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Reply To: Lansing

July 14, 2006

E-file

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

Re: 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

Enclosed for filing on behalf of The Michigan Exchange Carriers Association, Inc. are the following: (1) MECA's Brief in Response to Verizon's Motion for Summary Disposition; and (2) Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Ron Richards
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Date: 2006.07.14 14:35:10 -04'00'

Ronald D. Richards Jr.

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Enclosures

cc: James N. Rigas, Administrative Law Judge (via e-mail)
Emmanuel B. Odunlami (via e-mail)
Michael G. Oliva (via e-mail)
A. Randall Vogelzang (via e-mail)
Glen A. Schmiede (via e-mail)

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

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**MECA’S BRIEF IN RESPONSE TO
VERIZON’S MOTION FOR SUMMARY DISPOSITION**

The Michigan Exchange Carriers Association, Inc. (“MECA”), through its attorneys, Foster, Swift, Collins & Smith, P.C., files this response to Verizon’s¹ motion for summary disposition pursuant to the Commission’s Rules of Practice and Procedure, R 460.17103 and R 460.17335, and respectfully requests that the Commission deny Verizon’s motion for complete lack of merit. As explained below, MECA has standing to pursue this matter on behalf of its members (the Rural ILECs), and this Commission has jurisdiction over MECA’s application seeking redress on behalf of the Rural ILECs as to Verizon’s recalcitrance.²

¹ Verizon North, Inc. and Contel of the South *d/b/a* Verizon North Systems (Verizon).

² MECA’s 33 members are: Ace Telephone Company of Michigan, Inc., Allendale Telephone

BACKGROUND

A. The Parties and the Rural ILECs.

Applicant MECA is an association whose membership is comprised of 33 small incumbent local exchange carriers in Michigan who generally serve rural areas of the state (the Rural ILECs). The Rural ILECs provide basic local exchange service, toll access service, and local transport and termination service to other carriers to allow them to originate and/or terminate calls in the Rural ILECs' exchanges.

Respondent Verizon is a tandem company that has several tandems that interconnect with the Rural ILECs' end offices. Calls routed to, or from, many Rural ILECs' exchanges are routed through Verizon tandems. Verizon is also a toll provider that uses the switched toll access services of the Rural ILECs to terminate toll calls and, until approximately mid-2005, used the switched toll access services of many of the Rural ILECs to originate toll calls. Verizon further uses the local transport and termination services provided by the Rural ILECs to terminate local calls in areas where Verizon has Extended Area Service or Expanded Local Calling.

B. MECA's Representative Nature and Organizational Structure.

MECA is a voluntary association formed as a non-profit corporation on a non-stock basis.

Company, Baraga Telephone Company, Barry County Telephone Company, Blanchard Telephone Association, Inc., Bloomingdale Telephone Company, Inc., Carr Telephone Company, CenturyTel of Michigan, Inc., CenturyTel Midwest-Michigan, Inc., CenturyTel of Northern Michigan, Inc., CenturyTel of Upper Michigan, Inc., Farmers Mutual Telephone Company d/b/a Chapin Telephone Company, Chatham Telephone Company, Chippewa County Telephone Company, Communication Corporation of Michigan, The Deerfield Farmers Telephone Company, Drenthe Telephone Company, Hiawatha Telephone Company, Island Telephone Company, Kaleva Telephone Company, Lennon Telephone Company, Midway Telephone Company, Ogden Telephone Company, Ontonagon County Telephone Company, Pigeon Telephone Company, Sand Creek Telephone Company, Shiawassee Telephone Company, Springport Telephone Company, Upper Peninsula Telephone Company, Waldron Telephone Company, Westphalia Telephone Company, The Winn Telephone Company, and Wolverine Telephone Company.

It is organized on a membership basis pursuant to MCL 450.2302. (Affidavit of Agris Pavlovskis, Exhibit A). MECA's purpose is *to provide* information, *representation* and general assistance *to its members in* intercompany relations, *regulatory matters*, legislative matters, and general business matters relating *to rural telecommunications issues of interest to incumbent local exchange carriers and to administer tariffs filed by the Association on behalf of its members*. MECA not only has general expertise in telecommunication industry matters, but also has expert knowledge and information regarding the issues involved in this case; indeed, MECA has filed and administers 2 of the tariffs at issue in this dispute (MECA's MPSC Tariff No. 25 (access service) and MECA's MPSC Tariff No. 23 (local transport and termination service)). (Pavlovskis Affidavit, Exhibit A).

MECA's representation of the Rural ILECs here is nothing new. Since its inception in 1987, MECA has been extensively involved in representing the Rural ILECs before the Commission in a variety of matters, including administering the access and other tariffs that are filed on their behalf. Two other relevant examples are MPSC Case Nos. U-9590 and U-11298. MECA initiated Case No. U-9590 by filing an application on behalf of all of its members seeking authority to revise one of its tariffs to establish new rates and charges for access service. Several companies participated, including Verizon. Ultimately, Case No. U-9590 was resolved by settlement agreement, signed by MECA (on behalf of its members) and Staff and joined in by all other parties (including Verizon). That settlement agreement continued the use of the very same T/O ratios used to determine the access usage for billing during part of the time involved in the dispute at issue here. (See Order Approving Settlement Agreement, Case No. U-9590 (November 21, 1990); see also Pavlovskis Affidavit, Exhibit A). Similarly, MECA initiated Case No. U-11298 by filing a formal complaint, on behalf of the Rural ILECs, against Ameritech

arising from a dispute centered on Ameritech's similar attempt to impose changes in terminating access usage on the Rural ILECs, where Ameritech unilaterally tried to change the T/O ratios and to use ITAC to calculate new ones. (See Order Approving Settlement Agreement, Case No. U-11298 (June 25, 1997)).

Given MECA's representative purpose and nature, MECA has also been involved in the Rural ILECs' attempts to resolve the present dispute and to convince Verizon to pay all amounts due. (Pavlovskis Affidavit, ¶ 5). Indeed, at the request of several of the Rural ILECs, Verizon approached MECA to address many of the issues involved in this dispute. (See *id.*).

C. The Dispute, and MECA's Application on Behalf of the Rural ILECs.

The dispute to be resolved in this proceeding relates to measurement of usage, and payment of usage-based charges. Verizon refuses to pay charges billed by the Rural ILECs for (1) terminating toll access service, (2) local transport and termination service, (3) originating toll access service, and (4) billing and collection services performed in connection with originating toll access service.

Given Verizon's improper position on each of the four areas of dispute, MECA initiated this matter by filing an application to resolve the dispute with Verizon regarding measurement of usage and non-payment of usage-based charges. MECA's application made clear that it was filing this matter "on behalf of its members." (See MECA Application, Introductory Paragraph, p. 1). For relief, MECA sought, among other things, a declaration that the charges at issue are appropriately based on agreed-upon charges or the actual usage that is measured at the end offices of Rural ILECs, and to compel Verizon to pay the full amount of the bills rendered for these services. (See *id.* at pp. 13-14). MECA specified that, of its 33 member companies, it sought monetary relief on behalf of 12 of those 33 companies. (See D. McCartney Testimony,

Exhibit DSM-15 (filed in support of the MECA Application and listing the 12 companies).³

Verizon answered, and filed a motion for summary disposition claiming that MECA lacks standing to bring this action and that the Commission lacks jurisdiction over the allegations therein. Verizon's motion is completely baseless.

ARGUMENT

I. MECA HAS STANDING TO PURSUE ITS APPLICATION TO RESOLVE THE INSTANT DISPUTE ON BEHALF OF THE RURAL ILECS.

Verizon's motion erroneously claims that MECA lacks standing to pursue the instant application. For "support," Verizon cites various court and administrative decisions. Verizon's claim fails as contrary to case law and dependent on inapposite authority.

A. Standing Principles.

Michigan courts have recognized (for judicial economy and policy reasons) that associations are in a special position such that they may act on behalf of their members in legal proceedings. See e.g., *White Lake Improvement Ass'n v City of Whitehall*, 22 Mich App 262, 274; 177 NW2d 473 (1970); *Muskegon Bldg and Constr Trades v Muskegon Area Intermediate School Dist*, 130 Mich App 420; 343 NW2d 579 (1983), overruled on other grds, *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531; 565 NW2d 828 (1997); *Michigan Soft Drink Ass'n v Treasury Dep't*, 206 Mich App 392; 522 NW2d 643 (1994); *Telephone Ass'n of Michigan v PSC*, 210 Mich App 662; 534 NW2d 223 (1995); *In Re Filing Requirements*, 210 Mich App 681; 534 NW2d 234 (1995); *Michigan Trucking Ass'n v Michigan Public Service Comm*, 225 Mich App 424; 571 NW2d 734 (1997). Federal courts have similarly recognized the

³ Those 12 companies are: Blanchard Telephone Company; Bloomingdale Telephone Company; Carr Telephone Company; Chapin Telephone Company; Communication Corporation of Michigan; Deerfield Farmers Telephone Company; Ogden Telephone Company; Pigeon Telephone Company; Sand Creek Telephone Company; Upper Peninsula Telephone Company;

importance of association standing. See e.g., *National Motor Freight Ass’n, Inc v United States*, 372 US 246; 83 S Ct 688; 9 L Ed 2d 709 (1963); *Hunt v Washington State Apple Advertising Comm*, 432 US 333; 97 S Ct 2434; 53 L Ed 2d 383 (1977).

For an association to litigate the claims of another, the association must show 3 “general standing” requirements: (1) an injury in fact, (2) causal connection between the injury and the conduct complained of, and (3) the injury is redressable by a favorable decision. *Michigan Chiropractic Council v Comm’r of Office of Financial and Ins Svcs*, ___ Mich ___, at * 5; ___ NW2d ___ (June 28, 2006). The association must then show 2 additional “association standing” requirements: (1) that the party has a close relationship with the third party, and (2) evidence of a hindrance to the third party’s ability to protect his or her interests. See *id.* Standing requirements are not strictly applied in administrative proceedings, but applied liberally. See Order, MPCSC Case No. U-7117 (January 19, 1983); Order, MPSC Case No. U-9138 (November 10, 1988); Order, MPSC Case No. U-9174 (February 23, 1989); see also Order, MPSC Case No. U-10225 (May 21, 1993) (“[u]nlike a court of law, an administrative agency can allow participation whenever it finds that doing so will advance the public interest”).

B. MECA Meets All Applicable Association Standing Requirements.

1. MECA satisfies all general and association standing elements.

There can be no question MECA satisfies all requirements for association standing to bring the instant action. First, MECA satisfies the 3 general standing requirements. Failure to uphold MECA’s measurement and billing methodologies and correct Verizon’s improper conduct will injure MECA by allowing conduct contrary to the MECA tariffs that MECA filed on behalf of the Rural ILECs and which MECA maintains and administers. MECA has a direct

Westphalia Telephone Company; and Winn Telephone Company.

interest in having its tariffs enforced. Also, if barred from representing the Rural ILECs here, MECA will be deprived of serving one of the very purposes for which it exists: representing its members in regulatory matters. Such a result could also negatively impact MECA by leading to loss of membership. The Rural ILECs are also directly injured as Verizon's conduct has injured them economically through loss of toll access revenues, local transport and termination revenues, and billing and collection revenues.

A direct causal connection exists between the injuries to MECA and the Rural ILECs, and the conduct complained of in the Application. Considering, also, that a favorable decision from the Commission will redress those injuries by compelling Verizon to follow MECA's tariffs and properly compensate the Rural ILECs, the conclusion is obvious that MECA meets all 3 general standing requirements.

MECA also satisfies the 2 additional requirements for association standing. It is beyond dispute that MECA has the requisite close relationship with the Rural ILECs. Further, the "hindrance" element is met because preventing MECA from pursuing this matter on the Rural ILECs' behalfs (and requiring the Rural ILECs to become parties) would (a) undermine a core purpose of MECA's existence – representing the Rural ILECs in regulatory proceedings such as the instant one, (b) require the Rural ILECs to incur additional unnecessary expense, (c) ignore the fact that MECA has the unquestioned expertise necessary to pursue this matter on behalf of the Rural ILECs, and, in fact, MECA filed 2 of the tariffs that are a major part of this case, (d) be contrary to judicial economy and public policy, both of which warrant resolving the dispute in a single proceeding, and not through multiple, separate proceedings brought by the individual Rural ILECs, and (e) ignore the critical fact that MECA initiated on the Rural ILECs' behalf Case No. U-9590 and signed the settlement agreement in that case regarding the T/O ratios,

which is an intricate part of the present case.

Because MECA meets both general standing requirements and the additional association standing requirements, Verizon's challenge to MECA's standing is baseless.

2. Verizon's Argument Relies on Inapposite Authority.

None of the "authority" Verizon cites in its motion saves its motion from failing. Verizon cites the Commission's decision in *In Re Complaint of Michigan Cable Television Assoc*, MPSC Case No. U-7620 (January 29, 1985), but its reliance on that decision is misplaced for a few reasons. First, that order concerned a complaint case, unlike the instant application case. Second, the association in U-7620 had no assurances that its members would be bound by the outcome of the complaint; in contrast, MECA's members support MECA's representation of them in this action and therefore will be bound by the outcome of this case. (See Pavlovskis Affidavit, Exhibit A). Hence, the Order in U-7620 is inapposite. Indeed, for very similar reasons, this Commission in a proceeding following U-7620 deemed U-7620 irrelevant. See *In the Matter of the Application of Michigan Bell Telephone Co*, MPSC Case Nos. U-8083 *et seq.* (May 20, 1986) (where a party argued that an association lacked standing due to the Order in U-7620, the Commission disagreed and found the association to have standing; the Commission found U-7620 unpersuasive for similar reasons and refused to follow it).

Verizon also erroneously relies on *Mid-Michigan Farm and Grain Assoc, Inc v Henning*, 127 Mich App 735, 745-746; 339 NW2d 243 (1983). (Verizon Brief, p. 7). In that case, the Court found a non-profit corporation to lack standing to raise constitutional questions regarding tax waivers embodied in the Economic Development Corporations Act. The Court's decision was very narrow and cannot be expanded to apply here since the Court's ruling was based solely

on the statutory language not at issue there. See *id.* at 744.⁴ In any event, that case was not a decision of an administrative agency, where standing requirements are applied less stringently. See Order, MPSC Case No. U-7117 (January 19, 1983); Order, MPSC Case No. U-9138 (November 10, 1988); Order, MPSC Case No. U-9174 (February 23, 1989); see also Order, MPSC Case No. U-10225 (May 21, 1993).

Verizon also cites *Michigan Chiropractic Council, supra*, for the proposition that MECA lacks standing on the theory that it cannot show a “hindrance” limiting the Rural ILECs from pursuing their own claims separately. (Verizon Brief, p. 8). Verizon is wrong. MECA explained above the numerous hindrances that exist to the Rural ILECs’ pursuing their own claims in separate proceedings. See Argument II(B)(1), *supra*.⁵ In sum, the Commission should reject all “authority” Verizon cites, as irrelevant.

3. Relevant Authority Shows that MECA Has Standing.

Verizon’s argument not only relies on inapposite case law but also ignores that there are several relevant decisions from the Commission and Michigan courts that overwhelming establish that MECA has standing to bring the instant action. The following decisions reinforce MECA’s standing here.

In an administrative proceeding similar to the instant one, the Commission determined

⁴ The corporation plaintiff in *Mid-Michigan* claimed it had standing under the language in MCL 600.2041(3), allowing “an action to prevent the illegal expenditure of state funds or to test the constitutionality of a statute relating thereto may be brought in the name of a domestic nonprofit corporation” The Court ruled that the item the corporation sought to challenge, a tax waiver, was not an “expenditure” of state funds such that standing could not be based on MCL 600.2041(3). See *id.* at 744.

⁵ Verizon also cites *Friends of the Earth, Inc v Laidlaw Environmental Services*, 528 US 167; 120 S Ct 693; 145 L Ed 2d 610 (2000), arguing that MECA lacks standing “because both the claim and the relief sought mandate active participation of its members in the instant litigation.” (Verizon Brief, p. 7). Verizon’s argument is faulty because, although not as named parties, the Rural ILECs will as a practical matter actively participate in this matter, such as through

that an association of telephone companies had standing to pursue a matter on behalf of the association's member companies. In *In Re Michigan Bell*, Case Nos. U-8083 et seq. (May 20, 1986 Order), pp 39-43, *supra*, an association of telephone companies filed an application with the Commission, requesting authority to establish intrastate access charge tariffs for its member telephone companies. The Commission found that the association, acting in a representative capacity on behalf of its members, had standing to represent those members before the Commission. *In Re Michigan Bell* is directly applicable here. Like the association of telephone companies in that case, MECA is acting in a representative capacity on behalf of the Rural ILECs to which MECA provides services, in a matter properly before the Commission.

The Michigan Court of Appeals has also concluded that standing exists when a non-profit association represents their members to seek redress of a collective grievance of the members. *White Lake Improvement Ass'n v City of Whitehall*, *supra* at 274. In *White Lake*, the Court held that the plaintiff private non-profit association had standing to represent its riparian owner members in a suit to stop lake pollution, despite that the association owned no land. See *id.* at 272. The Court found particularly persuasive evidence that the association existed to represent its riparian owner members in litigation, and that the association representation was the most expedient way for riparian owners to obtain a determination on the merits:

“No constructive purpose would be served by requiring the members of the plaintiff association who are riparian owners to maintain this action individually and thereby require that they seek in some other fashion financial and other support from the other affected land owners. *Additionally, allowing the land owners to associate together for this purpose may avoid a multiplicity of suits*; the difficulties that are likely to be encountered where there are a large number of plaintiffs are all too familiar to anyone who has had experience in such litigation. *The most expedient way for the riparian owners to obtain a determination on the merits is to allow them to combine and join together for this purpose with others of a like interest under a single banner both before and at the*

discovery, etc.

time of suit: The only practical judicial policy when people pool capital, their interests, or their activities under a name and form that will identify collective interests, often is to permit the association or corporation in a single case to vindicate the interests of all.” [*White Lake*, *supra* at 272-273 (internal quotation and citation omitted) (emphasis added).]

See also *Michigan License Beverage Assoc v Behnan Hall, Inc*, 82 Mich App 319; 266 NW2d 808 (1978) (finding that an association may litigate its members’ interests, if the association is constituted for representative purposes, its corporate purpose related to litigation representation, the outcome of the adjudication will be binding upon those represented, and those to be affected by the litigation were given notice of the pending litigation and an opportunity to participate personally or through a representative).⁶

Like the plaintiff association in *White Lake*, MECA is a non-profit entity created to represent and advocate the interests of its members in regulatory proceedings. (See Pavlovskis Affidavit, Exhibit A (noting that MECA was constituted in its articles of incorporation and bylaws to represent its members in regulatory matters, and the members have authorized MECA to represent them in writing)). Indeed, since 1987, MECA has vigorously advocated on behalf of its members on numerous issues, including interconnection and the use of tariffs, before both the Commission and the Federal Communications Commission. MECA has also routinely assisted its members and provided subject matter expertise in negotiations with large telephone companies such as Verizon and AT&T Michigan. See MPSC Case Nos. U-9590 and U-11298. And 2 of the tariffs at issue here are tariffs MECA prepared, filed, and administers for the Rural ILECs.

⁶ Insofar as Verizon claims that MECA should not be permitted to proceed without the Rural ILECs being made a party since the Rural ILECs would not be bound by any such order, Verizon’s claim is off the mark. Each and every one of MECA’s members will be bound by a determination in this proceeding (see Pavlovskis Affidavit), and it is ridiculous for Verizon to suggest otherwise. If MECA is allowed to represent their interests, then they are bound.

Moreover, since MECA was organized to protect the rights and interests of its members and since MECA's tariffs are directly involved in this case, MECA has a direct interest in Verizon's full compliance with tariffs filed by MECA on behalf of its members, assuring vigorous representation of the Rural ILEC's interests. *Michigan License Beverage, supra* (standing is the legal term used to assure sincere and vigorous advocacy). In fact, absent Verizon's full compliance with the tariffs, MECA's very existence (dependent on the Rural ILECs' continued existence) may be in question as there is an increased risk of membership loss. In legal terminology, MECA will "wither or die" if it is unable to effectively protect its members. *Muskegon Trade, supra*, at 428. Finally, the outcome of this matter will be binding on the Rural ILECs (Pavlovskis Affidavit), and they were each given notice and an opportunity to participate; they opted to have MECA represent them as more efficient. (See *id.*).

Under the relevant facts and applicable authority above, the Commission should conclude that MECA satisfies all standing requirements and has properly brought the instant action. See *White Lake, supra*; *Michigan License Beverage, supra*; *In Re Michigan Bell*, Case Nos. U-8083 et seq. (May 20, 1986 Order), pp 39-43, *supra*; see also *In Re Filing Requirements, supra*, 210 Mich App at 691-692 (specifically holding that MECA itself had standing to appeal a Commission decision because MECA's "members have a substantial interest" in issues on appeal that are affected in a "manner different than the citizenry at large").

C. MECA Has Standing Regardless of Whether the Proceeding is Considered an "Application Case" or a "Complaint Case."

Verizon asserts that there is a "stricter" standing requirement of associations in "complaint cases" than in "application cases." (Verizon's Brief, pp. 2-3). Verizon then posits that this case is really a "complaint case," not an "application case," and that MECA does not meet the "stricter" standing requirement in complaint cases. This argument does not affect the

conclusion that MECA has standing here.

As a preliminary matter, MECA properly initiated this action on behalf of the Rural ILECs with an application since the Rural ILECs and Verizon are telecommunications providers. See MCL 484.2204 (allowing a telecommunications provider to file with the Commission an “application” to resolve a dispute between 2 or more telecommunication providers relating to a regulated telecommunication service). MCL 484.2204. Also, Verizon cites no authority to support its bold claim that the label given to the initial pleading in a case is determinative of standing. In any event, MECA set forth the controlling principles of association standing above, and explained that all relevant standing requirements are met. The Commission should reject this Verizon argument as a red herring that is simply irrelevant.

D. Even If the Commission Determines that MECA Lacks Standing, the Proper Remedy is Not Dismissal But Instead to Order the Rural ILECs Joined as Parties.

Even if the Commission finds that MECA lacks standing, Verizon is wrong in suggesting that the proper remedy is dismissal with prejudice. (Verizon Brief, p. 8). The proper remedy is instead is to require the missing parties to be joined. See MCR 2.207 (proper remedy for misjoinder is to order the necessary parties to be made parties to the case); see also MCR 2.205(B) (effect of failure to join necessary parties is to order them parties); MCR 2.207 (allowing parties to be added by court order on the court’s own initiative at any stage of the action). Thus, if the Commission finds that MECA lacks standing as an association to bring this matter in a representative capacity, the Commission should merely order all 33 Rural ILECs to be joined as parties.

E. Verizon’s Argument Regarding Severing This Single Case Into 33 Separate Cases is Procedurally Infirm as Premature, and Substantively Infirm as Contrary to Public Policy and Judicial Economy.

Although less than clear, Verizon apparently suggests that if this matter progresses to a hearing, regardless of whether MECA is permitted to pursue this case on the Rural ILECs’ behalves or whether all Rural ILECs are ordered to participate as parties, the Commission should sever this case into 33 separate hearings and hear each individual Rural ILECs’ dispute with Verizon separately. (Verizon Brief, p. 8). Verizon’s suggestion is entirely premature, and procedurally improperly raised. The proper time and method to raise such an argument is not through its motion for summary disposition.

Regardless, Verizon’s “request” for separate hearings for each of the Rural ILECs is absurd, and would completely obliterate any semblance of judicial economy and public policy. Principles of judicial economy overwhelmingly support resolving the claims of all of the Rural ILECs in one proceeding. MCR 2.206. The same occurrence or series of occurrences is involved here, i.e. Verizon’s attempts to impose its own ITAC methodology on the Rural ILECs and Verizon’s failure to identify and pay for traffic that it sends to the Rural ILECs. There are also numerous common questions of law and fact, as this proceeding involves issues that are common to all the Rural ILECs, including the proper methodologies for traffic identification, measurement, and billing to be used in the Rural ILECs’ exchanges and at Verizon’s tandems statewide. It involves traffic sent from Verizon’s tandems to AT&T Michigan’s tandems to be terminated by the company where the called party resides — which can be in any one of the Rural ILECs’ service areas. Further, MECA has already done an excellent job of coordinating the presentations of all its members. Should the Commission order all Rural ILECs joined as parties, the Rural ILECs’ presentations will be coordinated in order to avoid unnecessary delay

or complication of the proceedings.

Public policy favors keeping the claims of these small rural telephone companies in one proceeding where they are not as likely to be bullied by Verizon and the vast resources that can be brought to bear by such a large litigant. Verizon's assertions that the case should be dismissed and that each MECA member should be forced to pursue its claims independently is a thinly veiled attempt to "divide and conquer." To put it simply, hearing their claims in one proceeding will promote the convenient administration of justice. See *White Lake, supra* at 272-273 (recognizing judicial economy and public policy benefits to allowing an association to pursue a matter in a single proceeding on behalf of its members).

Verizon has correctly pointed out that only twelve of MECA's 33 members have made claims for monetary compensation at this time.⁷ Yet this does not support segregating the hearings. A single proceeding is appropriate, despite that only 12 members seek monetary relief here, since many of the Rural ILECs terminate expanded local calling traffic from Verizon and most terminate at least some of Verizon's toll calls when a Verizon customer makes a long distance call to an end user in the MECA member's service area, which can happen at any time. While the amounts for these companies are smaller and did not justify specific claims in this proceeding, the monetary interest does, in fact, exist. And the reality is that there is no requirement that all Rural ILECs seek all of the same relief; in fact, the rule is the opposite - that only some of the 33 Rural ILECs seek monetary relief does not prevent hearing all of the members' disputes in a single forum. MCR 2.206 (a plaintiff need not be interested in obtaining all the relief demanded).

Thus, a single proceeding is appropriate — regardless of whether it is captioned in

⁷ See footnote 3 for a list of those 12 companies.

MECA's name or in the name of the Rural ILECs (or both), and regardless of whether it is deemed to be a complaint or a application-type proceeding. MECA takes the position that no changes need be made to the parties or the caption, but if the Commission deems it necessary or appropriate to render complete relief, then the proper remedy is to continue forward with MECA and the Rural ILECs as named parties.

F. The Commission Can Order Monetary Damages With MECA Serving as Representative.

The Commission should also reject Verizon's claim that monetary damages cannot be ordered if a MECA member is not a "party" to the case. First, all the Rural ILECs are involved in this case since the application was filed on their behalf. Second, the Rural ILECs will be bound by the ruling in this matter. (See Pavlovskis Affidavit, Exhibit A).

Third, Verizon's position would place form over substance: All the Rural ILECs are specifically identified in the initial filing, and those companies with specific monetary claims are also identified. There is no surprise or lack of notice to Verizon. Verizon is essentially asserting that each company with a claim for monetary compensation must be a "named" party—apparently in the caption of the case. While we disagree, particularly given the affidavit assertions that the Rural ILECs will be bound by the ruling in this case (see *id.*), if the Commission were to accept Verizon's argument, then the proper remedy is not to dismiss or sever the case but to add the individual companies as named parties. MCR 2.205; MCR 2.207. Each member can be added to the caption and aligned with MECA as co-applicant/complainants. They each will join in the application as filed, and the already-filed testimony and exhibits will be presented on their behalf.

II. THE COMMISSION HAS STATUTORY JURISDICTION.

Verizon argues that the Commission lacks jurisdiction over MECA's application on the

ground that the Commission can only hear complaints between telecommunication providers and customers, and MECA is neither a telecommunications provider nor a customer of Verizon. (MECA Brief, p. 9). This argument should be rejected.

Verizon itself admits that the Commission has statutory authority to resolve disputes between providers. (See Verizon Brief, p. 9). The instant dispute is between the Rural ILECSs (on whose behalves MECA is acting) and Verizon. Since the Rural ILECs (telecommunications providers) filed the case through MECA to resolve a dispute with Verizon (a telecommunications provider), the Commission has jurisdiction. MCL 484.2203-2205, MCL 484.2305a.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, MECA respectfully requests that the Commission deny Verizon's motion. Alternatively, if the Commission finds that the Rural ILECs must be parties, then MECA (with the members' consent) asks that they be added as parties who adopt the previously-filed application and testimony as their own.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Ron Richards

Digitally signed by Ron Richards
DN: cn=Ron Richards, c=US, o=Foster Swift
Date: 2006.07.14 14:36:40 -04'00'

Dated: July 14, 2006

By:

Glen A. Schmiede (P37112)
Mark J. Burzych (P43793)
Ronald D. Richards Jr. (P61007)
313 South Washington Square
Lansing, MI 48933
(517) 371-810

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

Glen A. Schmiede (P37112)
Ronald D. Richards Jr. (P61007)
FOSTER, SWIFT, COLLINS & SMITH, P.C.
313 South Washington Square
Lansing, MI 48933
(517) 371-8100

EXHIBIT A

AFFIDAVIT OF AGRIS PAVLOVSKIS

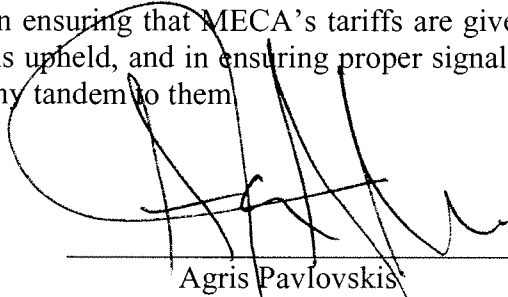
I, Agris Pavlovskis, being duly sworn, state:

1. I have personal knowledge of the facts set forth below, and I am competent to testify to them as a witness.
2. I am President of the Michigan Exchange Carriers Association, Inc. (MECA).
3. I have been employed by MECA for nearly 18 years and am familiar with MECA's corporate status, the members of the association, and telecommunications issues of interest to them and MECA. I have testified before the Michigan Public Service Commission previously.
4. MECA is an association whose membership is comprised of 33 small incumbent local exchange carriers in Michigan (the Members or Rural ILECs). MECA is a voluntary association formed as a non-profit corporation on a non-stock basis. It is organized on a membership basis under state law.
5. MECA's purpose is to provide information, representation and general assistance to its Members in intercompany relations, regulatory matters, legislative matters, and general business matters relating to rural telecommunications issues of interest to incumbent local exchange carriers and to administer tariffs filed by the Association on behalf of its Members. MECA has expert knowledge and information regarding the issues involved in this case (U-14905) and many aspects of the telecommunications industry. MECA has filed and administers MECA's MPSC Tariff No. 25 (access service) and MECA's MPSC Tariff No. 23 (local transport and termination service). MECA also addresses general access and inter-company issues between the Rural ILECs and other providers. MECA has been involved in the Rural ILECs' attempts to resolve the dispute with Verizon that is at the center of MPSC Case No. U-14905, and to convince Verizon to pay all amounts due. At the request of several MECA Members, Verizon approached MECA to address many of the issues involved in the dispute. MECA negotiated in good faith and attempted to reach an agreement on the issues, but Verizon and MECA did not reach an agreement.
6. MECA has been involved in many proceedings at the Commission on behalf of its Members, including Case No. U-11298, which MECA initiated by filing a formal complaint on behalf of the Rural ILECs against Ameritech arising out of Ameritech's attempt to impose changes in terminating access usage on the Rural ILECs and unilaterally change the T/O ratios and use ITAC to calculate new ones, similar to Verizon's attempts here. MECA also filed Case No. U-9590 on behalf of its Members, which is the case MECA initiated on behalf of its Members and which resulted in the settlement agreement—signed by MECA on behalf of its Members and joined in by Verizon—that continued the use of the T/O ratios

that were used to determine the access usage for billing during a portion of the time involved in the dispute at issue here.

7. Since 1987, MECA has vigorously advocated on behalf of its Members on numerous issues, including interconnection and the use of tariffs, before the Michigan Public Service Commission and the Federal Communications Commission. For the past 19 years, MECA has routinely assisted its Members and provided subject matter expertise in negotiations with large telephone companies such as Verizon and AT&T Michigan. Indeed, MECA prepared and filed tariffs at issue in U-14905 (MECA's MPSC Tariff No. 25 and MPSC Tariff No. 23), with MECA acting as tariff administrator for its Members.
8. MECA was constituted in its articles of incorporation and bylaws to represent its Members in regulatory matters or litigation before regulatory bodies; and the Members have authorized MECA in writing to initiate and represent them in Case No. U-14905, and to resolve the dispute with Verizon in U-14905. MECA's Members are aware of the proceeding that is U-14905. By pursuing this matter through MECA, MECA's Members have committed to being bound by the outcome in U-14905. The MECA Members were given notice of the pending matter in U-14905 and an opportunity to participate personally or through representation, and have opted to have MECA represent them.
9. Resolution of issues relating to identification of traffic, measurement, and billing will affect all MECA's Members when traffic is routed to or from them through a Verizon tandem. Most telecommunications traffic throughout the state is routed to and from tandems, including Verizon's tandems. Twelve of MECA's Members have made claims for monetary relief in this proceeding due to the very significant amounts of traffic that flowed and is flowing between them and Verizon—either through a tandem or over direct trunks. With the exception of 5 Members that provide service exclusively in the Upper Peninsula, the remaining Members are located in LATAs where Verizon has tandems that route telecommunications traffic to or from them on occasion. Even when a Member does not subtend a Verizon tandem within the same LATA, some intraLATA telecommunications traffic is routed through one of Verizon's tandems to the tandem that the Member subtends and to the Member. These Members have the right to bill Verizon for intraLATA traffic and are affected by Verizon's attempts to use ITAC. Members outside a LATA where Verizon has a tandem have an interest in ensuring that MECA's tariffs are given effect, in ensuring that their billing methodology is upheld, and in ensuring proper signaling and call identification for calls passing through any tandem to them.

Further, affiant sayeth not.



Agris Pavlovskis

Subscribed and sworn to before me, this 17th day of July, 2006

Ida Buntin

Notary Public, State of Michigan, County of Ingham
My Commission Expires 10-22-2012

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IDA BUNTIN
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF INGHAM
My Commission Expires Oct. 22, 2012
Acting in the County of Ingham

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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
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Case No. U-14905

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CERTIFICATE OF SERVICE

Ronald D. Richards Jr., being duly sworn, deposes and says that he is an employee of Foster, Swift, Collins & Smith, P.C., and that on July 14, 2006, copies of: (1) **MECA's Brief in Response to Verizon's Motion for Summary Disposition**, and (2) this Certificate of Service, were served by electronic mail upon:

See Attached Service List

The above statements are true to the best of my knowledge, information, and belief.

Ron Richards Digitally signed by Ron Richards
DN: cn=Ron Richards, c=US, o=Foster Swift
Date: 2006.07.14 14:37:22 -04'00'

Ronald D. Richards Jr.

Michigan Public Service Commission
Case No. U-14905
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Page 1 of 1

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