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## **INTRODUCTION**

The Michigan Exchange Carriers Association, Inc. ("MECA"), files this reply brief in accordance with the schedule established by the presiding Administrative Law Judge.

In this reply brief, MECA will respond to several arguments raised and statements made in the initial briefs. Among other things, several parties refer to the four "stipulations" that were admitted into evidence as Exhibits I-7, S-8, S-9, and S-10. These "stipulations," however, are merely statements of positions of some of the parties and should not be given undue weight, especially considering the fact that MECA's position represents a single united position of thirty-three basic local exchange carriers.

In addition, MECA explained in detail in its initial brief why all non-exempt providers, both local and toll providers, should be responsible for implementing Section 304(11). While MECA has addressed most issues raised by the parties in its initial brief, MECA will respond to some additional issues raised in this regard. MECA will also respond to numerous unsupported and conclusory statements made by the other parties.

From a policy perspective, this Commission should exercise extreme caution when the large carriers who are supposed to be competing with each other all seem to have the same goal of transferring customers among themselves. AT&T and WorldCom seem all too eager to transfer some of their interexchange customers to

Ameritech Michigan and Verizon for purposes of carrying their adjacent exchange interexchange calls (toll calls). It is common knowledge that AT&T and MCI WorldCom are spinning off their consumer long distance assets. The breakup of both companies is partly motivated by thinning profits and growing competition in the consumer long distance market. Nevertheless, at least one long distance carrier, Sprint, is interested in continuing to serve the public. Sprint also supports compliance of all carriers, both long distance and local carriers, so that each carrier keeps its own current customers while it complies with the mandates of Section 304(11).

### **ARGUMENT**

#### **I. THE COMMISSION SHOULD NOT ADOPT THE “STIPULATIONS” PER SE SINCE THEY CONTAIN INACCURACIES AND ARE MERELY STATEMENTS OF THE POSITIONS OF SOME OF THE PARTIES.**

The four documents that have been referred to as partial “stipulations” were pursued by the parties in accordance with the Commission’s encouragement in its July 17, 2000 order to explore fully the possibilities of achieving consensus on some or all of the issues. While MECA participated in the discussions in an attempt to achieve consensus, it could not sign these documents because, among other things, they contain inaccuracies and seem to imply that local exchange carriers exclusively must implement Section 304(11). As discussed in MECA’s initial brief, both local exchange carriers and toll carriers are responsible for complying with Section 304(11), other than those specifically exempted by the law.

These four documents should not be given undue weight by the Commission. These documents merely contain the positions of some of the parties on some of the issues. They are not in any way binding on the Commission or the remaining parties.

Rule 333 of the Commission's Rules of Practice and Procedure, 1992 ACS R 460.17333, recognizes only two types of potentially binding documents – settlements and stipulations. In accordance with Rule 333(2), a stipulation is a written document that is used when all parties to a proceeding agree upon on some or all the facts. The documents here are not true stipulations since all the parties did not agree to them and they contain merely the positions of the parties, as opposed to facts.

Under Rule 333, a "settlement agreement" is a document that can be proposed by either all or some of the parties to a proceeding. A settlement agreement proposes a reasonable resolution of the entire proceeding. These four documents do not resolve the entire proceeding and, thus, there clearly is no settlement agreement here.

The parties that sponsored these documents admitted that the documents represent a consensus by some of the parties on some of the issues and that they will provide the Commission with a good sense of the positions of the respective parties in a manner that facilitates resolution of the issues. (3 T 95-98). Thus, Exhibits I-7,

S-8, S-9 and S-10 are neither stipulations nor settlement agreements and are not binding on the Commission or the remaining parties.

In their initial briefs, some of the parties have suggested that their positions should be given more weight than MECA's because the "stipulations" were signed by most of the parties. They also imply their position should be given more weight by asserting that MECA is the only party taking the position that all non-exempt providers must comply with Section 304(11). MECA encourages the Commission to ignore these appeals to number counting. Regardless of whether it is only one party or it is a group of parties encouraging a tortured interpretation and an activist revision of the law, their position should fall.

The correct focus is on the weight of an argument, not on the number of carriers or parties supporting an argument. However, if the Commission believes that numbers are important, then correct counting weighs in MECA's favor since MECA represents thirty-three local exchange carriers. The other parties also overlooked the position taken by Sprint Communications, LP, which is very similar to the position taken by MECA. Thus, thirty-four companies support MECA's position, many more than oppose it.

With that said, MECA notes that it does agree with most of the general concepts in the four documents at issue. With regard to Exhibit S-8, the "Corrected Partial Stipulation of Issues," MECA agrees that a customer's local calling area should be the home exchange of the customer and that EAS should be grandfathered. There

is, however, a technical problem with the so-called "stipulation." Subpart b states that where Section 304(11) applies, a call to an incumbent local exchange adjacent to a customer's home exchange "is a local call and shall be considered a local call." This is a misquote of the law. The law states that 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." It appears that the error was inadvertent, but nevertheless it is an error. These calls are not local calls, but are merely "considered" local calls. The misquoted language improperly shifts the focus of the legislative mandate and is being used to advance their otherwise unsupportable positions.

Exhibit I-7, the "Partial Stipulation Regarding Section 701 Issue," also asserts a concept that is generally agreeable to MECA. As discussed in MECA's initial brief, the rate cap in Section 701 should not apply to the services required by Section 304(11). However, the so-called "stipulation" contains language suggesting that there might be a contraction of intraLATA toll calling. This language is troublesome because it suggests that there may be a contraction of toll service. As discussed in MECA's initial brief, in non-EAS areas, calls between exchanges are by definition part of toll service.

With regard to Exhibit S-9, the "Partial Stipulation Regarding Slamming/Cramming Issue," that document is completely off base in suggesting that customers will of necessity be switched to a different carrier than the customer's chosen toll provider. MECA opposes slamming because it is anti-competitive, regardless of

whether it is done by the provider or done administratively. As MECA discussed in its initial brief, the strong legislative and administrative efforts taken over the past year to prevent slamming should lead to the conclusion that neither legislative nor administrative slamming is supported by Section 304(11). Rather, customers should be allowed to choose their providers.

With regard to Exhibit S-10, the “Partial Stipulation Regarding Billing Adjustment Issue,” MECA also generally agrees that no adjustments to customer bills are required. However, there is again language in the document focusing on local exchange providers instead of both local exchange providers and toll providers.

These four documents should not be given undue weight by this Commission. In fact, to the extent that they imply that only local exchange carriers are required to comply with Section 304(11), they should be disregarded. These parties’ tortured interpretation of the law to achieve their own policy and business goals should be rejected. The Commission should apply the words as written in the context of the entire Act.

**II. THE PLACEMENT OF THE LOCAL CALLING REQUIREMENTS IN SECTION 304 WAS LOGICAL EVEN THOUGH IT APPLIES TO ALL NON-EXEMPT CARRIERS.**

MECA’s initial brief sets out clearly why Section 304(11) applies to all non-exempt carriers. MECA’s initial brief addressed most of the issues raised by the parties. One new argument has been raised in response to MECA’s position. Some parties try to place great emphasis on a technical decision of the Legislature, i.e. the

Legislature's decision to place the local calling provision in Section 304, a section primarily directed toward basic local exchange service. Some parties assert that placement of this provision in Section 304 implies that only basic local exchange carriers must comply. This argument should be rejected.

First, the location of a provision in an Act does not control over the language of the Act.

Second, because this provision applies to both basic local exchange carriers and toll carriers, the Legislature of necessity had to choose between two locations, to the exclusion of one. It would have been just as logical for the Legislature to put this provision with the toll service provisions as it was for the Legislature to put it with the local service provisions. Either one is logical since it affects both. It was probably better to put it in Section 304 since it fits neatly with the other optional calling plans available to customers in Section 304b.

Third, other provisions in Section 304 apply to various types of services. For example, Section 304(10) contains an exemption from the basic local exchange provisions of Section 304 and also from the toll access provisions of Section 310(2).

Fourth, a review of other provisions in Section 304, 304a and 304b reveals that the Legislature clearly knew how to specifically require only one type of provider to comply. For example, Section 304a(1), MCL 484.2304a(1), states that "a basic local exchange provider shall restructure its rates." Similarly Section 304b(1), MCL 484.2304b(1), states that "a provider of basic local exchange service

shall develop and offer various rate plans” . . . . The Legislature did not choose similar language in Section 304(11), but clearly knew how to do so if it intended to limit the provision to providers of basic local exchange service.

Moreover, as pointed out in MECA’s initial brief, interpreting this section to apply only to providers of basic local exchange service would be inefficient, would require changes in providers, networks and call routing, would be anti-competitive, would result in administrative slamming, and would deny benefits to rural areas.

### **III. SPECIFIC RESPONSES TO OTHER ARGUMENTS.**

#### **A. Response to Verizon.**

Verizon's brief contains a lot of conclusory statements that have no support in the law and should be rejected. For example, Verizon states on page 1 of its brief that Section 304(11) requires Verizon to "expand its local calling areas," thereby "transforming" a large number of what were previous toll calls into local calls. Contrary to this assertion, local calling areas will actually be reduced in order to accommodate the expanded local calling between more local calling areas. In addition, there is no indication in the legislative language that calls will be "transformed." Rather, certain interexchange calls will simply be "considered" to be local calls. These calls will still be carried between exchanges and will require the use of the interexchange networks of the toll providers (including Ameritech Michigan's and Verizon's interexchange facilities).

Verizon also erroneously asserts at page 5 of its brief that Section 304(11) "has changed the definitions of what constitutes a local call." This statement is completely inaccurate. The definitions of "basic local exchange service" and "toll service" are exactly the same as they were prior to the recent amendments to the MTA. See MCL 484.2102(b) and (ee). The traffic at issue here is interexchange traffic and should continue to be provided by the interexchange carriers.

Verizon also refers to the adjacent exchange toll calling plans required of toll providers by Section 312(4) of the MTA, MCL 484.2312(4). (Verizon brief, pp

4-5). In this regard, Verizon states that customers of an exempted service provider should enjoy the benefit of affordable rates for calls within their communities of interest just as the customers of non-exempted carriers. Verizon asserts that this is true because, even if exempt from Section 304(11), exempt carriers must offer optional discounted toll plans to their customers sharing a community of interest. While this statement may be true in some areas of the state, it is not true in the exchanges of the small incumbent LECs. These LECs do not provide toll service. Customers in these exchanges rely on toll providers or interexchange carriers such as Verizon, Ameritech Michigan and AT&T for their interexchange toll calling. Benefits can only be brought to these customers by applying Section 304(11) to all providers.

Verizon also argues that it should not be deemed to be in violation of the MTA's prohibition against slamming and cramming. (Verizon brief, p 6). While Verizon might not be in violation of the slamming and cramming provisions of the MTA, Verizon's willingness to take customers from interexchange carriers is certainly undesired administrative slamming. Verizon attempts to justify its administrative slamming by pointing out that every customer in Verizon's local calling network affirmatively ordered local service from Verizon. This assertion, however, fails to acknowledge the similar fact that some of its customers have affirmatively ordered toll service, including adjacent exchange interexchange service, from an alternative toll provider. It is hard to believe that the few limited words of the one short sentence in Section 304(11) contains a legislative mandate to slam customers.



**B. Response to Ameritech Michigan.**

In footnote 4 at pages 8-10 of its brief, Ameritech Michigan identifies a potential problem with one-way local calling where there is an exchange of a non-exempt provider adjacent to an exchange of an exempt provider. Ameritech Michigan asserts that customers will undoubtedly arbitrage the system by choosing to place calls from the exchange having expanded local calling, rather than from the exchange where toll charges apply. Ameritech Michigan points out an underlying problem, but its proposal does not remedy the problem. The solution, of course, is to have available between all adjacent exchanges expanded local calling. If non-exempt toll providers are required to comply with Section 304(11), all customers will have expanded local calling and there will be no need for "code calling" arbitrage. Adoption of MECA's interpretation of Section 304(11) eliminates this potential problem.

Ameritech Michigan's more direct response to MECA is filled with clever half witticisms, but is lacking in content. Ameritech Michigan criticizes the well thought out, straight forward testimony of MECA's President Agris Pavlovskis with a lame analogy to a duck and a chicken. Mr. Pavlovskis testified that the calls referred to in Section 304(11) are interexchange calls and that 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 still be billed as local calls. (3 T 124 and 128). In a foul response, Ameritech Michigan describes Mr. Pavlovskis' position as follows, "In other words, although the service walks like a duck and

quacks like a duck, the Legislature intended it to be a chicken.” (Ameritech brief, page 12). This quip is an attempt by Ameritech Michigan to convince the Commission that the service is a duck when it really is a chicken. They want to take a chicken and dress it up like a duck, and to incur a great expense in doing so.<sup>1</sup> The bottom line however is that it is physically the same. An interexchange call uses the interexchange network and should be provided by the current provider who carries the calls between the exchanges.

Ameritech Michigan also asserts that MECA’s proposed interpretation is an “overly-technical reading of the section that is too clever by half.” Contrary to this assertion, MECA’s proposed interpretation is simple. It does not read words into the statute. It also does not cause conflicts with other parts of the statute. MECA agrees with Staff that this provision must be considered in conjunction with other provisions of the MTA. (Staff brief, p 1). Considering it in conjunction with all the provisions of the MTA, including the definition provisions, leads to the conclusion that all providers must comply with Section 304(11).

Ameritech Michigan also refers to Section 312 of the MTA which requires all toll providers to offer optional discount toll calling plans to adjacent exchanges. MCL 484.2312(4). Ameritech asserts that this amendment would be

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<sup>1</sup>Mr. Pavlovskis’ credentials show that he graduated from the University of Oregon, the home of the Fighting Ducks. (3 T 115). As an Oregon alumnus, he knows a duck when he sees one. MECA, however, fears that Ameritech Michigan is all too familiar with foul play.

“mere surplusage” if Section 304(11) were interpreted to require toll providers to offer local calling to adjacent local calling areas. This argument fails to account for the overall scheme of the Act. The Act contains various provisions mandating numerous types of optional plans to be made available to customers. The idea is to make available various alternatives that can be chosen by the customer in a competitive market place. In fact, the continued inclusion of Section 312(4) indicates that the Legislature intended for toll service providers to continue to provide service between exchanges. In order to comply with Section 304(11), since they are already providing a service between adjacent exchanges, they simply need to create a new variation of this service with an appropriate pricing scheme, appropriate tariff language and appropriate billing protocols.

Furthermore, MECA agrees with Ameritech Michigan that the Commission should not construe Section 304(11) in a way that would render the legislation unworkable. That is exactly why MECA supports the interpretation of the Act that requires all providers to comply, but limits the new service to adjacent exchanges.

**C. Response to WorldCom.**

At page 2 of its brief, WorldCom raises legitimate concerns regarding the financial impact that the new law will have on interexchange carriers (“IXCs”). WorldCom asserts that IXCs would stand to lose \$1.87 million per month or \$22 million in revenue per year under the Ameritech Michigan proposed method of flash-cutting to an expanded local calling regime for all customers without having the

customers sign up for the expanded calling. WorldCom proposes a potential solution of making the service optional to the customer, who then can be switched to a different carrier once appropriate end user approval has been obtained. This, however, is not a real solution. While it might eliminate concerns about technical non-compliance with the MTA's anti-slamming provisions and customer choice provisions, it does not resolve the lost revenue issue. While MCI may be spinning off its residential toll business, other long distance carriers such as Sprint really do care to retain their revenues and their customer base. MECA's proposal allows carriers to retain their customers.

WorldCom also opposes being required to comply with Section 304(11) on the grounds that IXCs do not have local rates in their toll tariffs. This argument misses the point. The same could be said of local service providers that they don't provide toll service through a local service tariff. In any event, if new service provisions and rates are put in the tariff, the IXCs will have applicable rates in their toll tariffs for these calls that are considered local calls and that are provided by statute by means of toll service. It's up to WorldCom to find a way to put these rates in their tariff. It is certainly less costly to make adjustments to the tariff than it is to require a complete reconfiguration of the toll and local networks.

**D. Response to AT&T.**

AT&T also raises concerns about construing Section 304(11) in a manner that negatively impacts Michigan's competitive telecommunications markets. MECA

agrees with AT&T that the Commission should be concerned if traffic is being syphoned away from an emerging competitive market to a non-competitive market. Like WorldCom, AT&T raises concerns, but its proposals do not provide adequate solutions. Making the service optional and requiring it to be offered only by the non-exempt local exchange carriers does not resolve the underlying issues. The appropriate solution is for each carrier to take care of its own customers by putting new service provisions in their own tariffs. This is not that difficult.

Furthermore, AT&T's proposal to apply Section 304(11) only within the service territory of each incumbent provider does not make sense. If it is inappropriate to transfer customers from one provider to another for traffic between different incumbents' service territories, then it is also inappropriate to do that within a single incumbent's service territory.

AT&T also refers to the adjacent exchange toll calling provisions of Section 312(4) as support for its proposal to apply Section 304(11) solely within the exchanges of each provider. Section 312(4), however, does not limit the adjacent exchange toll calling plans to a subset of the adjacent exchanges in the state. That section provides options to customers and is consistent with imposing other adjacent exchange calling requirements on toll providers.

Furthermore, at pages 12-13 of its brief AT&T again argues that interexchange carriers should not have to implement Section 304(11). AT&T incorrectly asserts that no other party supported MECA's proposal. As pointed out previously, MECA represents 33 individual basic local exchange carriers who all support this proposal and, in addition, Sprint supports MECA's proposal. It is good to

know that there is at least one long distance carrier in Michigan who is interested in continuing to serve the public. Sprint has not found it necessary to come up with contrived reasons to get out of the residential toll business. AT&T's proposals do not remedy the concerns that they have raised. Their proposal simply allows them to get out of the business sooner.

**E. Response to Z-Tel.**

Z-Tel recommends that Section 304(11) be interpreted so that the expanded local calling service is not optional to the customer. Z-Tel asserts that such a requirement would be unduly burdensome to CLECs such as Z-Tel.

The small incumbent LECs may face some of the same economic considerations as Z-Tel and other CLECs. Thus, as MECA proposed in its initial brief, the choice of whether to implement a mandatory or optional plan should be left to each company. Each individual LEC and IXC is in the best position to determine whether or not its economic circumstances justify an optional or a mandatory plan.

**CONCLUSION**

All non-exempt providers, both local and toll, should be required to comply with Section 304(11). This provision can be implemented quickly and efficiently by requiring providers who currently carry the affected calls to continue to carry those calls, but to adjust bills and prices accordingly. It is, after all, good policy to keep customers with their chosen providers; to save money by using the existing networks of the existing interexchange providers; to support carriers dedicated to

providing services within the state; and to bring benefits to all areas of the state. Requiring all carriers to comply is competitive and fair and does not twist the wording of the statute to require numerous specific changes to networks and services that have not been specifically mandated by the Legislature. These carriers can choose

whether to implement a plan that is mandatory or optional to their customers in order to implement the plans economically and efficiently.

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