

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
)	
Review of Regulatory Requirements for)	CC Docket No. 01-337
Incumbent LEC Broadband Telecommunications)	
Services.)	
_____)	

**REPLY COMMENTS
OF THE MICHIGAN PUBLIC SERVICE COMMISSION**

Introduction:

In this proceeding, the Federal Communications Commission (Commission) initiated an examination of the appropriate regulatory requirements for the incumbent local exchange carriers' (LECs) provision of domestic broadband telecommunications services ("broadband services"). In particular, the Commission seeks comment on what regulatory safeguards and carrier obligations, if any, should apply when a carrier that is dominant in the provision of traditional local exchange and exchange access services provides broadband service. The following are the reply comments of the Michigan Public Service Commission (MPSC).

Background:

The Commission states that basic elements of the existing regulatory requirements for the provision of broadband services by incumbent LECs were initially developed in a prior era of circuit-switched, analog voice services characterized by a one-wire world for access to communications. Historically, consumers have only been able to access telecommunications services through the wireline facilities installed by their local telephone company. Today, the services provided by different communications networks are converging, as cable providers, satellite providers, and terrestrial wireless network providers develop new services that are

becoming increasingly substitutable for the broadband services provided over the traditional telephone network.

The Commission states that at the same time, the provision of broadband services to residential customers is a nascent market, and enormous new investment and innovation will be required if we are to realize the full promise of broadband deployment. As such, much is unknown about consumer demand for services such as DSL and the incentive and ability of dominant carriers to exercise market power in the broadband market. Thus, the Commission initiated this proceeding to consider what changes, if any, they should make in their traditional regulatory requirements to reflect the relevant competitive landscape and create the right incentives for broadband services growth and investment.

Under existing domestic common carrier regulation, incumbent local exchange carriers are generally treated as dominant carriers, absent a specific finding to the contrary for a particular market. As dominant domestic carriers, incumbent LECs are subject to tariff filing, tariff support and pricing requirements. The present broadband services market differs from the historic market for the provision of analog voice services in which traditional common carrier regulation arose. In particular, the one-wire world for customer access appears to no longer be the norm in broadband services markets as the result of the development of intermodal competition among multiple platforms, including DSL, cable modem service, satellite broadband service, and terrestrial and mobile wireless services. In particular, they ask interested parties to address how the Commission can best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation.

The Commission requests interested parties to consider the potential for deregulation or reduced regulation to foster increased broadband deployment and competition among providers

of broadband services. The Commission also asks that interested parties address how their proposals would serve the Act's mandate to foster the deployment of broadband services and the facilities used in the provision of broadband services. In addition, the Commission invites interested parties to address the effect of the statutory requirements in the 1996 Act on these proposals, as the Act's existing statutory safeguards may reduce the need for other forms of regulation.

Existing Regulatory Structure:

The Commission historically has distinguished between dominant carriers, that possess individual market power, and non-dominant carriers, that lack individual market power. Non-dominant carriers have been subject to significantly reduced regulation. In contrast, dominant carriers are subject to a broad range of regulatory requirements that are generally intended to protect consumers from unjust and unreasonable rates, terms and conditions and unreasonable discrimination in the provision of communications services. The Commission has streamlined dominant carrier regulation, however, to reflect the development of competition.

The Commission's dominant carrier regulation includes rate regulation and tariff filing requirements. For example, as provided in section 204(a)(3) of the Act, incumbent LECs may file tariff revisions on either seven days' or fifteen days' notice. The Commission's rules also require supporting information, which in some cases includes detailed cost data, be filed by dominant carriers with their tariff filings.

Incumbent LECs are subject to rate level regulation in the provision of their interstate access services. The Bell Operating Companies and GTE are subject to mandatory price cap regulation, and several other incumbent LECs have entered price caps on an elective basis. Smaller incumbent LECs are regulated under rate-of-return regulation. As described above, however, the Commission has taken a number of steps to provide price cap incumbent LECs

with increased pricing flexibility for interstate access services as wireline competition develops. In addition, in markets where carriers may have the incentive and ability to leverage control over bottleneck facilities to disadvantage competitors in related markets, the Commission has developed various safeguards to limit that ability.

Incumbent LECs currently are classified as dominant in the provision of broadband services. The Commission seeks comment on what relevance, if any, these types of regulations have for broadband services provided by incumbent LECs. They seek comment on whether it would be appropriate to streamline the traditional dominant carrier regulation of incumbent LECs' provision of broadband services, and if so, how such dominant carrier regulation should be reduced. The Commission also asks parties to comment on whether incumbent LECs should be reclassified as non-dominant in the provision of broadband services.

MPSC Reply Comments:

The initial comments in this proceeding lined up as expected with the incumbent providers of this industry requesting immediate and complete regulatory relief while the competitive providers want to retain regulatory restraints for as long as possible. The MPSC would align itself generally with the commenters from the state regulatory agencies.

The MPSC agrees with the comments made by the Missouri PSC. The Missouri PSC states that “with pending legislative proposals and multiple rulemakings addressing various aspects of broadband, the division between the discussions becomes blurred. The MPSC finds it difficult to fully address the questions as outlined in the present rulemaking without considering the impact of other legislative proposals and/or rulemakings as interrelated outcomes.” The MPSC provides its comments mainly from the aspect of wireline-provisioned services to aid the Commission in its review of regulatory requirements for incumbent LEC broadband telecommunications services.

The MPSC encourages the Commission to consider a policy that promotes broadband investment and deployment and to adopt policies that remain technologically neutral so as to not promote one form of broadband service over another. Under existing domestic common carrier regulation, incumbent LECs are treated as dominant carriers absent a finding to the contrary for a specific market. As such, incumbent LECs are subject to tariff filing and pricing requirements. The MPSC recommends incumbent LEC broadband telecommunications services remain classified as dominant. However, the MPSC would suggest that it would be more appropriate to streamline the traditional dominant carrier regulation. This could be done by removing some of the regulatory requirements for the broadband services that are further along in development, such as the business and institutional areas and continue the regulatory requirements for the less developed residential market.

As pointed out by the Wisconsin PSC in its comments, many state commissions have completed or are currently in the midst of resetting prices for unbundled network elements for the Regional Bell Operating Companies (RBOCs) serving in their states. The MPSC has led the way in establishing UNE rates that foster competitive entry. Also, many state commissions, like the MPSC are in the midst of conducting extensive testing of operations support systems (OSS), in order to be prepared to make decisions on the RBOCs' 271 applications. The 271 evaluations and the States' responsibility for promoting local competition and the deployment of advanced services are valuable and should be continued. States have just begun to experience local telecommunications competition and the deployment of advanced services and it is premature to remove the regulatory controls that will be necessary to allow competition to flourish.

Earlier this year Michigan Governor Engler signed into law a package of broadband bills designed to stimulate the availability of affordable high-speed Internet connections. Of the package of bills, one bill creates a body called the Telecommunication Rights-of-Way Oversight

Authority, which would help telecommunication providers is intended to cut through red tape and get projects done without having to pay excessive fees or endure endless delays. The second bill provides tax credits 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. The third bill creates the Michigan Broadband Development Authority to help fund the rollout of broadband services in underserved areas.

Any regulations that the Commission adopts in this area must not have the effect of preempting extensive work already done in a number of states, following the Commission's guidelines, seeking to promote competition. States and the Commission, by working together, can foster local competition and promote the timely deployment of advanced services.

Conclusion:

The MPSC recommends incumbent LEC broadband telecommunications services remain classified as dominant and we would suggest that instead of removing regulatory control, it would be appropriate to streamline the traditional dominant carrier regulation. This could be done by removing some of the regulatory requirements for the broadband services that are further along in development such as the business and institutional areas and continue the regulatory requirements for the less developed residential market.

If the Commission proceeds with an analysis of the broadband market, included in a finding of non-dominance should be an identification of the relevant market and market conditions under which an incumbent LEC may be declared non-dominant. Also, in determining market dominance, the operating company level or the holding company level must also be addressed. If deregulation occurs at an operating company level based on some measurement of non-dominance, a carrier operating in multiple states could be deregulated in some and not in other states in which it operates. The MPSC is concerned with the possible cross-subsidization

between the holding company and the operating company as well as with the possibility of predatory pricing which could be impacted by any decisions in this docket. Without some form of regulation, such market abuses will be difficult to detect.

States may be more familiar with investment strategies and patterns and marketing strategies of all providers. States may also be more familiar -- just like in 271 -- with the general conduct of all providers. Finally, some States, like Michigan, have been pursuing regulatory strategies based on their individual goals, objectives and circumstances, and external policies should not now disrupt those strategies.

Any regulations that the Commission adopts in this area must not have the effect of preempting extensive work already done in a number of states. The MPSC is in favor of the states and the Commission working together to foster local competition and promote the timely deployment of advanced services.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

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