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June 30, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

**Re: The Michigan Exchange Carriers Association, Inc., v. Verizon North, Inc. and
Contel of the South d/b/a Verizon North Systems, MPSC Case No. U-14905**

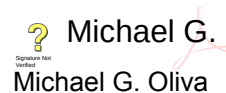
Dear Ms. Kunkle:

Enclosed for electronic filing on behalf of Respondents in the above-captioned case is a **Response of Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems, Motion for Summary Disposition and Brief in Support of Motion for Summary Disposition**. Also enclosed is a Proof of Service

Should you have any questions, please kindly advise.

Very truly yours,

LOOMIS, EWERT, PARSLEY,
DAVIS & GOTTING, P.C.

 Michael G. Oliva
Michael G. Oliva

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Enclosures
cc w/ enc.: Parties of Record
Emmanuel Odunlami

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of
**THE MICHIGAN EXCHANGE
CARRIERS ASSOCIATION, INC.**
Complainants

MPSC Case No. U-14905

Vs.

**VERIZON NORTH, INC. and
CONTEL OF THE SOUTH
d/b/a VERIZON NORTH SYSTEMS**
Respondents

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss.
INGHAM COUNTY)

Karen Culton, being duly sworn, deposes and says that on the June 30, 2006, she served a true copy of the **Response of Verizon North, Inc. and Contel of the South, Inc. d/b/a Verizon North Systems, Motion for Summary Disposition and Brief in Support of Motion for Summary Disposition** upon the attached service list by electronic mail.

 **Karen Culton**
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Karen M. Culton

Subscribed and sworn to before me on
the 30th day of June, 2006.

 **Jennifer Ottney**
Digitally signed by Jennifer Ottney
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Jennifer L. Ottney
Ingham County, Michigan
Acting in the County of Ingham
My commission expires: 10/02/10

SERVICE LIST
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**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

**THE MICHIGAN EXCHANGE
CARRIERS ASSOCIATION, INC.,
Complainant,**

vs

MPSC No. U-14905

**VERIZON NORTH INC. and
CONTEL OF THE SOUTH, INC
d/b/a VERIZON NORTH SYSTEMS,
Respondent.**

**RESPONSE OF VERIZON NORTH INC.
AND CONTEL OF THE SOUTH, INC.
d/b/a VERIZON NORTH SYSTEMS**

VERIZON NORTH INC. and CONTEL OF THE SOUTH, INC., d/b/a VERIZON NORTH SYSTEMS (“VERIZON NORTH”) respond to the Complaint (styled as an “Application”) of THE MICHIGAN EXCHANGE CARRIERS ASSOCIATION, INC. (“MECA”) as follows:

In response to the initial, unnumbered paragraph of the Complaint, Verizon North denies that MECA has standing to bring this Complaint on behalf of its members. Verizon North denies that there is any dispute between Verizon North and MECA with respect to the subject matter of the Complaint, and further denies that there is any dispute between Verizon North and the majority of the Rural ILECS who are members of MECA with respect to the subject-matter of the Complaint. As to those Rural ILECS with which Verizon North has a dispute, Verizon denies that it has refused to pay charges lawfully billed for (1) terminating toll access service, (2) local transport and termination service, (3) originating toll access service or (4) billing and collection services performed in connection with originating toll access service. In support of such

denial, Verizon affirmatively avers that the Rural ILECs with which it has a dispute have unlawfully and fraudulently charged Verizon for non-existent and phantom (1) terminating toll access service, (2) local transport and termination service, (3) originating toll access service, and (4) billing and collection service performed in connection with originating toll access service, all contrary to and in violation of the existing contractual and/or tariff arrangements between each such Rural ILEC and Verizon North. Further answering, Verizon North affirmatively avers that it has been substantially overcharged for such services and has substantially overpaid such unlawful and fraudulent charges, in violation of and contrary to the existing contractual and/or tariff arrangements between each such individual Rural ILEC and Verizon North.

THE PARTIES

1. In response to Paragraph 1, Verizon North admits that MECA claims it is an association, but neither admits nor denies the remaining allegations in Paragraph 1, being without knowledge or information sufficient to form a belief as to the truth thereof.
2. In response to Paragraph 2, Verizon North admits same.

JURISDICTION

3. In response to Paragraph 3, Verizon North denies same. In support of such denial, Verizon North affirmatively avers that MECA (1) is not a telecommunications provider as defined in and within the meaning of the Michigan Telecommunications Act, 1991 PA 179, *as amended* MCL 484.2101 *et seq* (the “MTA”), (2) is not a customer of Verizon North, and (3) does not have any interest that falls within the intended scope of protection of the MTA, and

that, accordingly, MECA lacks standing to bring the Complaint, and the Commission lacks jurisdiction to hear the Complaint. Further answering, Verizon North affirmatively avers that, to the extent the subject matter of the Complaint concerns the inability of providers to agree on arrangements for interconnection, the same is not properly the subject matter of a Complaint before this Commission even if brought by such providers individually, but is required to be resolved by Arbitration.

THE DISPUTE

4. In response to the first sentence of Paragraph 4, Verizon North neither admits nor denies same, being without information sufficient to form a belief as to the truth thereof. In response to the second sentence of Paragraph 4, Verizon North admits that it is a tandem company, and that it has several tandems that interconnect with some Rural ILEC end offices, as that term is defined in the Complaint, but Verizon North denies that it has tandems that interconnect with all of the Rural ILEC end offices as that term is defined in the Complaint. In response to the third sentence of Paragraph 4, Verizon North admits same. In response to the fourth sentence of Paragraph 4, Verizon North admits that it is a toll provider and that it uses the switched toll access services of other ILECs to terminate calls and, until mid-2005, used the switched toll access services of some Rural ILECs to originate too toll calls, but it denies that it used such services of all Rural ILECs. In response to the fifth sentence of Paragraph 4, Verizon North admits that it uses local transport and termination services provided by some Rural ILECs to terminate local calls in areas where Verizon

has Extended Area Service or Expanded Local Calling, but denies that it has such service with all Rural ILECs.

5. In response to Paragraph 5, Verizon North denies same. In support of such denial, Verizon North denies that it has any dispute with MECA with respect to the subject matter of the Complaint, and Verizon North denies that MECA has any legal authorization or authority to act as agent or attorney for those individual Rural ILECS with which there is a dispute between them and Verizon North.

TERMINATING TOLL ACCESS

6. In response to Paragraph 6, Verizon North makes no answer to the legal conclusions thereof, no answer being required.
7. In response to Paragraph 7, Verizon North makes no answer to the legal conclusions thereof, no answer being required. Further answering, Verizon North admits that terminating minutes of use were being billed based on a Terminating to Originating ("T/O") Ratio prior to the time that measured actual usage was available pursuant to contractual arrangements between Verizon North and individual Rural ILECS which predated the Settlement Agreement in MPSC Case No. U-9590, but Verizon North avers that certain Rural ILECs continued to bill Verizon North based on T/O Ratios for terminating toll access after such time as measured toll access was available to such Rural ILECs, resulting in billings to Verizon North for non-existent, phantom toll terminating toll access, in violation of such contractual arrangements. Further answering, Verizon North avers that the Settlement Agreement in MPSC Case No. U-9590

does not modify the obligation of the parties to utilize actual, rather than estimates, of terminating minutes of use once actual data became available.

8. In response to Paragraph 8, Verizon North denies that its communications on billing or any of allegations in this paragraph were to all MECA companies or to MECA,, but it admits the remaining allegations on the paragraph. Further answering, Verizon North affirmatively avers that its actions were consistent with, and pursuant to, the terms of the contractual arrangements for terminating toll access with each of the affected Rural ILECs.
9. In response to Paragraph 9, Verizon North admits that charges should be based on actual usage.. In response to the remaining sentences thereof, Verizon North admits same, but avers that, on information and belief, many of the Rural ILECs have had the capability to bill based on actual, rather than estimated terminating toll access, for many years, and that they continued to bill Verizon North based on T/O ratios for terminating minutes of use that they knew or should have known, were non-existent, resulting in substantial and fraudulent overcharges to Verizon North, and that the billings being submitted under the “RUM” methodology by such Rural ILECs is neither industry standard nor accurate in reflecting actual usage, resulting in continuing overcharges to Verizon North.
10. In response to Paragraph 10, Verizon North admits same.
11. In response to Paragraph 11, Verizon North neither admits nor denies that the Residual Usage Methodology (“RUM”) is based on actual usage, being without information sufficient to form a belief as to the truth thereof. Verizon North denies

that RUM is the appropriate methodology for billing Verizon for terminating toll access service.

12. In response to Paragraph 12, Verizon North admits that it has utilized the IntraLATA Terminating Access Compensation ("ITAC") billing system for billing and payment of terminating toll access, and admits that it has not utilized other alternatives. Verizon North denies that such other alternatives would be "appropriate" under all the facts and circumstances, or that it is required to offer or provide any such other alternatives.
13. In response to the first three sentences of Paragraph 13, Verizon North neither admits nor denies the same, being without knowledge or information sufficient to form a belief as to the truth thereof. In response to the fourth sentence of Paragraph 13, first admits same. In response to the fourth sentence of Paragraph 13, Verizon admits that it has not installed dedicated trunks over which 100% of its calls would travel.
14. In response to the first sentence of Paragraph 14, Verizon North admits same as to Verizon North, but neither admits nor denies same as to any other toll carrier, being without knowledge or information sufficient to form a belief as to the truth thereof. Verizon North denies the second through fourth and sixth sentences of Paragraph 14, as untrue. In response to the fifth sentence of Paragraph 14, Verizon North admits same, but avers that information about calls for which Verizon North is the toll carrier is transmitted to the Rural ILECS through the ITAC process.

15. In response to Paragraph 15, Verizon North admits that it has the ability to identify all calls including its own, but denies that it has failed to do so.
16. In response to the first sentence of Paragraph 16, Verizon North admits that it is utilizing ITAC for billing terminating toll, but denies that it is attempting to “dictate” the same. Verizon North denies the second sentence of Paragraph 16 as false. In response to the third sentence of Paragraph 16, Verizon North makes no answer to the legal conclusion thereof.
17. In response to Paragraph 17, Verizon North makes no answer to the legal conclusions thereof. In response to the last sentence thereof, Verizon North denies the same as false.
18. In response to Paragraph 18, Verizon North admits the first two sentences thereof, except that Verizon denies that it has “attempted to unilaterally implement” the use of the ITAC methodology, and denies that it has made retroactive changes to bills rendered prior to February 2005, and affirmatively avers that it has demanded reparations and refunds for amounts improperly, illegally and fraudulently billed to it. In response to the third sentence of Paragraph 18, Verizon North denies same as false, and affirmatively avers that it is owed substantial amounts for overcharges. The other allegations in the paragraph are denied.
19. In response to Paragraph 19, Verizon North denies the same as false.
20. In response to Paragraph 20, Verizon North denies the same as false.
21. In response to Paragraph 21, Verizon North denies the same as false.

- 22. In response to the first sentence of Paragraph 22, Verizon North denies the same as false. In response to the second sentence, Verizon North makes no answer to the legal conclusions thereof, no answer being required.
- 23. In response to Paragraph 23, Verizon North denies the same as false.
- 24. In response to Paragraph 24, Verizon North makes no answer to the legal conclusions thereof, no answer being required.

LOCAL TRANSPORT AND TERMINATION SERVICE

- 25. In response to Paragraph 25, Verizon North neither admits nor denies same, being without knowledge or information sufficient to form a belief as to the belief thereof.
- 26. In response to Paragraph 26, Verizon North admits same.
- 27. In response to Paragraph 27, Verizon North makes no answer to the legal conclusions thereof, no answer being required.
- 28. In response to Paragraph 28, Verizon North denies same.
- 29. In response to Paragraph 29, Verizon North denies the same as false.
- 30. In response to Paragraph 30, Verizon North makes no answer to the legal conclusions thereof, no answer being required.

ORIGINATING TOLL ACCESS

- 31. In response to Paragraph 31, Verizon North neither admits nor denies the first two sentences thereof being without knowledge or information sufficient to form a belief as to the belief thereof. In response to the third sentence thereof, Verizon North denies that, after Verizon North discontinued intra-LATA toll service to

certain Rural ILECs, that such ILECs billed Verizon for such service under MECA Tariff MPSC No. 25.

- 32. In response to Paragraph 32, Verizon North denies the same as false.
- 33. In response to Paragraph 33, Verizon North admits same.
- 34. In response to Paragraph 34, Verizon North makes no answer to the legal conclusions thereof, no answer being required.

BILLING AND COLLECTION

- 35. In response to Paragraph 35, Verizon North admits the first two sentences thereof. In response to the third sentence thereof, Verizon North denies that, after deregulation of billing and collection services and removal of such services from the MECA tariff, that the "Agreement for the Provision of Telecommunications Services and Facilities", which incorporates the terms of the MECA Access Tariff, was applicable to such services. Further answering, Verizon North denies that any such services were provided in connection with service to Rural ILECS for which Verizon North terminated intra-LATA toll service after the date of such termination.
- 36. In response to Paragraph 36, Verizon North admits same.
- 37. In response to Paragraph 37, Verizon North admits same.
- 38. In response to Paragraph 38, Verizon North admits same
- 39. In response to Paragraph 39, Verizon North makes no answer to the legal conclusions thereof, no answer being required.
- 40. In response to Paragraph 40, Verizon North makes no answer to the legal conclusions thereof, no answer being required.

AMOUNTS DUE

41. In response to Paragraph 41, Verizon North denies the same as false. Further answering, Verizon North avers that it has substantially overpaid those Rural ILECs which are now claiming amounts due.
42. In response to Paragraph 42, Verizon North admits that Complainant has filed testimony and exhibits of Mr. David S. McCartney and Mr. David F. Freeman in connection with the Complainant, but denies that such testimony and exhibits support the claims made in the Complaint.

AFFIRMATIVE DEFENSES

In further response, Verizon North interposes the following affirmative defenses:

- A. **Lack of Standing - MECA.** Complainant MECA lacks standing to seek, on behalf of its members, specific monetary relief for amounts allegedly owing by Verizon to such members, or to seek declaratory relief on their behalf. MECA does not allege that it is a customer of Verizon or that it is affected, by any matter contained in the Complaint.
- B. **Lack of Standing - Agent or Attorney for Individual Rural ILECS.** Complainant MECA has failed to allege that it possesses authority to represent the claims of any individual Rural ILEC with respect to the individual claims sought to be presented in this Complaint. Further, on the face of the Complaint, approximately two-thirds of the members of MECA make no claim whatsoever against Verizon North, and there appears to be no case or controversy between such companies and Verizon North. Finally, many of the members of MECA would have no claim whatsoever against Verizon North in any event, because

they are not customers of Verizon North, and Verizon North is not a customer of them, for any telecommunications service.

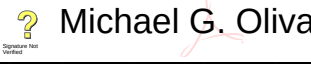
- C. **Failure to Join Necessary Parties.** MECA, lacking standing to bring a complaint for specific monetary relief to individual Rural ILECS, has failed to join such Rural ILECs as parties, notwithstanding that they are necessary parties. Absent such joinder, none of the Rural ILECs would be bound by any final order of this Commission as to the issues sought to be presented in this Complaint.
- D. **Misjoinder.** Although the claims which MECA seeks to make may involve certain common issues of law as to the individual Rural ILECs who seek to make claims in this complaint, they involve entirely separate issues of fact as to each such Rural ILEC. Accordingly, even if each individual Rural ILEC were to bring a separate complaint against Verizon North, it would be improper and contrary to the convenient administration of justice to join or consolidate such individual complaints in a single proceeding.
- E. **Failure to State a Prima Facie Case.** The Complaint fails to state a prima facie case against Verizon North under the Commission's Rules of Practice and Procedure.
- F. **Failure to Conform to Commission Rules.** The Complaint fails to conform to the requirements of the Commission's Rules of Practice and Procedure.
- G. **Offset.** Verizon North has a right of offset against the amounts claimed as damages by Complainant on behalf of the individual Rural ILECs, for past overcharges by each such individual Rural ILEC, and for amounts owing by each such Rural ILEC to Verizon North.

H. **Additional Defenses.** Verizon North reserves the right to amend its response to raise such additional defenses as may be supported by the law and facts.

Date: June 30, 2006

Respectfully Submitted

VERIZON NORTH INC.
CONTEL OF THE SOUTH, INC.
d/b/a VERIZON NORTH SYSTEMS

By  **Michael G. Oliva**
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

**THE MICHIGAN EXCHANGE
CARRIERS ASSOCIATION, INC.
Complainant**

MPSC Case No. U-14905

Vs.

**VERIZON NORTH INC. and
CONTEL OF THE SOUTH, INC.
d/b/a VERIZON NORTH SYSTEMS
Respondents**

MOTION FOR SUMMARY DISPOSITION

**VERIZON NORTH INC. AND CONTEL OF THE SOUTH, INC., d/b/a
VERIZON NORTH SYSTEMS** (“Verizon North” or “Respondents”) move, pursuant Rule 501, R460.17501 of the Commission’s Rules of Practice and Procedure, to dismiss the Complaint (styled as an “Application”) of The Michigan Exchange Carriers Association, Inc., for the reasons set forth in the attached Brief in Support of Motion for Summary Disposition.

Respectfully Submitted
**VERIZON NORTH INC.
CONTEL OF THE SOUTH, INC.
d/b/a VERIZON NORTH SYSTEMS**

Dated: June 30, 2006

By:

 **Michael G. Oliva**
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

**THE MICHIGAN EXCHANGE
CARRIERS ASSOCIATION, INC.**

Complainant

MPSC Case No. U-14905

Vs.

**VERIZON NORTH INC. and
CONTEL OF THE SOUTH, INC.,
d/b/a VERIZON NORTH SYSTEMS
Respondents**

BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

VERIZON NORTH INC. and CONTEL OF THE SOUTH, INC. d/b/a VERIZON NORTH SYSTEMS ("Verizon North" or "Respondents") move to dismiss the Complaint, (styled as an "Application") in this case, initiated by THE MICHIGAN EXCHANGE CARRIERS ASSOCIATION, INC. ("MECA" or "Complainant"), pursuant to the Commission's Rules of Practice and Procedure, R 460.17103; 17323, and Michigan Rule of Court MCR 2.116(C)(1)(4)(5)(8)(10); 2.206(B); 2.207, and other applicable rules and laws.

This action is a Complaint, styled as an "Application", in which MECA is attempting to present certain claims and to obtain specific declaratory and monetary relief from Verizon North on behalf of twelve (12) of its member Rural ILECs. MECA lacks the legal capacity to sue and has no standing to bring this Complaint. Further, the Commission lacks jurisdiction over this case because, although it is empowered by the Michigan Telecommunications Act, 1991 PA 179, *as amended*, MCL 484.2101 *et seq.* ("MTA") to

hear complaints, its jurisdiction to hear complaints is limited to complaints involving disputes between telecommunications providers and their customers, or between telecommunications providers, and not by disinterested third parties. MECA is neither a telecommunications provider nor is it a customer of Verizon North. Further, to the extent MECA's complaint is viewed as one seeking declaratory rulings under Section 64 of the Michigan Administrative Procedures Act, 1969 PA306, *as amended*, MCL 24,264, the same is still subject to standing requirements, which MECA cannot satisfy.

DISCUSSION:

I. THE COMMISSION APPLIES A DIFFERENT, AND STRICTER STANDING REQUIREMENT ON ASSOCIATIONS IN COMPLAINT CASES THAN IN CASES INVOLVING APPLICATIONS

Although associations such as MECA are frequently parties to proceedings before the Commission, the Commission has carefully distinguished the permitted association participation in a quasi legislative proceedings, or Application proceedings, from the dissimilar participation of an association in a quasi judicial proceedings where it would be acting on behalf of its members as a Complainant. *Re Michigan Bell Tel Co*, 75 PUR4th 349 (MPSC No U-8083, May 20, 1986; *In Re Complaint of Michigan Cable Television Assoc*, MPSC No U-7620 (January 29, 1985).] Thus, although the Commission routinely allows associations to participate in quasi legislative proceedings, when the issue is raised, that is not the case for quasi judicial proceedings. Whether a proceeding is in essence judicial, rather than legislative, is determined by the nature of the final act of the agency, and the character of the process and the operation of the agency in the case,

rather than by the general character of the authority conferred on an agency by the legislature. See *Morgan v. United States*, 298 US 468; 56 SCt 906; 80 Led 1288 (1936); *Arizona Grocery Co. v Atchinson, T & SFRCo.*, 284 US 370; 52 Sct 183; 76 Led 348 (1932); *Prentis v Atlantic Coast Line Co*, 211; 29 SCt 67; 53 Led 150 (1908) Here, the relief sought in the Complaint of an order requiring specific money damages and declarations as to the manner of accounting, billing and payment under specific contractual arrangements between individual ILECs and Verizon North make it clear that the Commission would be acting in a quasi-judicial, rather than a quasi-legislative capacity. The Commission analyzes a quasi judicial Complainant standing with greater rigor than standing for an Applicant in a quasi legislative proceeding.

The reason for the distinction is obvious. Typically, in a case involving a quasi-legislative application, such as a proceeding on USF, VNXX, service quality rules or dialing parity, all association members – indeed, all members of the public, whether parties or not - will be bound by the outcome of an application process. All members to an application seek Commission ruling on the same or similar harm or broadly applied policy issue, and therefore it is economical and beneficial to all association members to jointly develop and present the case.

Dissimilarly, because a quasi-judicial action such as a complaint by its nature involves specific parties with particular alleged claims, and particular relief, not all association members will be subject to or bound by a final Commission order. Only the parties to the case are bound by the Commission's decision. Because relief granted is particular to the actual parties, and not quasi-legislative by extending to persons who are

not parties, the Commission applies a stricter analysis of standing in a complaint than application proceeding. *Id.*

MECA has filed this complaint on behalf of all 33 of its members, but contains allegations by 12 companies. The 12 separate complaints with Verizon North seek specific and different monetary damages from Verizon North, and the nature of this proceeding involving breach of contract and fraud claims is similar to disputes between parties litigated in a judicial proceeding. Unlike a common Application involving utility rates and conditions of service applicable to all members and their customers, here MECA is attempting to address 12 individual *alleged* grievances between Verizon North and 12 companies, seeking particular redress for just these companies, but not all of the companies which are its members. The alleged grievances and remedies pleaded here are individual and distinct, and do not impact all MECA members. The relief will be specific to each of the 12 companies, and no other members will be bound by any final Commission order in the case. Only a minority of members will experience any resultant detriment or benefit from such Order, and then only individually based on the specific facts of its specific dispute with Verizon North.

The Commission has made clear that, where a Complaint proceeding under the MTA seeks monetary damages, any order of the Commission requiring payments will only extend to those persons who are actually parties to the case. In *In re Michigan Pay Telephone Association*, MPSC Case No. U-11756, (March 16, 2004 Opinion and Order, *reh den* February 10, 2005) the Commission ordered that Verizon North and SBC make certain payments to payphone providers, but only to those payphone providers who were

actually named as parties to the case. The Commission held that it was without authority to order payments to payphone providers who were not one of the 60+ named complainants, not even those providers who were members of MPTA.

Accordingly, MECA cannot meet the required burden to attain proper standing as a Complainant in this case, as described more fully below, and because it has no claim itself against Verizon its action must be dismissed.

II. MECA LACKS THE LEGAL CAPACITY AND STANDING TO BRING THIS ACTION AGAINST VERIZON NORTH ON BEHALF OF THE TWELVE COMPANIES WHICH ARE ITS MEMBERS.

MECA categorically lacks the capacity and standing to bring this action. Under Rule 501, R460.17501, a complaint may only be made "by a person having an interest in the subject matter of the Complaint...subject to applicable statutory standards." Further, "every action shall be prosecuted in the name of the real party in interest." MCL 600.2041. Standing is only proper if a party shows a direct effect on its legal interest. MECA must show: (1) that it will suffer in fact, and (2) that the interest allegedly endangered is within the "zone of interests protected or regulated" by the authority in question. *City Signal v Michigan Bell Tel Co*, 144 PUR4th 60 (MPSC No U-10225, May 21, 1993).

In *In Re Complaint of Michigan Cable Television Assoc*, MPSC No U-7620 (January 29, 1985), the Commission dismissed an action by the Michigan Cable Television Association, ("MCTA"), that challenged Michigan Bell pole attachment rates on behalf of its members. The case was dismissed because MCTA plainly lacked standing. Similar to the facts in this case, even though MCTA members were subject to the same rates because

they had pole attachments, the MCTA itself did not have any attachments and it was not subject to the rates. Therefore, it had no actual dispute or interest as to Michigan Bell. As a result, MCTA lacked standing to initiate the case because it was not a real party in interest.

Similarly here, MECA is a nonprofit corporation organized for the purpose of educating, representing, and assisting members with matters including regulatory matters related to rural telecommunications. (Exhibit A). According to Applicant, current membership includes 33 small incumbent local exchange carriers in Michigan that serve rural areas of the state (the "Rural ILECs"). (Application ¶ 1). MECA does not purchase or provide terminating toll access service, local transport and terminating service, originating toll access service or billing and collection services. Indeed, it does not provide any telecommunications service, let alone any of the services at issue in this case. It has no direct interest, will not have any performance obligation as a result of any Commission Order related to the claims, and will suffer no direct damage because it is not a local exchange carrier who provides telecommunication service within the State. It is not subject to the rates at issue in this case, and MECA otherwise has no individual interest within the "zone of interests protected or regulated" by the Commission. In fact, the overwhelming majority of its members are similarly situated, making it impossible for them to independently achieve standing in this case either.¹

¹ Out of 33 members, only 12 are asserting claims or seeking relief in the Complaint and accompanying testimony and exhibits. These are indicated in bold: Ace Telephone Company of Michigan, Inc., Allendale Telephone Company, Baraga Telephone Company, Barry County Telephone Company, **Blanchard Telephone Association, Inc., Bloomingdale Telephone Co, 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 Co**, Chatham Telephone Company, Chippewa County Telephone Company, **Communication Corp of Michigan, The**

An association, acting on behalf of its members, has no proper interest in the claim unless the association is immediately affected by the alleged wrong. *Mid-Michigan Farm and Grain Assoc Inc*, 127 Mich App 735, 745-6; 339 NW2d 243 (1983). The interests at stake in this action are not germane to the overall interest or purpose of MECA because the issue and relief ultimately sought is individual and particular to a small minority of members, not the membership as a whole. Succinctly, the matter is not of general interest or beneficial to all local exchange carriers.

Further, MECA fails to have standing because both the claim and the relief sought mandate active participation of its members in the instant litigation. *Friends of the Earth Inc v Laidlaw Env Serv*, 528 US 167, 181; 120 SCt 693 (2000). Members are individually required to produce data, testify, and otherwise actively participate in the hearing. In the event that there would ultimately be awarded equitable relief or damages, individual members will receive particularized benefit including remuneration, not the association as a whole. Additionally, to the extent that Verizon North may have rights of offset or counter-claims against the individual members who are not parties to the case, those rights are against the individual members, and not against MECA. If there is to be a comprehensive adjudication of the respective rights of the affected individual members of MECA and Verizon North, the same cannot be accomplished in a manner that is final and binding, in a complaint proceeding brought by MECA.

Finally, MECA cannot show that there is some "hindrance" which prevents the

Deerfield Farmers Telephone Co, Drenthe Telephone Company, Hiawatha Telephone Company, Island Telephone Company, Kaleva Telephone Company, Lennon Telephone Company, Midway Telephone Company, **Ogden Telephone Co**, Ontonagon County Telephone Company, **Pigeon Telephone Company**, **Sand Creek Telephone Co**, Shiawassee Telephone Company, Springport Telephone Company, **Upper Peninsula Telephone Co**, Waldron Telephone Company, **Westphalia Telephone Co**, **Winn Telephone Co**,

individual companies from pursuing their own claims and protecting their own interests. See *Michigan Chiropractic Council v Comm of the Office of Fin and Ins Serv*, ____ Mich ____ (June 28, 2006), applying the three-part test described above and the additional “hindrance” test for third-party standing where an association seeks to commence quasi-judicial proceedings before and administrative agency.

Unequivocally, MECA cannot meet the burden of attaining standing in this case. However even if, *assuming arguendo*, this case did progress to hearing, on the face of the filed testimony and exhibits, each company that contracts with Respondent for services, (FN 1, *supra*), has a separate agreement, distinct claims, damages, and alleged injury that is different from the other companies. Each company will be required to disclose financial, marketing, and other potentially confidential business information. Unrelated, multiple discovery, trial presentation, and administration of multiple and distinct claims will prevent the Commission from disposing of these independent claims in an expeditious fashion.

Moreover, the misjoinder of parties that have no legal claim against Verizon North is a proper basis for ordering severance and separate trials. MCR 2.206(B). Here, because the alleged injury is distinct, separate, and different for each member, in the interest of justice and judicial economy, those members capable of meeting standing and other requirements should be heard in separate actions.

Accordingly, because MECA failed to prove that it is a real party in interest, and it fails to meet the test for standing as an association, this case should be dismissed with prejudice.

III. THIS COMMISSION LACKS JURISDICTION OVER THE INSTANT ACTION.

MECA claims the Commission has jurisdiction over this proceeding under its authority to hear complaints between telecommunications providers. See Complaint, ¶ 3. Under §§ 203 – 205 of the MTA the Commission has authority to resolve complaints between telecommunications providers or between a provider and its customers. However, the Commission lacks jurisdiction over MECA in this case because MECA is neither a telecommunications provider/basic local exchange service provider nor a customer of Verizon North. Conversely, Verizon North is not a customer of MECA. Although, the Commission has authority under the MTA to administer the statute and hear complaints brought thereunder, that statutory authority must be understood to be limited to hear Complaints by parties who have standing to bring the Complaint under the Commission's Rules of Practice and Procedure, and does not extend to the power to hear complaints brought by disinterested third parties.

Further to the extent that the case may be regarded as being a petition by MECA for declaratory rulings under the provisions of the Michigan Administrative Procedures Act, (which MECA does not purport to be doing on the face of the Complaint) it must be recognized that the same standing requirements apply. Disinterested third parties may not seek declaratory rulings before either the Courts or Administrative Agencies. See, e.g. *In Re Omnipoint Communications, Inc.*, FCC Gen Docket No 90-314 (Memorandum Opinion and Order, August 9, 1996), in which the FCC applied a three-prong test, derived from the federal standing requirements, that the petitioner must allege (1) a distinct and palpable

personal injury-in-fact that is (2) fairly traceable to the respondent's conduct and (3) redressable by the relief requested. Absent a showing by the petitioner of how it is personally injured, the FCC declined to issue the requested declaratory rulings.

MECA is not telecommunication provider of regulated services and/or basic local exchange service. Accordingly, the Michigan Public Service Commission lacks jurisdiction over this case.

CONCLUSION AND RELIEF

Based upon the foregoing, Respondents respectfully request that this Commission grant summary disposition in this action because MECA failed to show that it has standing and that this Commission has proper jurisdiction. MECA also failed to properly state a claim upon which this Commission may grant appropriate relief.

Accordingly, Verizon North requests that the Commission:

- A. Dismiss the Complaint, improperly filed as an Application, in its entirety;
- B. Grant costs, including reasonable attorney fees, to Verizon in connection with responding to the original Complaint and with this motion under MTA §209; and
- C. Grant Verizon North such further and additional relief as is reasonable and in the interest of justice.

Respectfully Submitted,

VERIZON NORTH INC. and
CONTEL OF THE SOUTH, INC
d/b/a VERIZON NORTH SYSTEMS

Date: June 30, 2006

By:  Michael G. Oliva
One of their Attorneys

Digitally signed by Michael G. Oliva
DN: cn=Michael G. Oliva,
o=Loomis Law Firm, c=US
Date: 2006.06.30 14:52:38 -0500
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DAVIS & GOTTING, P.C.**

Attorneys for Respondent

232 South Capitol Avenue, Suite 1000
Lansing, Michigan 48933
(517) 482-2400

MPSC Case No. U-14905

Exhibit A

MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES - CORPORATION, SECURITIES & LAND DEVELOPMENT BUREAU		
Date Received OCT 15 1998		(FOR BUREAU USE ONLY)
		FILED
Name Glen A. Schmiede, Esq. Foster, Swift, Collins & Smith, P.C.		OCT 15 1998
Address 313 S. Washington Square		Administrator MI DEPT OF CONSUMER & INDUSTRY SERVICES CORPORATION, SECURITIES & LAND DEVELOPMENT BUREAU
City Lansing	State Michigan	EFFECTIVE DATE:
Zip 48933-2193		

Document will be returned to the name and address you enter above.

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION

For use by Domestic Profit and Nonprofit Corporations
(Please read information and instructions on the last page)

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations), or Act 162, Public Acts of 1982 (nonprofit corporations), the undersigned corporation executes the following Certificate:

1. The present name of the corporation is: Michigan Exchange Carriers Association, Inc.
2. The identification number assigned by the Bureau is: 710-992
3. The location of its registered office is: 1400 Michigan National Tower, Lansing, MI 48901-0025

4. Article II of the Articles of Incorporation is hereby amended to read as follows:

ARTICLE II

The Corporation shall be organized and operated for the purpose of providing 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 corporation on behalf of its members.

1250 ch 724200chr

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CORPORATE ENTITY DETAILS

Searched for: MICHIGAN EXCHANGE CARRIERS ASSOCIATION, INC.

ID Num: 710992

[Assumed Names](#)

Entity Name: MICHIGAN EXCHANGE CARRIERS ASSOCIATION, INC.

Type of Entity: Domestic Nonprofit Corporation

Resident Agent: AGRIS PAVLOVSKIS

Registered Office Address: 1400 MICHIGAN NATIONAL TOWER LANSING MI 48933

Mailing Address: P.O. Box 20025 LANSING MI 48901

Formed Under Act Number(s): 162-1982

Incorporation/Qualification Date: 9-17-1987

Jurisdiction of Origin: MICHIGAN

Number of Shares: 0

Year of Most Recent Annual Report: 05

Year of Most Recent Annual Report With Officers & Directors: 03

Status: ACTIVE **Date:** Present

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