

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

In the Matter of	)	
	)	CC Docket No. <b>02-33</b>
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities.	)	
	)	
Universal Service Obligations of Broadband Providers.	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements.	)	CC Docket Nos. <b>95-20, 98-10</b>
	)	
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**COMMENTS OF THE  
MICHIGAN PUBLIC SERVICE COMMISSION**

The Michigan Public Service Commission (MPSC) hereby submits its comments in response to the Federal Communications Commission’s (Commission) Notice of Proposed Rulemaking (NPRM), adopted February 14, 2002. The MPSC is an agency of the State of Michigan, created by 1939 PA 3, MCL 460.1 *et seq*, that has the jurisdiction and authority to regulate local exchange service in the State of Michigan pursuant to the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2101 *et seq*. The MPSC, in addition to protecting the interests of consumers of telecommunications services, has an affirmative duty to encourage the introduction of new services, the entry of new providers, the development of new technologies and increase investment in the telecommunications infrastructure in the State of Michigan through incentives to providers to offer the most efficient services and products. MCL 484.2101(2)(d).

With the NPRM, the Commission launched an examination of the legal and policy framework under the Communications Act of 1934, as amended, for broadband access to the Internet provided over domestic wireline facilities. In the NPRM, the Commission makes the tentative conclusion that wireline broadband Internet access services - whether provided over a third party's facilities or self-provisioned facilities - are "information services" subject to regulation under Title I of the Communications Act. NPRM, ¶ 16. The Commission has asked for comments on this tentative conclusion as well as comment on numerous other issues as well.

In its NPRM, the Commission correctly observes that one of its responsibilities is to implement the Telecommunications Act as Congress intended. The importance of broadband access cannot be denied. There is little dispute that access to broadband by consumers and the business community is desired but not yet commonly available. Since advanced services such as broadband access hold the promise of extraordinary business and educational opportunities, the MPSC agrees with the Commission's recent finding that "the further deployment of advanced services is one of the Commission's highest priorities". *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Third Report, FCC 02-33, 6 (February 6, 2002).

The MPSC strongly favors choice and competition. The MPSC would urge the Commission to continue to preserve and protect the current competition in the voice service area that is growing in Michigan through the use of unbundled network elements (UNE's) and the UNE platform (UNE-P). Additionally, Michigan support those measures that ensure that the basic network is open to these and other competitors who wish to offer data services. Moreover, the MPSC believes that true open access requires that consumers be able to reach the entire network and all ISPs and other providers located at any point on that network, whether wireline,

wireless or cable. Thus, broadband network providers should not be permitted to restrict access to internet service providers. The MPSC believes that the classification of wireline broadband service over a provider's own facilities as an information service will allow broadband network providers to restrict access to ISPs and will eviscerate the Commission's line sharing and line splitting rules, as well as the MPSC's orders issued pursuant to those rules. The MPSC believes this to be the case because Title I of the Communications Act, which the Commission proposes to govern such service, does not specifically contain a duty to provide unbundled access to network elements, as does Title II - upon which the line sharing and line splitting rules and MPSC orders are based. Moreover, there is nothing in Title I that gives the states any specific role to ensure open access for ISPs, as is the case with Title II (specifically Sections 251 and 252).

Earlier this year Michigan's Governor Engler signed three laws relating to broadband that were designed to stimulate the availability of affordable high-speed Internet connections. Act 48 of the Public Acts of 2002 creates a body called the Telecommunication Rights-of-Way Oversight Authority, whose purpose is to assist telecommunication providers cut through red tape and get projects done without having to pay excessive fees or endure unnecessary delays. Under Act 50 of the Public Acts of 2002, tax credits are afforded to telecommunication providers that invest in new broadband infrastructure and, upon certification of the MPSC, for right-of-way fees paid under the first bill. Finally, Act 49 of the Public Acts of 2002 creates the Michigan Broadband Development Authority to help fund the rollout of broadband services in underserved areas.

The MPSC requests that any regulations that the FCC adopts in this area must not have the effect of preempting extensive work already done in a number of States, following the FCC's

guidelines, seeking to promote competition. States and the FCC, by working together, can foster local competition and promote the timely deployment of advanced services.

Finally, while the Commission often indicates that it would like to work in partnership with the States on issues of mutual interest and concern the resulting action does not always coincide with such stated intent. In addressing the questions raised in the NPRM, the MPSC welcomes and would encourage the Commission to work closely with the State commissions and the Joint Board in particular.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION**

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