

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
of the implementation of the local calling area )  
provisions of the amended Michigan ) CASE. NO. U-12528  
Telecommunications Act. )  
/

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**INITIAL BRIEF OF THE MICHIGAN  
EXCHANGE CARRIERS ASSOCIATION, INC.**

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## INTRODUCTION AND SUMMARY OF POSITION

The Michigan Exchange Carriers Association, Inc. (“MECA”), by its attorneys, Foster, Swift, Collins & Smith, P.C., is filing this brief on the implementation of Section 304(11) of the Michigan Telecommunications Act (“MTA”), MCL 484.2304(11). MECA files this brief on behalf of its 33 members who are rural, incumbent, basic local exchange carriers (“LECs”) in Michigan.

Subsection (11) states:

A call made to a local calling area adjacent to the caller’s local calling area shall be considered a local call and shall be billed as a local call.

This subsection is short and to the point. It specifies that certain calls shall be considered local calls and billed as local calls. Nothing more. It can be implemented almost completely by requiring changes to customer bills – changes in labeling and pricing.

Section 304(11) does not contain any language even remotely mandating any physical changes in how or by whom these calls are provided. This short subsection cannot reasonably be interpreted as some vast, complex, unwritten legislative mandate to redefine “basic local exchange service” and “toll service”; to require expensive network reconfigurations; to switch customers to different providers; to change inter-carrier compensation; and to otherwise change the competitive framework and the existing call plan options available to customers. All this would be a lot of specific change to read into such unspecific language. However, that is

exactly what most participants in this proceeding would like to do. They read this single short provision of the MTA to mean more than its literal wording; to conflict with and supercede numerous other clearly worded provisions of the Act; and to require a whole new regime for local and toll calling to adjacent exchanges. In doing so, Ameritech Michigan, Verizon and other carriers are excluding their own customers in the exchanges of the small LECs from the benefits of this requirement. Furthermore, AT&T is in the process of disposing of its residential and business long distance service and can hardly be presumed to be placing the interests of its Michigan customers at the forefront when it argues that it does not have to provide the service mandated by Section 304(11).

MECA asks this Commission to keep it simple, read it literally, and refuse to give in to those parties who would like the Commission to become an activist commission, rewriting the law to meet their policy and business goals.

### **ARGUMENT**

**I. SECTION 304(11) REQUIRES CHANGES TO BE MADE TO BILLS AND CHARGES TO CUSTOMERS; IT DOES NOT REQUIRE CHANGES IN HOW CALLS ARE CARRIED OR IN PROVIDERS. ALL PROVIDERS – BOTH LOCAL SERVICE PROVIDERS AND TOLL SERVICE PROVIDERS – MUST COMPLY WITH THE REQUIREMENTS OF SECTION 304(11).**

**A. The Language Of Section 304(11) Supports Changes To Billing, But Not Changes In How Calls Are Carried Or In Providers.**

The language of Section 304(11) is important both for what it says and for what it does not say.

First, it refers to certain calls, but does not say anything about the providers of those calls or the underlying service used to provide those calls. Second, it states that those calls are to be considered local, but does not actually convert them to be local. Finally, it refers to **billing**, but does not refer to networks or how calls are carried.

The Legislature certainly could have addressed all these matters if it wanted to mandate changes in all of them. It did not. The result is that certain toll calls are considered to be local and are billed accordingly. Section 304(11) does not change the fundamental nature of these calls, the underlying service by which these calls are provided to customers, or the providers of that service as chosen by the customer. A call between exchanges that is a toll call does not magically become a local call because of this provision; it is just “considered” to be local. Therefore, if a toll service provider carries an adjacent exchange call today, the provider can continue to carry that call as part of its service and that call will be considered to be local. The call can be itemized on the customer’s bill and labeled as “local,” and the customer can be charged a flat or usage-sensitive fee for the call, similar to how the customer is charged for a true local call that is provided as part of basic local exchange service. Any pricing scheme chosen by this Commission for these calls can be implemented through the billing process.

“Considering” a call to be local and “billing” it as local are concepts much different from requiring physical changes in how calls are carried by providers. The

statutory language does not imply that any changes are required in how calls are provided or that any provider other than the customer's current provider should carry these calls. Rather, all types of providers – both basic local exchange service providers and toll service providers – can and should comply with this provision. Where a LEC carries an interexchange call today, the LEC should continue to carry that interexchange call. Where a toll provider carries an interexchange call today, the toll provider should continue to carry that interexchange call. All of these calls that are adjacent exchange calls, however, will be considered to be local and billed by the relevant provider as local.

Compliance of all providers is especially important to customers residing in the exchanges of the small, rural incumbent LECs. Customers rely primarily on interexchange carriers such as Ameritech Michigan and Verizon to enable them to call most adjacent exchanges because of the optional toll calling plans that these carriers provide, as mandated by the Legislature. (3 T 121-122). While these customers are the customers of the LECs for basic local exchange service, they are the customers of these interexchange carriers for toll service. (3 T 118); In Re IntraLATA Access, Case Nos. U-9004, U-9006, and U-9007 (December 21, 1989 Order); In Re Adjacent Exchange Toll Calling Plans, Case Nos. U-9568 and U-9569 (June 19, 1991 Order, p 12). Thus, Ameritech Michigan, Verizon and others are responsible for carrying most adjacent exchange calls that are subject to Section 304(11). There is no reason why these interexchange carriers cannot revise their bills in order to accommodate

the new local calling area requirements. As Ameritech Michigan's witness Harry Semerjian testified, these calls, whether dialed with 7 or 11 digits, can be rated as local calls and charged accordingly. (3 T 207). Thus, all non-exempt providers should be required to comply and to make the billing changes necessary to implement Section 304(11).

**B. Changing Providers Would Conflict With The Definitions Of Basic Local Exchange Service And Toll Service Which Have Not Been Changed; Toll Service Is By Definition The Service Used To Carry Calls Between Local Calling Areas.**

The definitions of basic local exchange service and toll service, as used throughout the MTA, have not been changed.

"Basic local exchange service" or "local exchange service" means the provision of an access line and usage within a local calling area for the transmission of high-quality 2-way interactive switched voice or data communication. Section 102(b); MCL 484.2102(b) (emphasis added).

"Toll service" means the transmission of 2-way interactive switched communication between local calling areas. Section 102(ee); MCL 484.2102(ee) (emphasis added).

Since the calls referred to in Section 304(11) are calls between local calling areas, they must be provided as part of toll service (in non-EAS areas). Even though we may consider the calls to be local, the underlying service is, by definition, toll service.

If the Legislature had intended to change the nature of local service and toll service, it easily could have done so. It could have redefined "basic local exchange

service” in Section 102(b) to include adjacent exchange calls. Likewise it could have redefined “toll service” in Section 102(ee) to exclude adjacent exchange calls. Alternatively, the Legislature could specifically have said that basic local exchange service providers are responsible for carrying adjacent exchange calls. However, it did not do so. The only logical conclusion is that the providers who currently carry these calls remain responsible for them.

**C. The Most Efficient Way To Implement Section 304(11) Is To Keep The Same Providers, Networks And Call Routing.**

Ameritech Michigan and Verizon have gone to great lengths to show just how expensive it would be to reroute toll calls and to expand the local network. However, the expense and delay that they refer to can be avoided by ordering billing changes without ordering changes in the provider responsible to carry the call or the underlying service.

The toll carriers already have the interexchange facilities that are required to transport these calls. As MECA’s President Agris Pavlovskis testified, who better to transport these calls efficiently and economically than the carriers that have interexchange facilities already in place? These carriers are the toll carriers. (3 T 129). There is no justification for exempting toll carriers from Section 304(11).

Though not his intent, the testimony of Ameritech Michigan’s witness Harry Semerjian makes a compelling case for requiring interexchange carriers to comply with Section 304(11). His testimony regarding the cost of network reconfiguration

and the length of time required by Ameritech Michigan to implement Section 304(11) by means of basic local exchange service shows that it is not economical or efficient to require that these calls be carried only as part of basic local exchange service. Regarding the cost of network reconfiguration, Mr. Semerjian cited a report to the Legislature, which said that it would cost Ameritech Michigan \$45.1 - \$46.1 million in one time expenses to establish a "local calling area... which is 25 miles in all directions." (3 T 211-212, 130). He further pointed to the need for a significant increase in interoffice trunk capacity; and the need for additional physical equipment and enabling software to control the switching offices. (3 T 212-214). No doubt a good portion of these additional costs would be caused by customers migrating off interexchange carriers' networks. (3 T 130). Second, Ameritech Michigan, according to Mr. Semerjian, will take a minimum of 15 months to fully reconfigure its network in order to implement Section 304(11). (3 T 214-215).

Mr. Pavlovskis testified that, in his judgment, the Legislature did not intend to cause one class of carriers to incur such significant costs while exempting other classes of carriers that already have the necessary networks in place. (3 T 130). Further, the Legislature probably did not want the implementation of 304(11) to take a minimum of 15 months while Ameritech Michigan and Verizon "retool". (3 T 130-131). Therefore, this section of the MTA should apply to all non-exempt carriers, those with more than 250,000 customers in Michigan.

In addition, it would not be difficult for toll carriers to bill for local calls. As Mr. Semerjian and Mr. Pavlovskis pointed out, 7 or 11 digits can be rated as local calls. (3 T 131, 207). Therefore, interexchange carriers can implement section 304(11), allowing their customers to have the same service as LEC customers.

**D. Requiring All Carriers To Comply Is Pro-Competitive And Does Not Result In Administrative Slamming.**

Today, some LECs are responsible for carrying some calls between exchanges, as in the case of EAS, and interexchange providers are responsible for carrying the other calls between exchanges. (3 T 119-120). There are three classes of carriers depending on the services they provide. (3 T 120). One class includes carriers that are both a provider of basic local exchange service and a provider of interexchange service. The other two classes of carriers consist of those that are either providers of only local exchange service or providers of only interexchange service. In a LEC exchange where that LEC does not provide interexchange service, the end user is both a customer of the LEC for basic local exchange service and also a customer of an interexchange carrier chosen by the customer for interexchange service. There are also situations where a customer has not pre-subscribed to an interexchange carrier and those customers use 10XXXX dialing to obtain interexchange service. In the absence of EAS, the interexchange carrier currently is responsible for providing the service that enables the customer to call an adjacent exchange over the toll network. (3 T 120).

The policy issue from the customer's standpoint is whether, when Section 304(11) is implemented, the current providers for calls between any two adjacent exchanges will continue to be the providers for the calls between these exchanges for their customers or whether customers will be changed over to another class of carrier for those calls, i.e. whether they will be "slammed."

The best policy is for the customer's chosen provider that currently carries the customer's calls between two adjacent exchanges to continue to be responsible for carrying these calls. If a customer currently utilizes an interexchange carrier to make adjacent exchange calls, then that interexchange carrier is responsible for complying with Section 304(11). If a customer relies on a basic local exchange service provider to carry adjacent exchange calling through an EAS arrangement, then that provider is responsible for complying with Section 304(11).

Otherwise, if only LECs are required to provide this service, it could be construed that the Legislature meant to strip customers from one class of carrier and give them to another class, e.g., from AT&T to Ameritech. The Commission and the Legislature have recently taken strong steps to prevent carriers from engaging in slamming (the unauthorized changing of a customer's carrier without the customer's authorization). Thus, it is unlikely that the Legislature would engage in "legislative slamming" by mandating a change to customers' providers for these calls. It is more likely that the Legislature wanted all classes of providers to continue to carry their customers' calls, subject to billing changes mandated by Section 304(11).

This Commission should not subvert the will of the Legislature by now engaging in “administrative slamming” under the guise of implementation. All classes of carriers should continue to carry calls for their current customers as they do today.

**E. Requiring All Carriers To Comply Will Bring Benefits To Rural Areas.**

When this Commission established the regulatory scheme for intraLATA toll and access services, MECA’s members were classified as Secondary Exchange Carriers (“SECs”), as opposed to Ameritech Michigan and Verizon, who were classified as Primary Exchange Carriers (“PECs”). SECs provided basic local exchange service and access service; whereas PECs in addition provided toll service. MECA’s members primarily still provide only local exchange service and access service, though some members do have toll affiliates. MECA’s members also generally serve the rural areas of the state. (3 T 117).

IntraLATA and interLATA toll service to customers residing in the exchanges of MECA’s members is provided by either PECs or other interexchange carriers. MECA’s members provide access service to both PECs and other interexchange carriers in exchanges where the PECs and other interexchange carriers provide toll service. MECA’s members do not have networks to carry calls between exchanges other than for EAS. PECs and other interexchange carriers carry all non-EAS calls originating in small LEC exchanges and terminating in other exchanges. Customers in small LEC exchanges are customers of the LECs for basic local exchange service and are customers of the PECs and other interexchange carriers for toll service. (3

T 118). In Re IntraLATA Access, Case Nos. U-9004, U-9006, and U-9007 (December 21, 1989 Order); In Re Adjacent Exchange Toll Calling Plans, Case Nos. U-9568 and U-9569 (June 19, 1991 Order, p 12).

Ameritech Michigan and Verizon as PECs were mandated to carry adjacent exchange calls from their customers in MECA member company exchanges based on which Ameritech Michigan or Verizon tandem switch carried those calls. (3 T 121). As intraLATA dialing parity was implemented (allowing customers to choose their intraLATA interexchange carrier rather than defaulting to either Ameritech Michigan and Verizon), other interexchange carriers were required to provide 20 mile radius calling plans under Section 312(4). Also, interexchange customers could pick and chose different calling plans offered by their chosen provider. Therefore, customers in MECA member company exchanges relied on their chosen interexchange carriers for economic toll calling plans to adjacent calling areas. (3 T 121-122).

Either the Legislature meant to have these customers slammed, as indicated above, or their chosen interexchange carriers are also required to comply with Section 304(11). The latter is a more logical and practical interpretation. If only LECs must comply, then customers in MECA service areas will not benefit. However, if all non-exempt providers are required to comply, then all customers will benefit. (3 T 122).

**F. EAS Can Be Grandfathered.**

All parties agree that EAS should be grandfathered. Thus, even though toll providers are responsible for most interexchange adjacent exchange calls, the LECs can continue to comply where they currently provide EAS. Consequently, all providers can implement Section 304(11) for their customers for the calls they carry today.

**G. Requiring All Carriers To Comply Does Not Necessitate The Licensing Of Toll Providers As Local Exchange Carriers.**

Some parties argue that toll providers cannot carry any of these calls because they would have to be licensed as local service providers. This argument makes no sense. These calls, though considered local, are interexchange calls that are provided by means of toll service, i.e. service carrying communications between local calling areas. See MCL 484.2102(ee). Again, the underlying service has not been changed. The MTA requires a license only for carriers who provide or resell basic local exchange service in the state. MCL 484.2301(1). Thus, since interexchange carriers will not be providing basic local exchange service, they do not need to be licensed in order to implement this section.

**H. Requiring The Current Carriers To Continue To Carry These Calls Avoids Changes To Inter-Carrier Compensation.**

If all non-exempt carriers are required to comply with Section 304(11) by continuing to provide local service where they do today and toll service where they do today, then inter-carrier compensation issues are avoided. No changes are necessary. Again, it is hard to imagine that the few words comprising the statutory

language in Section 304(11) were intended to mandate costly changes in inter-carrier compensation. The parties attempting to alter compensation arrangements in this proceeding are reading far too much into the statutory language that is designed to bring benefits to customers. Compensation issues are best addressed through negotiations and tariff filings.

**II. OTHER INTERPRETATIONS ARE SO SPECULATIVE AND INCONSISTENT WITH OTHER PROVISIONS OF THE ACT THAT SECTION 304(11) WOULD BE VOID FOR VAGUENESS.**

The other parties' proposed interpretations that would have LECs carry calls between local calling areas as part of basic local exchange service, which by definition provides calls only within the local calling area, are so inherently contradictory that the provision would then make no sense. The provision would be gravely ambiguous and vague; and would lead to absurd and impracticable results. It therefore would have no legitimate, rational, articulable substantive content and would be void for vagueness.

The "void for vagueness" doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property, without due process of law. US const, Am XIV; Const 1963 art 1, § 17. Normally, a statute may be challenged for vagueness on the ground that it (1) is overbroad, impinging on First Amendment freedoms, (2) does not provide fair notice of the conduct proscribed, or (3) is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether an offense has been committed. Woll v

Attorney General, 409 Mich 500, 533; 297 NW2d 578 (1980), People v Hayes, 421 Mich 271, 283; 364 NW2d 635 (1984). The United States Supreme Court has stated that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. Lanzetta v New Jersey, 306 US 451, 453; 59 S Ct 618; 83 L Ed 888 (1939).

Even when the traditional vagueness analysis does not apply (because a statute does not impinge on First Amendment freedoms, does not proscribe conduct and does not set forth an offense), notions of due process and principles relating to statutory construction nevertheless require some degree of definiteness or certainty in the wording of any statute. State Treasurer v Wilson (on remand), 150 Mich App 78, 81; 388 NW2d 312 (1986). When there is absolutely no reasonable and practical construction that can be given to its language, a statute will be declared void. Id. This is true because the statute has no substantive content. Id.

In this proceeding, Section 304(11) purports to mandate certain conduct and, consequently, it proscribes contrary conduct, and also other provisions of the MTA subject violators to potential penalties. Thus, both traditional and the non-traditional “void for vagueness” analyses apply.

Section 304(11) can only be interpreted to have the requisite degree of certainty and to have substantive content if it is read in conjunction with the entire text of the MTA where toll providers are responsible to carry calls between local

calling areas and local providers are responsible to carry calls within local calling areas. Applying Section 304(11) to only local service providers would create an irreconcilable inconsistency in the statute since local service is provided within a local calling area, MCL 484.2102(b), and basic local exchange service providers are not required to provide toll services, i.e. services between local calling areas, MCL 484.2306 and MCL 484.2102(ee). If Section 304(11) is read in isolation, it is even more difficult to ascertain any specific directive with any level of certainty.

The fact that this Commission had to initiate two proceedings to attempt to interpret and give meaning to Section 304(11) is a good indicator that it may be unconstitutionally void for vagueness. Between this Commission's own inability to discern a clear meaning and the inability of the numerous parties to agree, there is compelling evidence that "men of common intelligence must necessarily guess at its meaning and differ as to its application." If this Commission were to reject the interpretation of this provision that applies it equally to all providers, then no rational interpretation would remain – at least not without ignoring or rewriting the words. This Commission, however, does not have the legislative authority necessary to rewrite the provision to attempt to give it meaning. As an administrative agency without the authority to legislate and without the technical authority to declare the provision to be unconstitutional, the Commission's options are (1) simply find that the provision cannot logically be implemented as written or (2) construe the statute in the one manner that renders it constitutional. Thus, instead of adopting the

activist proposals of the other parties, the Commission should strictly construe this provision in the only manner that makes any sense. The Commission should require all providers that are not specifically exempted by the small company exemption in Section 304(10) to comply.

### **III. ADJUSTMENTS SHOULD BE MADE TO THE LOCAL CALLING AREAS.**

If the Commission proceeds forward with the implementation of Section 304(11), then MECA agrees generally with the concept of reducing local calling areas to the geographic area of the home exchange, similar to the stipulation which was circulated. From a practical and economic perspective, it is vital to the small incumbent LECs that the Commission limit the geographic expansiveness of any new requirements imposed by Section 304(11). (3 T 122). If call termination is geographically expanded in this proceeding beyond historic incumbent LEC adjacent exchanges, extreme unintended consequences are possible. Id. If interpreted too broadly, Section 304(11) could create a pancaking effect whereby a small company would be expected to provide its customers with local call termination service that would include an expansive geographic area, which could include many adjacent EAS areas and local calling zones. Id.

For purposes of determining the size of the calling areas that are adjacent to a customer's home exchange under Section 304(11) when different carriers adjacent to that home exchange have different size exchanges, the originating carrier should have the right to specify the geographic area of its adjacent calling areas. This

should consist at a minimum of the historic geographic boundaries of the adjacent incumbent LEC exchange. (3 T 122-123). This policy would help prevent unintended consequences while ensuring a reasonable size area for call termination. For example, if a carrier for some competitive reason designates most of the state of Michigan as its home exchange, a carrier adjacent to that home exchange would be required to terminate throughout most of the state. This should be avoided.

#### **IV. COMPLIANCE WITH SECTION 304(11) SHOULD BE CONSIDERED TO BE A NEW SERVICE.**

The carriers' implementation of Section 304(11) should be considered a new service that is not subject to the rate cap in Section 701, MCL 484.2701, since there will be dramatic differences in costs and service.

MECA's President, Agris Pavlovskis, testified that any expansion of a carrier's obligations should be considered a new service. (3 T 123). There will be new costs associated with expanded obligations which need to be reflected in rates. The significant expansion of any service's geographic service area will cause increases in costs. These cost increases may arise from network reconfigurations and/or call termination charges billed to the originating carrier. (3 T 123).

The testimony of Mr. Gil Collver from Climax Telephone Company, a carrier competing with Ameritech Michigan on the basis of the size of its local calling area, illustrates that a larger calling area constitutes a different service. (3 T 184-188). Mr. Collver's persuasive testimony shows that customers recognize the difference

in the service offered by Climax, as opposed to that of Ameritech Michigan. Customers in Climax's larger Metro exchange recognize that this is a different service by voluntarily paying more for the ability to terminate local calls in a broader geographic area than that offered by Ameritech Michigan. As Mr. Collver points out, the differences in the scope of calling cause this to be a different service.

If the service required by Section 304(11) is not considered new, then some carriers responsible for providing the service will suffer severe financial harm because of the Section 701 limitation of the MTA, MCL 484.2701. (3 T 123). Further, with increased costs, some carriers could be forced into a position where their rates do not meet the minimum TSLRIC standard of the MTA, MCL 484.2321. (3 T 123). Thus, to avoid interpreting this section in a manner inconsistent with other sections of the Act, it must be considered a new service. The service should be considered to be new regardless of whether it becomes a mandatory part of, or expansion of, a carrier's basic service offering, or whether it is offered to customers as an optional add-on or alternative to their basic service. In either case, the costs and the nature of the service are dramatically different.

**V. CARRIERS SHOULD HAVE THE CHOICE OF IMPLEMENTING A MANDATORY PLAN OR ONE THAT IS OPTIONAL TO THE CUSTOMER.**

Section 304(11) does not require that customers' basic local exchange service be expanded. As discussed above, Section 304(11) does not refer to basic local exchange service or any specific class of service. It refers only to "calls." Thus, toll

service as a class of service can be expanded to carry these calls. Though provided by interexchange carriers, these calls can be considered local calls and can be billed as local calls.

Regardless of whether toll plans, local plans, or both are used, carriers should have the choice of implementing Section 304(11) through plans that are optional to the customer or through adjustments to their basic plans that are mandatory for all customers. Mr. Pavlovskis supported a company's ability to choose to implement Section 304(11) through optional plans because this service may have additional value to some customers and not to others. (3 T 124). Those customers who do not want expanded services would not have to bear the costs for those who do. The use of optional plans is consistent with the MTA because it anticipates a mix of service offerings to address customer needs for calling to nearby communities and exchanges. For example, the Legislature retained Section 312(4), MCL 484.2312(4), a statutory provision that anticipates the continuation of adjacent exchange toll calling plans ("AETCPs") and optional discount toll plans for calling to exchanges within 20 miles of a customer's home exchange.

Not all customers may need or desire this new "local call" option; nor would they wish to pay the additional charges for service plans providing it. This is why the AETCPs and 20-mile plans continue to be required; these plans may be more economical and better suit the needs of some customers. (3 T 125).

On the other hand, differences in demographics and geographic circumstances may favor a company making changes to basic plans that are mandatory for all customers. If the vast majority of a company's customers will benefit from expanding the calling area of their basic plan, then it may be more practical for the company to change its basic plan and spread the added cost among its entire customer base. The carriers themselves are in the best position to make the determination of what is most cost effective and most beneficial.

Regardless of whether a company chooses to offer an optional plan or a plan that is mandatory for all customers, the price cap of Section 701 does not apply. As pointed out above, it is a new service regardless of whether it is optional or mandatory.

Accordingly, allowing companies to choose the best competitive and customer-oriented alternative between optional calling plans and an across-the-board expansion of their basic service plans is consistent with the MTA and the public interest. They should be allowed this choice.

## **VI. BILLING ADJUSTMENTS SHOULD NOT BE REQUIRED.**

Adjustments to customers' bills for charges collected between the effective date of the amendments and the date of implementation of Section 304(11) are not appropriate.

A retroactive adjustment to customer bills is not appropriate for several reasons. First, some parties have assumed that this new service will cause overall rate reductions to the customer. That may not be true. Rates may need to be increased and increased rates cannot be billed retroactively. (3 T 123-124). Second, there is not a consensus of which services' rates need adjustment — those of optional toll calling plans or local service calling plans, or both. Also, it has not yet been determined which plans within these two categories are the proper ones for adjustment. (3 T 124). Third, making such retroactive adjustments would require a monumental review of past bills that could never be satisfactorily reviewed for accuracy; thus, causing disputes with customers. (3 T 124). Fourth, there is general agreement that this new service was not available as an alternative calling option nor could it be implemented on July 17, 2000. (3 T 124). This Commission even acknowledged in its July 17 order that it was not possible to immediately implement Section 304(11). Based on these reasons, it would be bad public policy to attempt to make billing adjustments back to July 17.

## **VII. INTER-CARRIER COMPENSATION SHOULD NOT CHANGE.**

Several parties raised issues regarding inter-carrier compensation for call termination services provided for adjacent exchange calls. Some parties are concerned about the potential need to negotiate individual interconnection agreements with the small incumbent LECs. Their concerns are unfounded since call termination services will be provided by the small incumbents pursuant to tariffs.

Both toll access tariffs and local reciprocal compensation tariffs can be used. In non-EAS areas, the calls affected by Section 304(11) are interexchange calls and toll service is the service used; therefore, they are subject to toll access charges as specified in MECA's toll access tariff. These calls are not subject to local reciprocal compensation, as some parties have asserted. This incorrect assertion is a result of inappropriately equating the categorization of a product i.e. the "local call" with the service used by the provider to carry that call. (3 T 128). The calls remain interexchange calls, but are only "considered" local calls for billing. These parties incorrectly tie inter-carrier compensation to the labeling on end user bills. Inter-carrier compensation should be tied to the underlying type of service carrying those calls. (3 T 128).

Some confusion also arises from their mistaken premise that these calls are within the local service area. In fact, the opposite is true. (3 T 128). These calls are between local service areas and, thus, the service used to provide them by definition is toll service (with the exception of grandfathered EAS). Consequently,

inter-carrier compensation for non-EAS calls subject to Section 304(11) is to be based on toll access rates.

In addition, changes to inter-carrier compensation are beyond the scope of this proceeding since Section 304(11) addresses only customer service and billing issues. Inter-carrier compensation issues are best left to negotiation and tariff filings.

Nevertheless, if this Commission determines that Section 304(11) requires that carriers compensate each other based on local interconnection rules, then MECA members will issue tariffs with appropriate termination rates. (3 T 131). Tariffs are appropriate because MECA's members are exempt under the Federal Telecommunications Act from the obligation to negotiate agreements with interconnecting carriers. See 47 USC 251(c) and (f). Thus, if a local reciprocal compensation scheme were to apply, carriers terminating traffic subject to 304(11) to MECA member company exchanges would be billed according to the rates, terms and conditions of those tariffs and there would be no need to negotiate interconnection agreements for this class of traffic.

The Commission has ruled in numerous cases that tariffs can be used to establish local reciprocal compensation arrangements. See, e.g., Bierman v CenturyTel of Michigan, Inc, Case No. U-11821 (January 28, 2000 order, p 11); Coast to Coast Telecommunications v GTE, Case No. U-12090 (February 22, 2000 order, pp 4-5); and Baraga Telephone v Ameritech, Case No. U-12284 (June 5, 2000 order). See also Dunbar Testimony, 3 T 88.

However, in order for a local reciprocal compensation arrangement to work, the Commission must also order the mandatory identification of the originating carrier on all call information to ensure that all calls are properly identified so the correct carrier can be billed. (3 T 132). For appropriate intercompany billing and compensation to be accomplished, the correct Carrier Identification Code ("CIC") or Carrier Information Parameter ("CIP") must be provided by the originating carrier to the terminating carrier. Id.

#### VIII. THE EXEMPTION APPLIES TO CALL TERMINATION.

Small companies are entitled to an exemption if they meet the criteria specified in Section 304(10), MCL 484.2304(10). At this time, all of MECA's members have been found to be exempt by this Commission. See In Re Application of Telecommunications Association of Michigan for Exemptions, Case No. U-12582 (October 6, 2000 Order).

The exemption should be a complete exemption. Among other things, it should be interpreted to require that there be no changes in the type of call termination rates (toll access rates) assessed to companies whose calls terminate in the small LEC exchanges.

An "exemption" is something that should insulate the exempt party from any significant negative impact. A company can hardly be considered to be exempt from Section 304(11) if the operation of Section 304(11) causes it to lose compensation by changing the company's applicable rates for call termination. The Legislature

obviously intended to insulate small LECs from the potential negative economic consequences faced by the larger LECs. There is no reason to give the large LECs and interexchange carriers a windfall by reducing their access rates. Rather, the applicable rates can remain the same and they can continue to pass on those costs. They should not be allowed to shift the burden of implementing this section to the small LECs when the Legislature so clearly exempted them. Thus, the exemption should apply to call termination as well as call origination.

### **CONCLUSION**

All providers -- both local service providers and toll service providers -- must comply with Section 304(11). Section 304(11) should be interpreted in a manner that does not upset long-standing relationships between customers and their chosen providers and that does not hinder competition and the competitive offerings available to customers. There should be no administrative "slamming" of customers from one class of carrier to another. All non-exempt carriers should have to comply with this section and provide service that allows for "local calling" to their customers. This can be accomplished by ordering each non-exempt carrier to offer plans to their customers that include these calls, identified on customer bills as a type of local call with a corresponding rate similar to a local rate.

The geographical scope of the calling area should be adjusted so that "local calling" includes the customer's home exchange and the historic adjacent exchanges of the incumbent LECs in order to prevent extreme unintended consequences.

Compliance with Section 304(11) should be considered a new service and not subject to the Section 701 limitations because of the larger calling area, the added cost and the minimum TSLRIC requirement.

Due to differences in demographics, geographic service areas and customer bases, each carrier should have the choice of implementing Section 304(11) via an expansion of a basic plan, with an applicable rate that is spread across the entire customer base or an additional plan that is optional to the customer.

There should be no billing adjustment back to July 17, 2000, since this provision could not have been immediately implemented.

Inter-carrier compensation should not be altered since the Legislature made no mention of a desire to change inter-carrier compensation and the law clearly requires toll access for calls between local calling areas. The small LEC exemption should be complete and should apply to call termination as the Legislature intended.

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