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STATE OF MICHIGAN

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BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application
of The Michigan Exchange Carriers
Association, Inc., to resolve a dispute
with Verizon North, Inc., and Contel of
the South d/b/a Verizon North Systems
regarding measurement of usage and
nonpayment of usage based charges.

Case No. U-14905

Volume 1

Paperless E-File

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PREHEARING

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Proceedings held in the above-entitled matter

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before James N. Rigas, J.D., Administrative Law Judge

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with SOAHR, at the Michigan Public Service Commission,

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6545 Mercantile Way, Room C, Lansing, Michigan, on

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Thursday, July 6, 2006, at 9:00 a.m.

13

APPEARANCES:

14

GLEN A. SCHMIEGE, J.D.
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On behalf of The Michigan Exchange Carriers
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MICHAEL G. OLIVA, J.D.
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- and -

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On behalf of Verizon North, Inc. and
Contel of the South

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(Continued)

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1 APPEARANCES (Continuing):

2 EMMANUEL B. ODUNLAMI, J.D.

3 Assistant Attorney General
4 6545 Mercantile Way, Suite 15
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6 On behalf of Michigan Public Service
7 Commission Staff

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10 REPORTED BY: Lori Anne Penn (CSR-1315)

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At about 9:05 a.m.

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Good morning. This is the hearing before the Michigan Public Service Commission in Case No. U-14905, captioned In the matter of the application of the Michigan Exchange Carriers Association, Inc., to resolve a dispute with Verizon North, Inc., and Contel of the South d/b/a Verizon North Systems regarding measurement of usage and nonpayment of usage based charges. Pursuant to due notice, a prehearing conference in this matter was set for his time and place.

My name is James N. Rigas, I'm an administrative law judge for the State Office of Administrative Hearings and Rules.

MR. SCHMIEGE: Glen Schmiede of Foster,
& Smith on behalf of the applicant,
ge Carriers Association.

MR. OLIVA: Michael Oliva of Loomis,
Ewert, Parsley, Davis & Gotting on behalf of Verizon
North, Inc., and Contel of the South, Inc.

MR. VOGELZANG: And Randy Vogelzang from
Metro Court Reporters, Inc. 248.426.9530

1 Verizon on behalf of Verizon North, Inc., and Contel of
2 the South, Inc.

3 MR. ODUNLAMI: Good morning, your Honor.
4 Emmanuel Odunlami, assistant attorney general, here for
5 staff.

6 JUDGE RIGAS: Thank you. Are there any
7 other appearances? I hear none.

8 All right. This "application" was filed
9 on May 30th. It's been served, it's been answered, I
10 read your answer yesterday. I've observed that there was
11 a motion for summary disposition of sorts filed with it.

12 Are we going to do anything today aside
13 from establish a schedule in this case?

14 MR. SCHMIEGE: I don't believe we are,
15 your Honor.

16 MR. OLIVA: I don't think so either, your
17 Honor.

18 JUDGE RIGAS: O.K.

19 MR. ODUNLAMI: (Nodding negatively.)

20 JUDGE RIGAS: O.K. Any schedule we
21 provide will necessarily have to allow for some response
22 to Mr. Oliva's motion, and we may also require an
23 opportunity for oral remarks on that. In light of the
24 fact that the motion seeks disposition of the entire
25 matter, it's based on a standing argument, we need to put

1 that right away at the start so that we can know one way
2 or another whether we're going to spend any resources
3 continuing the thing. Right?

4 MR. ODUNLAMI: Yes, your Honor.

5 JUDGE RIGAS: I observed when I came in
6 the room this morning that the parties were in the
7 process of having some informal discussions regarding the
8 schedule; there seemed to be some differences of opinion.
9 Would it facilitate matters if we pursued it further off
10 the record?

11 MR. SCHMIEGE: Yes, I think it would,
12 your Honor. But before we do that, may I raise something
13 regarding the scheduling of the motion for summary
14 disposition?

15 JUDGE RIGAS: Sure.

16 MR. SCHMIEGE: I would like to note that
17 my client, the Michigan Exchange Carriers Association,
18 filed this case on behalf of its 33 members. In
19 Verizon's motion, they have raised issues regarding
20 standing, the standing of MECA and the proper parties;
21 and I think it's really a question of dealing with all
22 the party-related issues in response to the motion.
23 Where I'm going with this is there's a question as to
24 whether MECA's members should be named parties in this
25 case, and I would propose just to address that when we

1 file our response and when we address the motion for
2 summary disposition.

3 JUDGE RIGAS: O.K. Thank you for
4 alerting us to that.

5 MR. SCHMIEGE: I didn't want anybody to
6 be blindsided.

7 JUDGE RIGAS: We might have to allow,
8 then, some additional time for a response, either oral or
9 written. But we can address that when we talk about the
10 schedule.

11 MR. SCHMIEGE: And I really don't have a
12 feel without being able to thoroughly analyze their
13 motion yet whether that might be the case or not.

14 JUDGE RIGAS: O.K. Are you going to have
15 difficulties, Mr. Schmiede, organizing your participation
16 in this case given the large number of companies that are
17 members of the association?

18 MR. SCHMIEGE: The only -- my answer
19 would be no. But there is one area; the only difficulty
20 we have ever had is if there is discovery that goes out
21 to each and every one of the companies, it is very
22 difficult to meet shortened discovery turnaround time
23 periods.

24 JUDGE RIGAS: That was exactly where I
25 was going with my question. Is discovery going to be
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1 problematic, recognizing as we must that the statute
2 requires these matters be dispatched within 180, possibly
3 210 days, so our turnarounds necessarily need to be
4 short?

5 MR. SCHMIEGE: And we have in prior cases
6 shortened the time periods and given an indication that
7 we will do our best, but with the understanding that we
8 can not necessarily always respond on behalf of all the
9 parties. That's if there are individualized questions.
10 A lot of the issues in this case are going to be common
11 issues that, at least I believe, wouldn't require going
12 back to each individual company separately.

13 JUDGE RIGAS: Do you wish to remark on
14 this at all, Mr. Oliva, at this time?

15 MR. OLIVA: I have a couple of remarks
16 regarding that. To the extent that -- first, to the
17 extent that Mr. Schmiede is perhaps suggesting joining as
18 parties individual members of MECA, as we've indicated in
19 our answer, we certainly think that Verizon North and
20 Contel of the South would have not merely rights of
21 offset, but also counterclaims against some of the
22 individual companies. Since they're not parties to the
23 proceeding at this point, there's no one to make a
24 counterclaim against in this case.

25 And also with respect to discovery, we
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1 think that there are such unique issues of fact with
2 respect to the 10 or 12 individual companies who appear
3 to have complaints that MECA is seeking to represent them
4 on that we would anticipate that substantially all of
5 this, the discovery from our side would be directed on an
6 individual basis to individual companies and would not be
7 generalized. So I would think that the discovery issue
8 and turnaround could potentially be a very big issue as
9 to individual companies.

10 JUDGE RIGAS: With respect to your
11 observation regarding counterclaims, do you believe that
12 some of these future potential counterclaims could run to
13 companies other than the 10 or 12 that are identified in
14 the pleadings we have so far?

15 MR. OLIVA: I don't know the answer to
16 that question at this point.

17 JUDGE RIGAS: Mr. Odunlami, do you have
18 any remarks?

19 MR. ODUNLAMI: No, your Honor, I do not.

20 JUDGE RIGAS: Something else,
21 Mr. Schmiede?

22 MR. SCHMIEGE: Yes, your Honor. Many of
23 these issues can be addressed at the motion for summary
24 disposition. But just to put my position on the record,
25 this case was filed on behalf of the 33 companies; they

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1 may not technically be named parties, that does not mean
2 necessarily that they aren't parties to this case, and
3 we're just talking semantics here. But this case was
4 filed on their behalf, this case is binding on them, they

5 are being -- they are members of the association, which
6 didn't file it on behalf of itself, it filed it on their
7 behalf, so they're not named parties. That's not
8 necessarily the same thing as not being a party or not
9 being involved in this proceeding.

10 In addition, there are 33 members of MECA
11 who are all listed in the application. There is a
12 smaller group, as you have indicated, that have monetary
13 issues or requests for damages or money at stake in this
14 case, but all of them have some interest in the issues
15 being resolved in this proceeding.

16 JUDGE RIGAS: All right. Let's go off
17 the record.

18 (A discussion was held off the record.)

19 JUDGE RIGAS: Go back on the record. Let
20 the record show that we've had a discussion during which
21 the following consensus schedule for this case has been
22 developed: An answer to the motion for summary
23 disposition will be filed on or before 5:00 p.m., July
24 14th of this year; oral argument on that motion will take
25 place at 9:00 a.m. on July 19th of this year.

1 We've established a schedule for the
2 remainder of the proceeding in the event it's determined
3 that it should go forward. Verizon will file its
4 prepared direct testimony and exhibits on or before 5:00
5 p.m., August 11th of this year. Staff has requested and
6 has been granted an opportunity to file separately; they
7 may file their prepared direct testimony and exhibits no
8 later than on or before 5:00 p.m., August 18 of this
9 year. Rebuttal, if any, may be filed on or before 5:00
10 p.m., August 25th of this year. Motions to strike, if
11 any, may be filed on or before 5:00 p.m., August 28th of
12 this year. Cross-examination of all the previously filed
13 prepared direct and rebuttal testimony and exhibits will
14 commence at 9:00 a.m. on August 30th of this year, and
15 continue on the 31st if necessary.

16 We've determined that an initial brief in
17 this matter may be filed on or before 5:00 p.m.,
18 September 18th of this year. Reply briefs are being
19 provided for, they may be filed on or before September
20 28th of this year. Proposal for decision will be issued
21 by this administrative law judge on or about October
22 31st. With the proposal for decision, I'll establish the
23 time for filing exceptions and replies thereto. It would
24 be my intent to allow approximately seven days for
25 exceptions and seven days for replies.

1 Pursuant to the requirements of the
2 statute, the commission is obligated to issue in an order
3 in this case within 180 days of its filing. We
4 determined that day, the 180th day in this case to be
5 November 26th, which is a weekend, so that now becomes
6 November 27th.

7 The schedule we've adopted at this point
8 in time recognizes that the commission will probably
9 require a little additional time, but under the statute,
10 the parties are able to stipulate an additional, up to an
11 additional 30 days in the schedule, and we anticipate we
12 may have to make some accommodation along those lines.

13 The parties have entered into a discovery
14 understanding. They will endeavor under good faith, best
15 efforts to turn their discovery around within five
16 business days.

17 Did I miss anything? Mr. Schmiede.

18 MR. SCHMIEGE: No, your Honor, that's
19 fine.

20 JUDGE RIGAS: Mr. Oliva.

21 MR. OLIVA: No, your Honor.

22 JUDGE RIGAS: Mr. Odunlami.

23 MR. ODUNLAMI: No, your Honor.

24 JUDGE RIGAS: Anything further this
25 morning?

1 MR. SCHMIEGE: No, your Honor.

2 JUDGE RIGAS: Very well. This matter is
3 adjourned, then, to 9:00 a.m., August 30th, 2006. Thank
4 you very much. Or no. Strike that. It's adjourned to
5 9:00 a.m., July 19th, 2006. Thank you.

6 MR. SCHMIEGE: Thank you, your Honor.

7 (Proceedings adjourned at 9:41 a.m.)

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C E R T I F I C A T E

I, Lori Anne Penn (CSR-1315), do hereby
certify that I reported in stenotype the proceedings had
in the above-entitled matter, that being Case No.
U-14905, before James N. Rigas, J.D., Administrative Law
Judge with SOAHR, at the Michigan Public Service
Commission, 6545 Mercantile Way, Lansing, Michigan, on
Thursday, July 6, 2006; and do further certify that the
foregoing transcript constitutes a true and correct
transcript of my stenotype notes.

**LoriAnne
Penn**

Digitally signed by
LoriAnnePenn
DN: CN = LoriAnnePenn, C =
US, O = Metro Court
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Date: 2006.07.18 23:29:43 -
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Dated: