireline-based carriers is tantamount to denying rural citizens access to the broadband world. The FCC is undoubtedly well aware of the countless excuses set forth by the incumbent, wireline-based carriers as to why broadband in rural areas is not feasible.

The citizens of rural America are literally dying for both basic and advanced communications services. Broadband access in rural areas cannot wait. For this reason, the Commission should no longer wait on the incumbents to roll out broadband strategies to

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[31] *See* Comments of Allband Communications Cooperative in Opposition to Petition for Waivers and Allband Request for Clarification, CC Docket No. 96-45 (filed Jan. 3, 2008), at 5.

[32] *See* Osirus Communications, Inc. Comments in Reply to Allband Communications Cooperative's Comments, CC Docket No. 96-45 (filed Jan. 18, 2008), at 2.

these areas. It is time for the Commission's rules to catch up to the reality of how broadband will most effectively be rolled out to rural America. The current rules assume that broadband will miraculously spring forth from an incumbent, wireline carrier using wire-based technology and strategies. M33 Access and Michigan Access have proven, however, that for rural America, the opposite is most likely to be true. M33 Access rolled out broadband first, and then, due to its success in this area, formed Michigan Access in order to begin offering telephone service to its subscribers. Under any reasonable interpretation of the term "incumbent" Michigan Access is, indeed, the only such carrier in Northeast Michigan. Through their unique service model, Michigan Access and M33 Access have demonstrated an alternative method of bringing broadband services to rural areas. In direct contravention to the ILECs' representations, M33 Access and Michigan Access have demonstrated that it is both economically and technically feasible to serve rural customers cost-effectively.

Michigan Access has taken up the cause to bring both Internet and telephone access to rural Michigan. However, even the most well-intentioned plans are limited by the force of reality. Additional funding is, indeed, important and necessary – as funding from any source will permit Michigan Access to roll out service to more customers under a more accelerated timeframe. For this reason, through its parent company, Custom Software, Inc., Michigan Access has submitted an application under the Broadband Initiatives Program (BIP),[36] and will also pursue any remedies available at the FCC or other agencies that will enable it to continue serving the citizens of rural Michigan. However, unlike the assertions of both Allband and Osirus, Michigan Access is committed to the residents of Northeast Michigan under any circumstances. Michigan Access will continue to seek ways – using its current strategies, or by developing new and perhaps even more creative ones – to ensure that each resident of the state of Michigan has access to telecommunications services and the broadband world. For Michigan Access, universal service and other funding would help the company serve more customers *now*. However, Michigan Access' commitment to telephone and broadband service in Northeast Michigan will remain strong, regardless of any decisions relative to funding.

For the reasons set forth herein, Michigan Access steadfastly opposes any efforts by Allband and Osirus to obtain an advantage for universal service funding or other purposes by claiming a position of incumbency in certain rural areas in Northeast Michigan. As this letter demonstrates, and as will be further supported in Michigan Access' FCC waiver petition, M33 Access and Michigan Access already are providing both broadband and telecommunications services in the very same areas both Allband and Osirus claim to be unserved. In order to maintain its incumbent status, and to seek additional funding to continue its highly successful broadband and telephone access strategies in these areas, Michigan Access intends to file its own petition for waiver with the FCC. Until such time

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[36] *See* H.R. 1--111th Congress: American Recovery and Reinvestment Act of 2009 ("ARRA"). (2009). In GovTrack.us (database of federal legislation). Retrieved Sep 16, 2009, from http://www.govtrack.us/congress/bill.xpd?bill=h111-1. The Notice of Funding Availability ("NOFA") for grants and loans issued pursuant to the ARRA appeared in the Federal Register on July 9, 2009. *See* Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program ("BIP"), Department of Commerce, National Telecommunications Industry Association, Broadband Technology Opportunities Program ("BTOP"), 47 Fed. Reg. 33,104-33,134 (2009). Custom Software, Inc. d/b/a M33 Access submitted an application under the Rural Utilities Services' Broadband Initiatives Program. A summary of M33 Access' application may be viewed at http://www.ntia.doc.gov/broadbandgrants/applications/results.cfm?org=custom+software&keywords=&projtype=&program=&state= (last visited Sept. 16, 2009).

as the Commission considers all of the evidence and issues presented in these proceedings, including the supporting documentation Michigan Access will submit as part of its waiver petition, Michigan Access submits that the petitions for waiver filed by Allband and Osirus should be denied.

Should you have any questions regarding this matter, or would like additional information, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Audrey Glenn
Audrey Glenn

Counsel to Michigan Access, Inc. and
Custom Software, Inc. d/b/a M33 Access

A RESOLUTION OF THE MENTOR TOWNSHIP BOARD IN SUPPORT OF MICHIGAN ACCESS' PETITION TO PROVIDE TELEPHONE SERVICE TO THE RESIDENTS OF MENTOR TOWNSHIP

WHEREAS, residents within Mentor Township do not have telephone service. There are no telephone exchange facilities in these areas, and the cellular coverage in this area is extremely poor.

WHEREAS, residents within Mentor Township are elderly with failing health. These residents are in desperate need of telephone service.

WHEREAS, To date, Michigan Access is the only company that has shown a willingness and commitment to provide telecommunications services to the residents of Mentor Township.

NOW, THEREFORE, BE IT RESOLVED AND DIRECTED by the Mentor Township Board that:

The Board supports Michigan Access' petition at the FCC to provide telephone service to the residents of Mentor Township.

The Board encourages the Federal Communications Commission and the Michigan Public Service Commission to take whatever steps necessary in order to permit Michigan Access to provide telephone exchange services to the residents of Mentor Township.

PASSED AND APPROVED on this 19th day of October 2009.

MENTOR TOWNSHIP BOARD

ATTEST:

Allan Vallad
Clerk

APPROVED BY:

Gary Wyckoff
Township Supervisor

abs
Nancy Crane
Treasurer

Paul Matte
Trustee

Robert Hoffman
Trustee

RESOLUTION 2009-17

A RESOLUTION OF THE BIG CREEK TOWNSHIP BOARD IN SUPPORT OF MICHIGAN ACCESS' PETITION TO PROVIDE TELEPHONE SERVICE TO THE RESIDENTS OF BIG CREEK TOWNSHIP

WHEREAS, several residents within Big Creek Township do not have telephone service. There are no telephone exchange facilities in these areas, and the cellular coverage in this area is extremely poor.

WHEREAS, several residents within Big Creek Township are elderly with failing health. These residents are in desperate need of telephone service.

WHEREAS, for the past nine years, M33Access has demonstrated a commitment to Big Creek Township and its residents. Upon recognizing that the Township and its residents did not have sufficient access to the Internet, in fall 2005, Michigan Access' sister company,. Installed copper and fiber lines and are installing new underground facilities in the un-served area of the Township.

WHEREAS, Michigan Access has obtained all required permits, and is currently installing new underground facilities in order to provide telephone service to several residents within un-served area. To date, Michigan Access is the only company that has shown a willingness and commitment to provide telecommunications services to the residents of Big Creek Township.

NOW, THEREFORE, BE IT RESOLVED AND DIRECTED by the Big Creek Township Board that:

The Board supports Michigan Access' petition at the FCC to provide telephone service to the residents of Big Creek Township.

The Board encourages the Federal Communications Commission and the Michigan Public Service Commission to take whatever steps necessary in order to permit Michigan Access to provide telephone exchange services to the residents of Big Creek Township.

PASSED AND APPROVED on this 20th day of October 2009.

BIG CREEK TOWNSHIP BOARD

ATTEST:

Judy Berney
Clerk

APPROVED BY:

James Booth
Township Supervisor

Susan Avery
Treasurer

Marian Buchanan
Trustee

Janis Sanderson
Trustee

A RESOLUTION OF THE FOSTER TOWNSHIP BOARD IN SUPPORT OF MICHIGAN ACCESS' PETITION TO PROVIDE TELEPHONE SERVICE TO THE RESIDENTS OF FOSTER TOWNSHIP

WHEREAS, several residents within Foster Township do not have telephone service. There are no telephone exchange facilities in these areas, and the cellular coverage in this area is extremely poor.

WHEREAS, several residents within Foster Township are elderly with failing health. These residents are in desperate need of telephone service.

WHEREAS, for the past three years, Michigan Access has demonstrated a commitment to Foster Township. Upon recognizing that the Township Board did not have access to the Internet, in July 2006, Michigan Access' sister company, M33 Access, placed a communications tower at the Foster Township Townhall at its own expense. The Internet services provided by M33 Access are used by the Foster Township Board and the Fire Department. Without M33 Access' support, Foster Township could not have otherwise afforded Internet access service.

WHEREAS, Michigan Access has obtained all required permits, and is currently installing new underground facilities in order to provide telephone service to several residents within Foster Township. To date, Michigan Access is the only company that has shown a willingness and commitment to provide telecommunications services to the residents of Foster Township.

NOW, THEREFORE, BE IT RESOLVED AND DIRECTED by the Foster Township Board that:

The Board supports Michigan Access' petition at the FCC to provide telephone service to the residents of Foster Township.

The Board encourages the Federal Communications Commission and the Michigan Public Service Commission to take whatever steps necessary in order to permit Michigan Access to provide telephone exchange services to the residents of Foster Township.

PASSED AND APPROVED on this 13th day of October 2009.

FOSTER TOWNSHIP BOARD

ATTEST:

Karen McIntyre
Clerk

APPROVED BY:

Sandra Miller
Township Supervisor

Betty Calvin
Treasurer

Steve Brenner
Trustee

Robert Mancour
Trustee

We, the undersigned residents of Foster Township, Ogemaw County, Michigan request our township officials to do whatever they can to encourage Michigan Access, Inc. to provide us with telephone service. We have never had telephone service at our residences and the cell phone service is either not available or not reliable in this part of the township. Anything you can do would be most appreciated as many of us are elderly and are desperately in need of 911 services. Thank you.

Signature Ernest King

Printed Name ERNEST KING

Address 307 CAMPBELL ST BAY CITY 48708

Age 56

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Signature Richard O Hawk

Printed Name Richard Hawk

Address 15156 Merriman
Livonia Mich 48154

Age 52

We, the undersigned residents of Foster Township, Ogemaw County, Michigan request our township officials to do whatever they can to encourage Michigan Access, Inc. to provide us with telephone service. We have never had telephone service at our residences and the cell phone service is either not available or not reliable in this part of the township. Anything you can do would be most appreciated as many of us are elderly and are desperately in need of 911 services. Thank you.

Signature John Loveland

Printed Name JOHN LOVELAND

Address PO BOX 403 MIO 48647

Age 75

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Signature James D Dubrico

Printed Name JAMES DUBRICO

Address 14697 DARWIN CT UTICA, MICH 48315

Age 64

BARBAR DUBRICO WIFE

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Signature Ronald E. Metz

Printed Name RONALD E. METZ

Address 5130 WARMBRIAR WHITELAKE MI.

Age 69

Vacation Property across from
5290 POLECAT LANE

[redacted]

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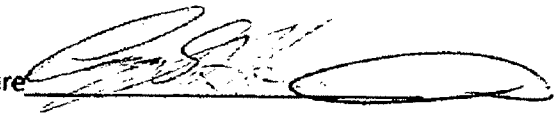
Signature 

Printed Name CRAIG S. HARRISON

Address 38627 TRAFALGAR. WAY

Age 52.

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Signature Larry F. David

Printed Name Larry F David

Address Sec. 6 T24N. R2E. 10.13 A. NE1/4 of NE 1/4 of NW 1/4

Age @ 52

Donna David

Donna David

49p 43

We, the undersigned residents of Foster Township, Ogemaw County, Michigan request our township officials to do whatever they can to encourage Michigan Access to provide us with telephone service. We have never had telephone service at our residences and the cell phone service is either not available or not reliable in this part of the township. Anything you can do would be most appreciated as many of us are elderly and are desperately in need of 911 services. Thank you.

Signature John N. Burgess

Printed Name John N. Burgess

Address 7725 Dow Rd West Branch 48661

Age 74

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Signature Dara Lee White

Printed Name DARA LEE WHITE

Address 5890 POLECAT LANE
WEST BRANCH MI 48661

Age 61