



### FEATURES |

#### ***E-9-1-1: Costly Regulations for Multi-line Phone Systems Continue to Loom for Michigan Institutions***

The Michigan Public Service Commission (“Commission”), Telecommunications Division, is continuing its informal rulemaking proceeding for the implementation of Section 405 of the Emergency 9-1-1 Services Enabling Act, MCL 484.1405, 1986 PA 32. Section 405 allows the Commission to promulgate rules that would “require each service user with a multi-line telephone system to install no later than December 31, 2011 the necessary equipment and software to provide specific...

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#### **Applications and Complaints |**

No Telecommunications Applications or Complaints have been filed during the preceding fortnight.

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. . . location of a 9-1-1 call. This section applies to multi-line telephone systems regardless of the system technology.” The telephone companies themselves are exempt.

The current version of the draft proposed rules (Draft 9) would require any operator of a multi-line telephone system (“MLTS”) to automatically provide with every 9-1-1 telephone call a “Specific Location” – which is defined as “a room or unit number, or room name, or equivalent unique designation of a portion of a structure or building to which a 9-1-1 emergency response team may be dispatched and the caller quickly located that is not larger than 7,000 square feet.” The “Specific Location” requirement is further defined as (a) for a building having its own street address and containing an occupied area of 40,000 square feet or less, all located on a single floor and on a single contiguous property; the MLTS operator shall identify the specific location of each communications device, including the building’s street address; (b) for a building having its own street address and containing an occupied area of more than 40,000 square feet; the MLTS operator shall identify the specific location of each communications device including the building’s street address and building floor if applicable; (c) for separate buildings, using one MLTS, containing an occupied area of 40,000 square feet or less, all located on a single floor and on a single contiguous property and having a common public street address; the MLTS operator shall identify the specific location of each communications device in each building, in addition to the street address; and (d) for separate buildings, using one MLTS, containing an occupied area between 7,000 square feet and 40,000 square feet on multiple floors; the MLTS operation shall identify the specific location of each communications device, including the street address and any unique building identifier, if applicable.

For many existing MLTS in Michigan, it is unknown if it is technically feasible to modify the system to transmit the required data to the 9-1-1 Public Service Answering Point (“PSAP”). If it is technically feasible, the costs for such changes will not be known until the rulemaking proceeding is complete. However, implementation of the statute and draft informal rules have a potential impact on schools, business, and telecommunications carriers that could run in the millions of dollars for each institution. Because there are currently no exemptions in the draft proposed rules based on impossibility or cost, all businesses, schools, and other organizations that maintain an internal phone system, regardless of whether such telephone system is on the Plain Old Telephone Network or connected via Voice over Internet Protocol, will be impacted.

The Emergency 9-1-1 Services Enabling Act requires that MLTS be compliant by December 31, 2011. Because this is currently an informal rulemaking process, the Commission has not yet requested authorization from the Office of Regulatory Reform (“ORR”) to begin the formal process to promulgate these rules. Once formal rulemaking is requested, it is unknown when the final rules will be adopted, allowing organizations to even start the inquiry process regarding modification of their MLTS.

The Commission has received numerous comments on the proposed rules and is continuing to solicit comments from interested parties. The Commission has also held a series of collaborative meetings with interested parties to discuss the rules and possible modifications. The informal rules are available for viewing on the Commission’s website under the Telecommunications Division/Numbering and 911 at <<http://www.michigan.gov/mpsc/0,1607,7-159-16372-220667-->

,00.html>. The Commission has asked that comments be sent to Karen G. Norcross, Sr. Numbering Resources Specialist, Operations and Tariffs Section, Telecommunications Division, Michigan Public Service Commission via e-mail at <norcrossk@michigan.gov>. Clark Hill PLC is available to assist interested parties with the drafting and filing of such comments.

# # #

### ***MiCTA Selects Sprint as an Endorsed National Vendor for Wireless Voice, Cellular, and IP Services |***

*Note: MiCTA issued the following Press Release on July 15, 2010.*

SAGINAW, Mich., July 15 – MiCTA, a nationwide group purchasing organization, has named Sprint an endorsed national vendor for telecommunications, VoIP, IP, cellular and select specialty services, as well as for designated direct equipment sales to its membership.

“We are very pleased to recognize Sprint as an endorsed national vendor for a comprehensive set of technology services for our membership,” said Tim von Hoff, Chief Operating Officer of MiCTA. "Nationally, Sprint has provided our membership with an excellent range of telecommunications and networking services designed especially for organizations in the governmental, business and public sectors. Our membership appreciates the unique combination of value and service that Sprint offers, and we're delighted that Sprint will continue to serve our membership for at least the next two years."

Sprint's designation as an endorsed national vendor is the result of MiCTA's highly competitive bidding process, which is designed to evaluate technology-oriented and telecommunications solutions on behalf of its nationwide membership. Once the process has been completed, MiCTA members may purchase telecommunications and technology-oriented products and services at volume discounts using the MiCTA contract. Besides offering significant cost savings, this approach also eliminates the need for members to conduct their own competitive bidding processes.

"Sprint is always looking for simple and innovative ways to offer the best experience to our higher education customers," said Tim Donahue, vice president of industry solutions at Sprint. "Our relationship with MiCTA will allow us to extend the reach and visibility of our cost-effective wireless solutions portfolio including 3G and 4G to universities across the country."

### **About MiCTA**

MiCTA, located at 515 North Washington Street, Suite 405, in Saginaw, MI, represents thousands of higher education, K-12, healthcare, library, governmental and charitable entities. Nationally, MiCTA seeks to resolve common voice, video and data issues, provide helpful information, participate in legislative and regulatory telecommunications advocacy, and negotiate discounted purchase contracts for telecommunications and technology services for its members. For more information, please visit the MiCTA Web site, <<http://www.mictatech.org>>.

For additional information about Sprint solutions for higher education, please visit <<http://www.sprint.com/highereducation>>.

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## 2009 & 2010 LEGISLATION |

Copies of bills and public acts referred to in this column may be obtained by contacting your state Senator or Representative, on the Michigan Legislature Web site, <<http://www.michiganlegislature.org/>>, or from the Legislative Service Bureau Document Room at (517) 373-0169.

Senate Bill # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
SB 012 Hardiman	01/14/2009	Campaign finance; public disclosure; disclosure of committees that employ and registration of persons who make “robocalls” in campaigns.	Referred to Senate Committee on Campaign and Election Oversight.
SB 013 Hardiman	01/14/2009	Administrative procedure; rules; state office of administrative hearings and rules; require policy posting of revisions and assessment of impact on the rules in the private sector.	06/16/2009 Substitute S-1 Passed Senate, 20 Yeas, 16 Nays, 1 Excused; 06/17/2009 referred to House Committee on Great Lakes and Environment.
SB 036 Pappageorge	01/27/2009	Education; curricula; internet safety instruction in schools; require. Amends 1976 PA 451 (MCL 380.1 - 380.1852) by adding sec. 1163.	Referred to Senate Committee on Education.
SB 149 Patterson	01/29/2009	Communications; internet; obtaining personal information by false pretenses; prohibit. Amends secs. 3, 7 & 9 of 2004 PA 452 (MCL 445.63 <i>et seq.</i> ) & adds sec. 7a.	08/19/09 Reported by House Committee on Judiciary with recommendation and amendment; referred to second reading.
SB 190 2009 PA 4 Thomas	02/04/2009	Communications; video services; dispute resolution process; provide for. Amends sec. 10 of 2006 PA 480 (MCL 484.3310).	04/02/2009 Signed by Governor Granholm; assigned 2009 PA 4 with immediate effect.
SB 371 Garcia	03/12/2009	Communications; cellular telephone; active duty military personnel; allow to cancel cellular telephone contract without penalties. Creates new act.	11/10/2009 Reported with recommendation and without amendment by the House Committee on Military and Veterans Affairs and Homeland Security; Referred to Second Reading
SB 397 Thomas	03/19/2009	Communications; video services; video service provider; clarify public, education, and government access fee. Amends sec. 6 of 2006 PA 480 (MCL 484.3306).	Referred to Senate Committee on Energy Policy and Public Utilities.

Senate Bill # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
SB 402 Thomas	03/24/2009	Traffic control; violations; operation of a vehicle while using certain electronic devices; prohibit. Amends sec. 320a of 1949 PA 300 (MCL 257.320a). Tie-Bar to SB 468.	01/26/2010 Substitute S-3 passed Senate, 31 Yeas, 6 Nays, 1 Excused; Referred to House Committee on Transportation.
SB 417 Basham	03/31/2009	Traffic control; violations; use of hand-free wireless telephones while operating a motor vehicle; allow. Amends sec. 320a of 1949 PA 300 (MCL 257.320a) & adds sec. 602b.	Referred to Senate Committee on Transportation.
SB 467 Kahn	04/23/2009	Transportation; school vehicles; use of cellular telephone while operating a school bus; prohibit, and provide penalties. Amends 1990 PA 187 (MCL 257.1801 - 257.1877) by adding sec. 58.	Referred to Senate Committee on Education.
SB 468 Kahn  2010 PA 59	04/24/2009	Traffic control; violations; use of handheld wireless telephone while operating a motor vehicle; prohibit under certain circumstances and permit use of hands-free wireless telephone. Amends sec. 320a of 1949 PA 300 (MCL 257.320a) by adding sec. 602b.	05/04/2009 Signed into law by Governor Jennifer M. Granholm.
SB 611 Thomas	05/27/2009	Communications; telecommunications; provision relating to toll access service rates; modify. Amends sec. 310 of 1991 PA 179 (MCL 484.2310).	Referred to Senate Committee on Energy Policy and Public Utilities.
SB 770 Patterson	08/26/2009	Criminal procedure; sex offender registration; use of commercial social networking websites by sex offenders; prohibit. Amends 1994 PA 295 (MCL 28.721 - 28.736) by adding sec. 37.	Referred to Senate Committee on Judiciary.
SB 883 Deborah Cherry	09/17/2009	Use tax; collections; definition of interstate telecommunications services; expand to include international services.	Referred to Senate Committee on Finance.
SB 989 Switalski	12/09/2009	Traffic control; violations; use of handheld cellular telephone device while operating a motor vehicle; prohibit, and provide penalties. Amends sec. 320a of 1949 PA 300 (MCL 257.320a) & adds sec. 602b.	Referred to Senate Committee on Transportation.
SB 1068 Basham	01/20/2010	Communications; broadcasting; employment contracts for broadcasters; prohibit certain provisions.	Referred to Senate Committee on Commerce and Tourism.

Senate Bill # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
SB 1133 Garcia	02/10/2010	Communications; telecommunications; distribution of emergency 9-1-1 service enabling funds; modify. Amends sec. 408 of 1986 PA 32 (MCL 484.1408).	Referred to Senate Committee on Appropriations.

House Bill # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
HB 4232 Horn	02/10/2009	Communications; telecommunications; disclosure of person paying for automated telephone communication; require. Amends 1976 PA 388 (MCL 169.201 - 169.282) by adding sec. 48.	Referred to House Committee on Ethics and Elections.
HB 4247 Mayes	02/11/2009	Communications; video services; dispute resolution process; provide for. Amends sec. 10 of 2006 PA 480 (MCL 484.3310).	03/04/2009 Passed House with amendment, 108 Yeas, 0 Nays, given immediate effect; transmitted to Senate; 03/05/2009 Referred to Senate Committee on Energy Policy and Public Utilities.
HB 4257 Melton 2009 PA 182	02/11/2009	Communications; telecommunications; provision relating to toll access service rates; modify. Amends sec. 310 of 1991 PA 179 (MCL 484.2310).	12/17/2009 Signed by Governor Granholm; assigned 2009 PA 182 with immediate effect.
HB 4362 Rocca	02/19/2009	Transportation; school vehicles; use of cellular telephone while operating a school bus; prohibit.	Referred to House Committee on Transportation.
HB 4369 Polidori	02/19/2009	Traffic control; violations; use of mobile phones while operating a motor vehicle; prohibit, and provide penalties.	Referred to House Committee on Transportation.
HB 4370 Polidori 2010 PA 58	02/19/2009	Traffic control; violations; entry of points for operating a motor vehicle while sending or receiving a message on an electronic wireless device; prohibit.	05/04/2009 Signed into law by Governor Jennifer M. Granholm.

House Bill # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
HB 4394 Gonzales  2010 PA 60	02/24/2009	Traffic control; violations; penalties for operating a motor vehicle while reading, writing, or sending a message on an electronic wireless device; provide for. Amends sec. 320a of 1949 PA 300 (MCL 257.320a) & adds sec. 602b.	05/04/2009 Signed into law by Governor Jennifer M. Granholm.
HB 4451 Smith	02/24/2009	Crimes; other; knowing an individual needs emergency help; require to call 9-1-1. Amends 1931 PA 328 (MCL 750.1 - 750.568) by adding sec. 499.	Referred to House Committee on Judiciary.
HB 4576 Barnett	03/12/2009	Communications; other; video service provider; clarify public, education, and government access fee. Amends sec. 6 of 2006 PA 480 (MCL 484.3306).	Referred to House Committee on Energy and Technology.
HB 4833 McMillin	04/29/2009	Libraries; policies and practices; installation of internet filter software on computers; require. Amends sec. 6 of 1982 PA 455 (MCL 397.606).	Referred to House Committee on Judiciary.
HB 4999 Mayes  2009 PA 146	05/26/2009	Traffic control; violations; weight restrictions during frost restriction periods; provide exemption for public utility subcontractors. Amends sec. 722 of 1949 PA 300 (MCL 257.722).	11/19/2009 Enrolled bill approved by Governor Granholm; assigned 2009 PA 146 with immediate effect.
HB 5079 Warren	06/11/2009	Crimes; computer; unauthorized use of internet; remove prohibition and penalty. Amends sec. 540 of 1931 PA 328 (MCL 750.540).	Referred to House Committee on Judiciary.
HB 5102 LeBlanc	06/16/2009	Communications; cellular telephone; termination of cellular telephone contracts by certain active military personnel; allow. Creates new act.	09/10/2009 Passed House, given immediate effect, 104 Yeas, 1 Nay; transmitted to Senate. 9/15/2009 Referred to Senate Committee on Senior Citizens and Veterans Affairs.
HB 5282 Haveman	08/26/2009	Criminal procedure; sex offender registration; use of commercial social networking websites by sex offenders; prohibit. Amends 1994 PA 295 (MCL 28.721 - 28.736) by adding sec. 37.	Referred to House Committee on Judiciary.
HB 5378 DeShazor	09/17/2009	Campaign finance; campaign practices; telephonic communications; require disclosure stating who is paying for call.	Referred to House Committee on Ethics and Elections.

House Bill # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
HB 5390 Cushingberry	09/17/2009	Property tax; utility property; broadband investment credit; increase and sunset. Amends sec. 13b of 1905 PA 282 (MCL 207.13b) & repeals sec. 13b of 1905 PA 282 (MCL 207.13b).	Referred to House Committee on Tax Policy.
HB 5419 Meadows	09/17/2009	Use tax; collections; definition of interstate telecommunications services; expand to include international services. Amends sec. 3a of 1937 PA 94 (MCL 205.93a).	Referred to House Committee on Tax Policy.
HB 5459 Geiss	09/23/2009	Communications; video services; assessment of public service commission's costs against competitive video service providers; extend sunset. Amends sec. 6 of 2006 PA 480 (MCL 484.3306).	Referred to House Committee on Energy and Technology.
HB 5468 Haveman	09/25/2009	Communications; technology; validity of judgment or order created with an electronic record or signature; clarify. Amends sec. 7 of 2000 PA 305 (MCL 450.837).	Referred to House Committee on Judiciary.
HB 5556 Lindberg	10/28/2009	Communications; broadcasting; local zoning restrictions for amateur radio; require to conform to federal regulations. Amends 2006 PA 110 (MCL 125.3101 - 125.3702) by adding sec. 205a.	Referred to House Committee on Intergovernmental and Regional Affairs.
HB 5574 Geiss  2009 PA 191	11/05/2009	Communications; video services; assessment against video service providers for public service commission costs; modify. Amends 2006 PA 480 (MCL 484.3301 - 484.3314) by adding sec. 15.	12/21/2009 Signed by Governor Granholm; Assigned 2009 PA 191, with immediate effect.
HB 5599 Cushingberry	11/12/2009	Communications; telecommunications; distribution of emergency 9-1-1 service enabling funds; modify. Amends sec. 408 of 1986 PA 32 (MCL 484.1408).	Referred to House Committee on Appropriations.
HB 5622 Schuitmaker	12/1/2009	Communications; telecommunications; funding for implementation of an integrated IP-based 9-1-1 mapping system; provide for. Amends sec. 408 of 1986 PA 32 (MCL 484.1408).	2/23/2010 House Committee on Energy and Technology reported substitute H-1 with recommendation; referred to second reading.

House Bill # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
HB 5750 Miller	01/19/2010	Communications; broadcasting; employment contracts for broadcasters; prohibit certain provisions. Amends sec. 4a of 1984 PA 274 (MCL 445.774a).	Referred to House Committee on Judiciary.
HB 5927 Neumann	03/09/2010	Communications; telecommunications; 9-1-1 call centers; require consolidation plans. Amends 1986 PA 32 (MCL 484.1101 - 484.1717) by adding sec. 322.	Referred to House Committee on Appropriations.
HB 6049 Sheltrown	04/20/2010	Appropriations; other; appropriation of public funds to a professional sports team; prohibit if home sporting event is blacked out in the previous fiscal year. Amends 1984 PA 431 (MCL 18.1101 - 18.1594) by adding sec. 399.	Referred to House Committee on Appropriations.
HB 6153 Espinoza	05/11/2010	Appropriations; supplemental; funding for implementation of an IP-based 9-1-1 mapping system; provide for. Creates appropriation act.	05/11/2010 Referred to House Committee on Appropriations; 05/12/2010 Reported with recommendation and without amendment; referred to second reading.
<b>HB 6327</b> <b>Jones</b>	<b>07/21/2010</b>	<b>Crimes; computer; electronic mail fraud regulatory act; create.</b>	<b>07/21/2010 Referred to House Committee on Judiciary.</b>

Senate Resolution # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
SCR 041 Kuipers	05/18/2010	A concurrent resolution to memorialize the President, the Congress, and the Federal Communications Commission of the United States to refrain from regulating Internet broadband services as common carrier services under Title II of the Communications Act of 1934.	05/19/2010 Adopted; 06/02/2010 House Concurrence Received.

Senate Resolution # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
SR 160 Patterson	05/18/2010	A resolution to memorialize the President, the Congress, and the Federal Communications Commission of the United States to refrain from regulating Internet broadband services as common carrier services under Title II of the Communications Act of 1934.	05/19/2010 Adopted.

House Resolution # Primary Sponsor	Date Introduced	Description	Status (revisions in bold)
HCR 057 Warren	05/14/2010	A resolution to memorialize the President, the Congress, and the Federal Communications Commission of the United States to refrain from regulating Internet broadband services as common carrier services under Title II of the Communications Act of 1934.	05/26/2010 Adopted
HR 231 Byrum	03/18/2010	A resolution to urge Google to select Mid-Michigan as a test market community for its proposed super high-speed broadband fiber network.	03/18/2010 Referred to House Committee on Energy and Technology.
HR 285 Mayes	05/14/2010	A resolution to memorialize the President, the Congress, and the Federal Communications Commission of the United States to refrain from regulating Internet broadband services as common carrier services under Title II of the Communications Act of 1934.	05/14/2010 Adopted

## **PUBLIC ACTS OF 2009 & 2010**

Listed below are Public Acts related to telecommunications that were passed during the current legislative session (2009-2010). Copies of Public Acts may be obtained by contacting your state Senator or Representative, on the Michigan Legislature Web site, <<http://www.michiganlegislature.org/>>, or from the Legislative Service Bureau Document Room at (517) 373-0169. Acts passed since the previous edition of the *Michigan Telecommunications Report* are in bold.

<b>Public Act #</b>	<b>Effective Date</b>	<b>Description</b>	<b>Enrolled Bill # and Sponsor</b>
2009 PA 4	04/02/2009	Communications; video services; dispute resolution process; provide for. Amends sec. 10 of 2006 PA 480 (MCL 484.3310).	SB 190 Thomas
2009 PA 146	11/19/2009	Traffic control; violations; weight restrictions during frost restriction periods; provide exemption for public utility subcontractors. Amends sec. 722 of 1949 PA 300 (MCL 257.722).	HB 4999 Mayes
2009 PA 182	12/17/2009	Communications; telecommunications; provision relating to toll access service rates; modify. Amends sec. 310 of 1991 PA 179 (MCL 484.2310).	HB 4257 Melton
2009 PA 191	12/21/2009	Communications; video services; assessment against video service providers for public service commission costs; modify. Amends 2006 PA 480 (MCL 484.3301 – 484.3314) by adding sec. 15.	HB 5574 Geiss
2010 PA 58	07/01/2010	Traffic control; violations; entry of points for operating a motor vehicle while sending or receiving a message on an electronic wireless device; prohibit.	HB 4370 Polidori
2010 PA 59	07/01/2010	Traffic control; violations; use of handheld wireless telephone while operating a motor vehicle; prohibit under certain circumstances and permit use of hands-free wireless telephone. Amends sec. 320a of 1949 PA 300 (MCL 257.320a) by adding sec. 602b.	SB 468 Kahn
2010 PA 60	07/01/2010	Traffic control; violations; penalties for operating a motor vehicle while reading, writing, or sending a message on an electronic wireless device; provide for. Amends sec. 320a of 1949 PA 300 (MCL 257.320a) & adds sec. 602b.	HB 4394 Gonzales

## **ORDERS ISSUED BY THE COMMISSION |**

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The Michigan Public Service Commission (“Commission”) issued the following Orders at its regularly scheduled meeting held on July 13, 2010 at 1:30 p.m.:

**Case No. U-16394**

**Interconnection Agreement Dispute**

**US Signal Company, LLC d/b/a RVP Fiber Co v AT&T Michigan**

**<http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=16394>**

On July 13, 2010, the Michigan Public Service Commission (“Commission”) issued an Order regarding the June 29, 2010, Motion to Compel Compliance with Arbitration Decision filed by US Signal Company, LLC d/b/a RVP Fiber Co (“US Signal”) against AT&T Michigan. In its Motion, US Signal sought to compel AT&T Michigan to comply with the Commission’s determination in its June 2, 2009 Order in MPSC Case No. U-15788, in which the Commission ordered AT&T to extend Sprint Communications Company L.P.’s Interconnection Agreement by three (3) years pursuant to the Federal Communications Commission (“FCC”) order approving the merger between AT&T, Inc. and BellSouth. US Signal requested that the Commission order AT&T to provide it with the same extension of its Interconnection Agreement. The Commission considered this Motion under Section MCL 484.2353a(2) of the Michigan Telecommunications Act (“MTA”), which provides:

If a party negotiating an interconnection agreement takes a position that the opposing party believes is contrary to a prior ruling of the commission in an arbitration proceeding, the opposing party shall file a motion with the commission for a determination under this section. The motion shall be filed no later than 90 days from the commencement of negotiations. The commission shall rule upon the motion within 21 days of the date the motion is filed, and the commission shall determine the extent to which the issue may be relitigated.

The Commission rejected AT&T Michigan’s argument to summarily dismiss this proceeding and instead found that AT&T Michigan failed to demonstrate that the facts and circumstances are not substantially the same as those presented in MPSC Case No. U-15788 and that if an arbitration proceeding were held based on the current negotiations, the parties could expect the Commission to reach a similar result to that reached in the Sprint arbitration proceeding in MPSC Case No. U-15788 and the parties are not to relitigate the issue of whether or not AT&T should grant a three year extension of US Signal’s Interconnection Agreement under the FCC’s order approving the merger between AT&T, Inc. and BellSouth. However, the Commission denied US Signal’s request to require AT&T Michigan to execute an amendment extending the interconnection agreement between the parties because such might be seen as circumventing the negotiation and arbitration procedures set forth in Sections 251 and 252 of the Federal Communications Act, 47 USC §§ 251 and 252.

## PROPOSALS FOR DECISION |

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Case No. U-16162

Interconnection Dispute

B&S Telecom, Inc. v AT&T Michigan

<http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=16162>

On July 16, 2010, State Office of Administrative Hearings and Rules Administrative Law Judge (“ALJ”) Mark D Eyster, acting for the Michigan Public Service Commission (“Commission”) issued Proposal for Decision (“PFD”) in the matter of the December 17, 2009 Complaint (as Amended on January 15, 2010 and on May 4, 2010) of B&S Telecom (“B&S”) against AT&T Michigan seeking to have AT&T renegotiate the Local Wholesale Complete (“LWC”) contract that the parties had signed in September, 2005. On May 28, 2010, AT&T filed a motion to dismiss or, in the alternative, for summary disposition, under administrative rules 460.17323 and 460.17513. The PFD recommends that the motion for summary disposition be granted.

The Second Amended Complaint included four counts, each alleging a violation of the Michigan Telecommunications Act (“MTA”). Count One alleged a violation of MCL 484.2352(2), stating that “the rates that Respondent has charged Plaintiff for the subject service do not conform to the rates established by the commission” and that “[s]uch rates violate section 352(2) of the MTA, which renders each and every invoice sent to plaintiff null, void, invalid, and of no legal effect.” Count Two alleged that AT&T “has failed to allow B&S to purchase separately priced loop and ports since March 11, 2006” and, therefore, has violated MCL 484.2355. Count Three alleged a violation of MCL 484.2502(1)(a) “by preparing and sending B&S invoices that violate law and then contending that such invoices were/are valid, accurate, and lawful when the same were not.” And, Count Four alleged that the MTA “prohibits Respondent from charging rates for the subject service that have not been established by the Commission”, “prohibits Respondent from bundling together loops and ports, and charging one price that is in excess of the addition of the individual prices of a loop and port, for both” and “prohibits Respondent from making representations about such rates that were/are false, misleading, or deceptive.”

In its Motion to Dismiss, AT&T stated:

[A]ll of B&S’s claims are based on the same false factual predicate: that notwithstanding the [Federal Communications Commission’s (“FCC”)] [Triennial Review Remand Order (“TRRO”)] order eliminating the availability of UNE local switching and UNE-P, and notwithstanding the Commission’s multiple orders implementing the TRRO, and notwithstanding the contractual obligations – both under the parties’ LWC contract and their interconnection agreement – B&S is entitled to obtain “UNE-P” or a “UNEP” equivalent at TELRIC rates. That proposition is baseless.”

AT&T further asserted that “any attempt to resurrect UNE-P under supposed state law authority would violate the Federal Telecommunications Act and the TRRO.”

The ALJ agreed “with AT&T that the Commission lacks jurisdiction to resolve this alleged contractual dispute related to the privately negotiated LWC; an agreement for which no Commission participation or approval was necessary or involved.” The ALJ cited various prior Commission Orders in which the Commission stated that “it was ‘not persuaded that it [was] preempted by either

the federal act or the FCC's orders from requiring the ILECs to provide UNEs', it 'note[d] that Section 201(2) of the MTA . . . requires Commission action to be consistent with the FTA and the FCC's rules and orders. Requiring the continued provision of UNE-P would be inconsistent with the FCC's detailed findings and plan for transition in the TRO and TRRO.' *In the matter on the Commission's own motion*, U-14463, Order, p. 8, (March 29, 2005). The Commission further stated that the 'parties may negotiate for provision of those same facilities and functions on a commercial market basis.' *In the matter on the Commission's own motion*, U-14463, Order, p. 10, (March 29, 2005). The ALJ found that since the Commission issued those decisions, the law has become clear "that federal preemption bars B&S's requested relief."

In recommending dismissal of the proceeding, the ALJ further found "no merit to B&S's claim and grant the motion for summary disposition. By all appearances, this action appears designed, not as a good faith effort to change the law, or as B&S might argue, to apply the law as written, but as a last ditch effort to avoid payment of several hundred thousand dollars of overdue bills." However, the ALJ left determination as to whether this matter is frivolous and whether the award of costs against B&S is required to the Commission's discretion.

Parties wishing to file Exceptions to the PFD must do so no later than Monday, July 26, 2010. Replies to any filed Exceptions must be filed no later than Monday, August 2, 2010.

**Case No. U-16181**

**Video Franchise - Show Cause**

**Pine River Cable**

**<http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=16182>**

On July 22, 2010, State Office of Administrative Hearings and Rules Administrative Law Judge ("ALJ") Sharon Feldman, acting for the Michigan Public Service Commission ("Commission") issued a Proposal for Decision ("PFD") in the matter of the Show Cause proceeding against Pine River Cable ("Pine River"). On January 11, 2010, the Commission issued a Show Cause Order directing Pine River to show cause why it should not be found in violation of the Uniform Video Services Local Franchise Act, 2006 PA 480, as amended by 2009 PA 4, MCL 484.3301 *et seq.* ("Video Franchise Act"). The Order indicated that Staff had received customer complaints from nine customers and the Village of Marion, and identified concerns with Pine River Cable's operation in six communities, including the Village of Perrinton, Fulton Township, McBain City, the Village of Maple Rapids, Carson City as well as the Village of Marion.

According to the PFD, Pine River did not provide the response called for in the Commission's order. A letter signed only "Pine River Cable", with no contact information, was received by the Commission on February 16, 2010. The letter stated:

Pine River Cable is no longer doing business and has not been conducting business for months. As for the complaints, Pine River Cable was assigned all the franchises when it purchased each system from PC-1 Cable (a New Jersey corporation) and was operating in these communities under such franchises. Each community was given written notice in addition to a 24/7 message on their TV listing channel that Pine River Cable would no longer be offering services to any community in the state of Michigan or any other state. Pine River Cable is no longer conducting business in any community in Michigan or any other state. It no longer has an address or phone number.

At a prehearing conference, Pine River did not appear represented by counsel as directed in the Commission's order. John Metzler, who indicated on the record that he was a shareholder of the company, attended the hearing, and further indicated it was he who sent the unsigned letter. Mr. Metzler, not an attorney, could not represent Pine River Cable in the contested case, but agreed to cooperate with the Commission Staff.

Based on the Commission Staff's testimony, the PFD finds that Pine River Cable was providing video services in violation of sections 2, 3 and 10 of the Video Franchise Act. The PFD recommends that the Commission assess a fine of \$500.00 for each of the 13 violations of the Act as explained in the PFD, for a total fine of \$6500.00, order Pine River Cable to cease and desist from further operations in Michigan, and rescind any existing franchise agreements.

Parties wishing to file Exceptions to the PFD must do so no later than Thursday, August 12, 2010. Replies to any filed Exceptions must be filed no later than Thursday, August 26, 2010.

**Case No. U-16182**

**Video Franchise - Show Cause**

**CableMax Communications**

**<http://efile.mpsc.cis.state.mi.us/efile/viewcase.php?casenum=16182>**

On July 22, 2010, State Office of Administrative Hearings and Rules Administrative Law Judge ("ALJ") Sharon Feldman, acting for the Michigan Public Service Commission ("Commission") issued a Proposal for Decision ("PFD") in the matter of the Show Cause proceeding against CableMax Communications ("CableMax"). On January 11, 2010, the Commission issued a Show Cause Order directing CableMax to show cause why it should not be found in violation of the Uniform Video Services Local Franchise Act, 2006 PA 480, as amended by 2009 PA 4, MCL 484.3301 *et seq.* ("Video Franchise Act"). The Order indicated that Staff had received customer complaints including complaints that 50-100% of services were removed without notification, that attempts to contact the company were unsuccessful, and that customers had paid for services no longer being received. The order identified seven communities for which CableMax apparently lacked a franchise: Brutus, Fine Lake, Akron/Fairgrove, Unionville, Mesick, Kaleva and Nashville.

CableMax, Commission Staff and Intervenor, the Village of Mesick, participated in this proceeding. A resident of Battle Creek, Earl R. Douglas, also appeared and made a comment on the record. Mr. Douglas expressed his concern with the location of certain equipment he believed was owned by CableMax.

In its defense, CableMax's witness, Matthew Klinger, testified that when CableMax purchased the cable systems in question, it believed it was purchasing whatever licensing and permits were needed to operate the systems. Before completing payments for the second transaction, CableMax discovered that it did not own the cable system in Brutus. CableMax also discovered that the numbers of customers were significantly less than the purchase called for, and it decided to shut down operations in Mesick and Kaleva because they were not worth operating. Mr. Klinger also testified that CableMax was unaware of the requirement to obtain a franchise under the Video Franchise Act.

The ALJ found that CableMax provided service in the seven communities without valid franchise agreements, in violation of MCL 484.3302(2) and 484.3303(1). Further, the ALJ found that CableMax did not subsequently obtain valid franchise agreements to provide service in any of the seven communities.

The PFD found that that CableMax was providing video services in violation of sections 2, 3 and 10 of the Video Franchise Act. The PFD recommends that the Commission assess a fine of \$500.00 for each of the 30 violations of the Video Franchise Act as explained in the PFD, for a total fine of \$15,000.00, with \$1,000.00 to be waived if CableMax demonstrates that it has refunded monies to the 87 customers which the PFD found were owed a total of \$3,952.20 within 30 days of the Commission's final order. The PFD also recommends that the Commission order CableMax to repay the outstanding amounts owed to customers, to cease and desist from further operations in Michigan and that any existing franchise agreements held by CableMax are rescinded.

Parties wishing to file Exceptions to the PFD must do so no later than Thursday, August 12, 2010. Replies to any filed Exceptions must be filed no later than Thursday, August 26, 2010.

## **APPLICATIONS AND COMPLAINTS |**

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No Telecommunications Applications or Complaints have been filed during the preceding fortnight.

## **NOTICES OF OPPORTUNITIES TO COMMENT |**

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The following Notices of Opportunity to Comment have been issued by the Michigan Public Service Commission's Executive Secretary. Any interested person may submit comments on the application by sending written comments to the Commission by mail to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Electronic comments may be e-mailed to: <mpscefilecases@michigan.gov>. Any comments should reference the applicable docket number.

*There are no known notices of opportunities to comment for telecommunications proceedings currently pending before the Michigan Public Service Commission.*

## **NOTICES OF HEARINGS |**

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The following Notices of Hearings have been issued by the Michigan Public Service Commission's Executive Secretary. Unless otherwise noted, all hearings are held at the offices of the Michigan Public Service Commission, 6545 Mercantile Way, Suite 7, Lansing, Michigan.

*There are no known notices of hearing for telecommunications proceedings currently pending before the Michigan Public Service Commission.*

## **MPSC HEARINGS SCHEDULE |**

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Note: Unless indicated otherwise, hearings are held in the offices of the Commission, 6545 Mercantile Way, Suite 7, Lansing, Michigan. Hearing dates and times are subject to change or cancellation. Please check with the Commission's Executive Secretary at (517) 241-6160 to confirm that a hearing will be taking place.

**KNOWN TELECOM HEARINGS SCHEDULED FOR THE NEXT FORTNIGHT**  
**(JULY 26 , 2010 THROUGH AUGUST 6, 2010)**

*There are no known telecommunications hearings scheduled before the  
the Michigan Public Service Commission during the next fortnight..*

**FUTURE TELECOM HEARINGS SCHEDULED**

August 19, 2010, 9:00 a.m.  
Case No. U-16396/Prehearing Conference  
City of South Haven PSAP v Van Buren County  
and Van Buren County Consolidated Dispatch  
Center (9-1-1 Funding Dispute)

August 19, 2010, 9:00 a.m.  
Case No. U-16397/Evidentiary Hearing  
Communications Venture Corporation d/b/a  
INdigital Telecom (license)

**2010 REGULAR MPSC MEETING DATES\* |**

<b><u>Month &amp; Date</u></b>	<b><u>Day</u></b>	<b><u>Time</u></b>
July 27, 2010	Tuesday	1:30 p.m.
August 10, 2010	Tuesday	1:30 p.m.
August 24, 2010	Tuesday	1:30 p.m.
September 14, 2010	Tuesday	1:30 p.m.
September 28, 2010	Tuesday	1:30 p.m.
October 14, 2010	Thursday	1:30 p.m.
October 26, 2010	Tuesday	1:30 p.m.
November 10, 2010	Wednesday	1:30 p.m.
December 7, 2010	Tuesday	1:30 p.m.
December 21, 2010	Tuesday	1:30 p.m.

\* Additional Special Meetings may be scheduled, as needed, on 18-hours notice as permitted by Section 5(4) of the Michigan Open Meetings Act, MCL 15.265(4). Agendas for all Regular and Special Meetings will be posted on 18 hours notice. A posted agenda is subject to Amendment as determined by the Commission. Any person with a question about a Regular or a Special Meeting of the Michigan Public Service Commission may make an inquiry by calling the Commission's Executive Secretary at (517) 241-6160

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