



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
PUBLIC SERVICE COMMISSION

STEVEN H. HILFINGER
DIRECTOR

ORJIAKOR N. ISIOGU JOHN D. QUACKENBUSH GREG R. WHITE
COMMISSIONER CHAIRMAN COMMISSIONER

December 1, 2011

Honorable Rick Snyder
Governor of Michigan

Honorable Members of the Michigan Senate
Secretary of the Senate

Honorable Members of the Michigan House of Representatives
Clerk of the House of Representatives

Enclosed is the first annual report on the operation and administration of the Michigan Intrastate Switched Toll Access Restructuring Mechanism (ARM), as required by Public Act 182 of 2009. Public Act 182 of 2009 amended Section 310 of the Michigan Telecommunications Act (MTA) to reform intrastate switched toll access charges for telecommunications providers in Michigan. The *Michigan Intrastate Switched Toll Access Restructuring Mechanism: 1st Annual Administrative Report* is also available on the Commission's website at www.michigan.gov/mpsc. The report explains the Commission's process for enacting Public Act 182 of 2009 and includes information about the first year of operation of the ARM .

The MTA, as amended by Public Act 182 of 2009, caps the rates providers charge to each other for originating and terminating intrastate access calls (intrastate toll calls) on their networks at rates no higher than each providers' corresponding rates for interstate access calls. As explained in detail in the report, the MTA includes two separate paths by which this reform of intrastate access rates occurs, depending on the type of provider. Providers have filed with the Commission new tariffs that reflect revised rates as allowed under the amended MTA.

The MTA, as amended by Public Act 182 of 2009, also established the Michigan Intrastate Switched Toll Access Restructuring Mechanism. The amended MTA established the ARM as a 12-year transition fund through which eligible providers can recover a portion of the lost revenues associated with the new requirements for lower intrastate access charges. The ARM is supported by monthly contributions from all providers of retail intrastate telecommunications services in Michigan. Pursuant to the MTA, the revenues associated with Voice over Internet Protocol service are exempt from the contribution calculation.

The Commission was charged with the administration of the ARM and, as such, established a new section, the Access Restructuring Fund Administration Section, within the Telecommunications Division to perform the daily administrative tasks associated with the ARM. The Commission tracks all contributions to the ARM, processes disbursements from the

December 1, 2011

Page 2

ARM, monitors the contribution percentage to ensure sufficient funding of the ARM, and handles any other tasks related to the operation of the ARM. The total amount collected for the first 12 months of contributions to the ARM was \$17,487,621.15. The total amount disbursed to eligible providers for the first twelve months of disbursements was \$15,784,390.68. The Commission's administrative costs recovered from the ARM for the first year of operation were \$194,943.73. Detailed information about the Commission's process to implement the ARM, as well as the contributions, disbursements, and administrative costs for the first year of the ARM's operation is included in the report.

Finally, the report addresses the broader topic of intercarrier compensation reform, of which intrastate access reform is a component, at the federal level, as well as information about intrastate access reform in other states. Reform of the charges that providers use to compensate each other for originating and terminating calls on their networks is a priority for many in the telecommunications industry and regulatory community. Charges based on historical technologies no longer function well in today's rapidly changing telecommunications industry. The report addresses a recent order adopted by the Federal Communications Commission (FCC) on October 27, 2011. The text of that FCC order was released on Friday, November 18th. The Commission's technical and legal experts are currently reviewing the order to determine whether there may be impacts on Michigan's reform efforts, including the operation of the ARM. After a thorough review of the FCC's order, the Commission will apprise the Governor and Legislature of any developments that warrant action.

Very truly yours,

John D. Quackenbush, Chairman

Orjiakor N. Isiogu, Commissioner

Greg R. White, Commissioner

Report on the Michigan Intrastate Switched Toll Access Restructuring Mechanism

In Compliance with Public Act 179 of 1991 as Amended

John D. Quackenbush, Chairman
Orjiakor N. Isiogu, Commissioner
Greg R. White, Commissioner

MICHIGAN PUBLIC SERVICE COMMISSION
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

December 1, 2011



Table of Contents

Introduction.....	1
History.....	2
<i>Public Act 182 of 2009</i>	2
<i>MPSC Case No. U-16183</i>	3
<i>Petition for Forbearance before the FCC</i>	7
Intrastate Access Tariff Revisions	8
<i>Eligible Providers</i>	8
<i>Other (Non-Eligible) Providers</i>	9
Operation of the ARM	10
<i>Disbursements</i>	10
<i>Contributions</i>	13
<i>Administrative Costs</i>	17
Intrastate Access Reform in Other States	18
National Intercarrier Compensation Reform	19
Conclusion	22

Introduction

Section 310 of the Michigan Telecommunications Act (MTA), MCL 484.2310, directs the Michigan Public Service Commission (Commission) to submit an annual report describing the operation and administration of the Michigan Intrastate Switched Toll Access Restructuring Mechanism (ARM). The MTA requires that the report include “the total amount of money collected from contributing providers, the total amount of money disbursed to each eligible provider, the costs of administration, and any other information considered relevant by the Commission.”¹ Pursuant to the MTA, company-specific information pertaining to demand data, contributions, and revenue information is exempt from public disclosure. Therefore, the report focuses on the aggregate activity of the fund. The ARM became operational on September 13, 2010 and in accordance with the MTA will provide disbursements for a total of 12 years.

This is the first annual report to be issued on the operation of the ARM and covers the time period through September 30, 2011. The report details the process by which the implementation of the ARM occurred and data for the first year of the activity of the ARM. Finally, this report discusses intercarrier compensation reform at the federal level, including the Federal Communications Commission’s (FCC) possible preemption of state jurisdiction over intrastate access service. Preemption may have significant legal ramifications on Section 310 of the MTA and the Commission’s operation of the ARM; however the possibility and extent of these ramifications is not yet known because the Commission’s legal and technical experts are still reviewing the FCC order, the text of

¹ MCL 484.2310(10)

which was only just released on November 18, 2011. The Commission has been and continues to be an active participant in the federal proceedings and will provide additional information to the Governor and Legislature as such information becomes available.

History

Public Act 182 of 2009

Switched toll access charges are the rates that providers charge to other providers for originating or terminating toll calls on their network(s). Intrastate switched toll access charges (intrastate access charges) are part of a larger system of compensation that providers charge to each other for originating and terminating calls referred to as intercarrier compensation. Intrastate access charges have historically been under the sole jurisdiction of the states, while other components of intercarrier compensation fall under federal or joint federal-state jurisdiction. In 2009, the Michigan Legislature chose to reform intrastate access charges to update and modernize the process by which carriers charge each other for originating and terminating intrastate access calls. Many of these charges were put into place long before newer technologies such as mobile wireless, and broadband/VoIP existed, and as such, may not have served their full purpose in today's telecommunications marketplace.

The legislative process consisted of workgroups of interested stakeholders including representatives from different types of industry carriers, as well as Commission Staff. Commission Staff served an educational and informational role throughout the workgroup process while the Commission maintained a neutral position on the legislation. On December 17, 2009, 2009 PA 182 (Act 182 of 2009) became law. Act

182 of 2009 amends MCL 484.2310 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2101 *et seq.* Act 182 of 2009 changed (in most cases reduced) the rates that providers can charge for intrastate access service and created the ARM as a transition mechanism to allow eligible providers the opportunity to recover some revenues lost while they adjust their business plans to the new requirements.

MPSC Case No. U-16183

The Commission was charged with establishing “the procedures and timelines for organizing, funding, and administering the restructuring mechanism.”² To meet that charge, the Commission issued an order on January 11, 2010, initiating the docket for Case No. U-16183 for the purpose of implementing PA 182 of 2009. In that order, the Commission sought the confidential and non-confidential data needed to calculate the size of the ARM, the appropriate contribution percentage for the ARM, and informed providers of the mandatory tariff filings to meet the requirements of the amended MTA. Commission Staff worked diligently to ensure that all licensed competitive local exchange carriers (CLECs), all providers registered in the Commission’s Intrastate Telecommunications Service Provider Registry (ITSPR), and all other known providers to which the ARM requirements would apply³ were aware of the new law and the requirements of Case No. U-16183.

Pursuant to the timeline established in the amended MTA, the Commission issued an order in Case No. U-16183 on April 13, 2010. This order included the total size of the restructuring mechanism and the amounts to be disbursed to each eligible provider. In this order, the Commission included all incumbent local exchange carriers with less than

² MCL 484.2310(10)

³ For example, payphone providers, mobile wireless providers, etc.

250,000 access lines as well as Allband Communications Cooperative (Allband) as eligible providers under Section 310 of the MTA, and established the monthly disbursement amount applicable to each. Additional detailed information about the calculation of these amounts is included in the *Operation of the ARM* section of this report. The Commission charged the Staff with investigating and reporting on the identities of those providers that did not make available the data required pursuant to the January 11, 2010 Order.

On May 17, 2010, the Commission issued another order in Case No. U-16183, setting the initial contribution percentage and addressing the issue of compliance with the earlier orders. Additional information on the initial contribution percentage is included in the *Operation of the ARM* section of this report. In the May 17, 2010 Order, the Commission found that of the 509 identified providers, 68 had not responded to the January 11, 2010 Order. The Commission found that those unresponsive providers did not represent a large portion of the retail intrastate telecommunications service market in Michigan, and that their information was not critical to the calculation of the contribution percentage. For those non-compliant providers that are licensed CLECs, the Commission includes such non-compliance as evidence in license revocation proceedings. For those providers not licensed in Michigan, the Commission continues to work to try to bring them into compliance. Finally, the May 17, 2010 Order also asked parties to comment on issues related to the operation of the ARM, including an appropriate review schedule for the contribution percentage, whether to set a minimum contribution amount, how to handle changes in the industry including new providers and/or mergers, and any other issues related to the appropriate administration of the ARM.

On August 8, 2010, the Commission issued an order finalizing the administrative process and the methodology for contributions to and disbursements from the ARM. The Order made a significant change to the Commission's initially proposed contribution methodology. The Commission found, after careful consideration of comments by multiple parties, that basing contributions on current revenues would be preferable to contributions based on historical revenues, as initially proposed. The Commission adopted a contribution methodology under which a provider contributes each month based upon the preceding month's revenue information. The Commission, in compliance with the timeframe established in the law, set the operational date of the ARM as September 13, 2010. Thus, initial contributions, as well as initial tariff filings for eligible providers,⁴ were due on September 13, 2010. Because the revised rates charged by eligible providers would not be billed until approximately one month later, the Commission found that eligible providers would experience the revenue reductions from the reduced rates around the end of October 2010. Therefore, the Commission directed that the first disbursements would be issued the last week of October 2010, with subsequent disbursements going out the last week of each month. The Commission also directed the Staff to continuously review the operation of the ARM to ensure sufficient funding and to notify the Commission should the contribution percentage need to be revised.

The August 8, 2010 Order also included a revised total ARM amount. This revision included a recalculated distribution amount for one eligible provider as a result of a correction to the initial data filed. Additionally, the Order addressed the status of Allband Communications Cooperative (Allband). After reviewing the comments of

⁴ Additional information about tariff filings is included in the *Tariff Revisions* section of this report.

parties in the proceeding as well as the definitions in Section 310 of the MTA, which defines “eligible provider,” and the Federal Telecommunications Act (which is referenced in the MTA definition of eligible provider), the Commission found that Allband should not be included as an eligible provider since it did not meet a strict interpretation of the definition.

In response to the Commission’s August 8, 2010 Order, Allband filed a claim in the United States District Court for the Western District of Michigan in Civil Action No. 1:10-cv-889. On September 17, 2010, the Honorable Janet T. Neff issued a preliminary injunction “staying the Commission’s August 10, 2010 Order in MPSC Case No. U-16183 insofar as it does not list Allband Communications Cooperative as an Eligible Provider for purposes of 2009 PA 182, MCL 484.2310, and the Michigan Public Service Commission’s orders in U-16183 implementing 2009 PA 182, MCL 484.2310.” The Court further stated that “Allband Communications Cooperative is returned to its status as an Eligible Provider for all purposes set forth in 2009 PA 182, MCL 484.2310 as determined by the Commission in its April 13, 2010 order.” The Commission therefore issued an order on October 14, 2010, in Case No. U-16183 stating that to be “in compliance with the September 17, 2010 order of the United States District Court for the Western District of Michigan, and based solely on the direction from that Court, the Commission amends the restructuring mechanism calculation and list of eligible providers to include Allband.”⁵ The total size of the restructuring mechanism was modified to reflect the disbursements to Allband.

The finalized total size of the ARM for the initial year of operation, as shown below in Figure 1, is \$17,539,756.57. This amount includes 12 months of disbursements

⁵ Commission Order in Case No. U-16183, October 14, 2010, page 3.

equal to \$15,784,390.68, \$440,000 for approximated administrative costs, and \$1,315,365.89 (equal to one month of disbursements) as a cash reserve.

Figure 1
Size of the ARM

One Year of Disbursements	\$15,784,390.68
One Year Estimated Administrative Costs	\$440,000.00
Cash Reserve = One Month of Disbursements	\$1,315,365.89
Total ARM Size	\$17,539,756.57

Petition for Forbearance before the FCC

On February 12, 2010, ACD Telecom, Inc.; DayStarr, LLC; Clear Rate Communications, Inc.; TC3 Telecom, Inc.; and TelNet Worldwide, Inc. (Petitioner CLECs) filed a *Joint Petition for Declaratory Ruling that the State of Michigan's Statute 2009 PA 182 is Preempted Under Section 253 and 254 of the Communications Act* (CLEC Petition) before the FCC.⁶ The Petitioner CLECs argued in their filing that Act 182 of 2009 “prohibits or has the effect of prohibiting the ability of the Petitioners, and other competitive local exchange carriers (“CLECs”), from providing interstate and intrastate telecommunications service” because the treatment of providers under the Act is not competitively neutral in that only eligible providers may receive disbursements from the ARM. The Petitioner CLECs argued that the FCC should therefore preempt PA 182 of 2009. On February 22, 2010, the FCC established a pleading cycle for the CLEC Petition setting comment deadlines for interested parties in WC Docket 10-45. The Commission submitted comments in that proceeding on March 9, 2010. The Commission’s comments opposed federal preemption of the Michigan law. Other parties

⁶ This filing is available on the FCC’s website at:
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7020388619>.

have filed comments and reply comments, as well as ex parte filings in that proceeding; however the FCC has not yet issued an order or otherwise acted on the CLEC Petition. As noted in the Commission's April 13, 2010 Order, "[u]nless and until the FCC takes action to preempt Act 182, the Commission is duty bound to carry out the mandates of this legislation."⁷ The Commission will continue to follow this proceeding and will take action as necessary should the FCC issue an order in the matter.

Intrastate Access Tariff Revisions

Prior to Act 182 of 2009, providers with over 250,000 access lines were required to set their intrastate switched toll access service rates at levels no higher than the corresponding interstate rates. Act 182 of 2009 expanded that requirement to make it applicable to all providers in Michigan. Act 182 of 2009 set two separate paths to transition to this new requirement based upon whether a provider is considered eligible or non-eligible under the Act. Intrastate switched toll access tariffs are required to be filed with the Commission for review and approval.⁸ Both of the transition paths and the resulting tariff filings are described below.

Eligible Providers

Act 182 of 2009 effectively defined eligible providers as incumbent local exchange carriers (ILECs) with less than 250,000 access lines. Act 182 of 2009 required eligible providers to change their rate structure such that intrastate switched toll access rates were set at levels no higher than corresponding interstate rates as of September 13,

⁷ Commission Order in Case No. U-16183, April 13, 2010, page 4.

⁸ Section 202(b) of the MTA which allows providers to opt out of filing certain tariffs with the Commission specifically excludes access tariffs from being opted out of. All providers continue to be required to file intrastate access tariffs if they are providing that service.

2010. In or around September 2010, all eligible providers filed revised tariffs reflecting the new intrastate access rates with effective dates that were in compliance with the MTA and the Commission's orders in Case No. U-16183. These providers have continued to maintain intrastate switched toll access tariffs that are in compliance with the law by revising these tariffs as necessary to reflect changes in their corresponding interstate tariffs.⁹ Eligible providers' intrastate switched toll access tariffs are made available to the public by the providers and most are also accessible via links from the Commission's website.¹⁰

Other (Non-Eligible) Providers

Pursuant to the MTA, non-eligible providers are required to reduce their intrastate access rates in no more than five steps, each a reduction of at least 20 percent of the differential between intrastate and interstate rates, on the following dates: January 1, 2011; January 1, 2012; January 1, 2013; January 1, 2014; and January 1, 2015. Non-eligible providers are effectively CLECs.¹¹ Therefore, in practice, CLECs are the providers to which the required reduction in the difference between intra- and interstate access rates over a series of five steps applies.

The first revised tariff filings for non-eligible providers were made on or around January 1, 2011 and, pursuant to the MTA, reflect a reduction of at least of 20 percent of the differential between the intra- and interstate rates in effect as of July 1, 2009.

⁹ For example, many of these providers use the National Exchange Carriers Association interstate tariff, the rates in which are updated each July 1st, and filed the appropriate revised intrastate tariffed rates with a July 1, 2011 effective date.

¹⁰ [Commission Online Tariff Index](#)

¹¹ Michigan's largest two incumbent providers are also technically non-eligible providers, however as noted above, these two companies were already required to set intrastate access rates no higher than corresponding interstate rates.

Determining whether the 20 percent differential was met was difficult, as intrastate access rates are actually comprised of multiple rate elements. Providers do not necessarily charge all of the same rate elements and/or offer the same services in both the intra- and interstate jurisdictions. Additionally, some providers charge only a composite rate while others charge based upon the various elements. Again, this may not be consistent across intra- and interstate jurisdictions even within a single company. The Commission however, has reviewed the initial tariff filings made by non-eligible providers pursuant to Act 182 of 2009 and has found that those tariffs are in compliance with the law.

Operation of the ARM

Disbursements

As noted above, in order to aid the transition to lowered intrastate access rates, the MTA established and the Commission began operation of the Access Restructuring Mechanism. Eligible providers are entitled to receive monthly disbursements from the ARM to recover lost intrastate switched toll access service revenues resulting from rate reductions. All eligible providers were required to complete the necessary registration process with the State of Michigan which enables the State to issue the ARM distributions.

To establish the size of the ARM, Act 182 of 2009 directed eligible providers to provide information to the Commission within 60 days from the effective date of the Act.¹² All eligible providers were required to submit 2008 intrastate switched toll access demand data and the corresponding current rate information. This information allowed

¹² MCL 484.2310(11)(a)

Commission Staff to calculate the amount of the reduction in annual intrastate switched toll access revenues that would result from the required reduction in rates. The reduction was calculated for each provider as the difference between intrastate and interstate switched toll access service rates in effect as of July 1, 2009, multiplied by the intrastate switched access minutes of use and other switched access demand quantities for 2008.

As a result, each eligible provider has its own monthly disbursement that remains unchanged until the first resizing of the ARM. Pursuant to the MTA, the Commission will recalculate disbursement amounts for eligible providers after four years of operation of the fund, and then again after 8 years.¹³ The first disbursements were issued during the last week of October 2010, with succeeding disbursements being issued the last week of each month. Figure 2, following, represents the initial monthly disbursement amounts in effect for each eligible provider for the time period covered by this report, as well as the resulting total first year disbursements for each provider.

¹³ MCL 484.2310(16)

**Figure 2
Eligible Provider Disbursements**

Eligible Provider	Monthly Disbursement	Total Disbursements Oct. 2010 - Sept. 2011
Ace Telephone Company (Ace)	\$34,844.51	\$418,134.12
Ace Telephone Company (Peninsula)	\$4,158.13	\$49,897.56
Allband Communications Cooperative	\$505.11	\$6,061.32
Allendale Telephone Company	\$38,778.82	\$465,345.84
Baraga Telephone Company	\$15,738.06	\$188,856.72
Barry County Telephone Company	\$39,986.08	\$479,832.96
Blanchard Telephone Company	\$4,138.24	\$49,658.88
Bloomington Telephone Company	\$13,909.96	\$166,919.52
Carr Telephone Company	\$8,438.22	\$101,258.64
CenturyTel Midwest-MI, Inc.	\$188,672.43	\$2,264,069.16
CenturyTel of Michigan	\$406,633.15	\$4,879,597.80
CenturyTel of Northern Michigan	\$17,185.17	\$206,222.04
CenturyTel of Upper Michigan	\$93,081.04	\$1,116,972.48
Chapin Telephone Company	\$3,421.00	\$41,052.00
Chatham Telephone Company (TDS Telecom)	\$23,553.99	\$282,647.88
Chippewa County Telephone Company	\$6,535.00	\$78,420.00
Climax Telephone Company	\$2,018.47	\$24,221.64
Communications Corporation of Michigan (TDS Telecom)	\$18,765.76	\$225,189.12
Deerfield Farmers' Telephone Company	\$11,652.23	\$139,826.76
Drenthe Telephone Company	\$2,771.37	\$33,256.44
Frontier Communications of Michigan	\$109,614.02	\$1,315,368.24
Hiawatha Telephone Company	\$30,023.38	\$360,280.56
Island Telephone Company (TDS Telecom)	\$3,583.77	\$43,005.24
Kaleva Telephone Company	\$12,650.87	\$151,810.44
Lennon Telephone Company	\$10,100.58	\$121,206.96
Michigan Central Broadband Company	\$10,281.57	\$123,378.84
Midway Telephone Company	\$4,054.04	\$48,648.48
Ogden Telephone Company	\$2,434.73	\$29,216.76
Ontonagon Telephone Company	\$16,353.51	\$196,242.12
Pigeon Telephone Company	\$13,376.16	\$160,513.92
Sand Creek Telephone Company	\$5,852.92	\$70,235.04
Shiawassee Telephone Company	\$30,127.72	\$361,532.64
Springport Telephone Company	\$14,417.84	\$173,014.08
Upper Peninsula Telephone Company	\$15,777.08	\$189,324.96
Waldron Telephone Company	\$2,130.26	\$25,563.12
Westphalia Telephone Company	\$23,516.25	\$282,195.00
Winn Telephone Company	\$3,012.65	\$36,151.80
Wolverine Telephone Company (TDS Telecom)	\$73,271.80	\$879,261.60
TOTALS	\$1,315,365.89	\$15,784,390.68

Contributions

The ARM is sustained by a “mandatory monthly contribution by all providers of retail intrastate telecommunications services and all providers of commercial mobile service.”¹⁴ Providers are required to pay into the ARM based upon a percentage of their intrastate retail telecommunications services revenues. In order to determine the initial percentage for the monthly contribution, Act 182 of 2009 required providers to report their 2008 retail intrastate revenues to the Commission within 60 days of the effective date of the Act. The Commission’s January 11, 2010 Order in Case No. U-16183 ordered all contributing providers to submit the following information by February 16, 2010:

1. The contributing provider’s 2008 total intrastate retail telecommunications services revenues.
2. The contributing provider’s 2008 uncollectible intrastate retail telecommunications services revenues, actual and projected.
3. The contributing provider’s 2008 total intrastate retail telecommunications revenues minus uncollectibles.¹⁵

The Commission found that the total of all providers’ 2008 retail intrastate telecommunications services revenues was \$4,190,942,420.15.”¹⁶ To determine the initial contribution percentage, the total size of the ARM¹⁷ was divided by the total 2008 retail intrastate revenues as reported. This calculation resulted in the initial contribution percentage of 0.431 percent. Pursuant to the MTA, the Commission issued an order setting the contribution percentage within 150 days of the effective date of PA 182 of 2009. Each month contributing providers are to multiply monthly retail intrastate telecommunications services revenues by the contribution factor to determine their

¹⁴ MCL 484.2310(12)

¹⁵ U-16183, Commission Order dated 1/11/10, Page 7

¹⁶ U-16183, Commission Order dated May 17, 2010, Page 2

¹⁷ As noted earlier, the total size of the ARM is equal to 12 months of disbursements, plus approximate administrative costs and a cash reserve equal to one month of disbursements.

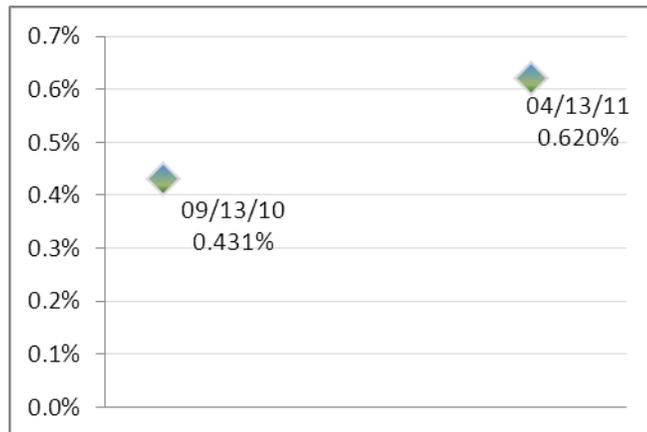
monthly contribution into the ARM fund. The Commission has an [online form](#) available that providers are required to use for this calculation and submit with each contribution.

Pursuant to the amended MTA, “[t]he commission may increase or decrease the contribution assessment on a quarterly or other basis as necessary to maintain sufficient funds for disbursements.”¹⁸ After the first four full months of operation of the fund, the Commission determined that the contributions paid into the fund were not sufficient to cover the expenses of the fund, including disbursements, the one month cash reserve, and estimated administrative costs. “The deficiency is in large part explained by the fact that contribution factors were calculated on average monthly revenues for 2008, as required by statute, while contributions

were calculated based on the previous month’s revenues.”¹⁹ Current retail intrastate telecommunications services revenues to which the ARM contribution applies are generally lower than 2008 levels due to

economic conditions and customers choosing VoIP service, the revenues of which are excluded from the contribution to the fund. The Commission recalculated the contribution factor, increasing it to 0.620 percent in its February 8, 2011 Order in Case No. U-16183. As shown in Figure 3, the revised contribution percentage was in place for contributions due on April 13, 2011 and remains the current contribution percentage as of

Figure 3
Effective Dates of Contribution Percentages

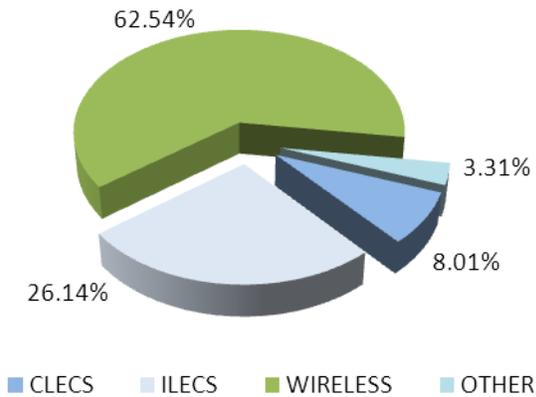
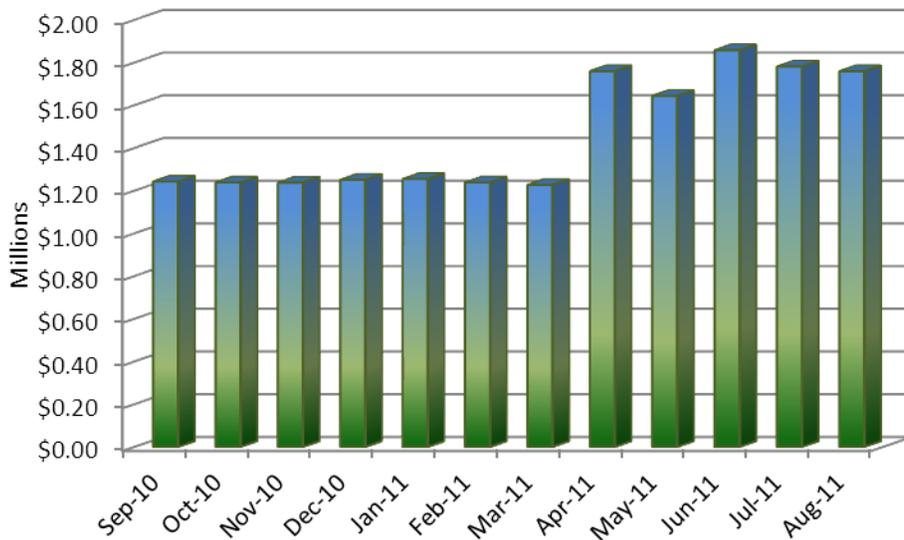


¹⁸ MCL 484.2310(14)

¹⁹ U-16183, Commission Order dated 2/8/11, Page 3

the issuance of this report. The revised contribution percentage increased the amount of money collected each month to a level adequate to cover the monthly disbursements, administrative costs, and building of a cash reserve. This increase in contributions is shown in Figure 4.

**Figure 4
Total Monthly Contributions**



**Figure 5
Percent of Total Contributions by
Provider Type**

From the initial operational date, September 13, 2010, through the end of the first full year of operation, September 2011, the total amount of contributions to the ARM was approximately \$17.5 million. As discussed previously, providers contribute based on retail intrastate telecommunications

services revenues, exclusive of VoIP revenues. The range of contributing providers includes ILECs, licensed CLECs, mobile wireless providers and other types of providers.²⁰ As shown in Figure 5, over the first year of operation, mobile wireless provider contributions represent nearly 63 percent of the revenue coming into the ARM, with ILEC contributions representing approximately 26 percent, CLEC contributions at eight percent, and the remaining three percent of contributions coming from other types of providers.

Commission Staff has continued to work diligently through website updates, the CLEC licensing process, the ITSP registration process, and other direct communications efforts to ensure all providers are aware of the requirements of the ARM. This has resulted in an increased number of providers contributing each month, as shown in Figure 6. The Commission continues to monitor the providers that are and are not contributing to the ARM to confirm that all providers operating in Michigan are in compliance with the ARM requirements.

²⁰ Other types of providers include operator service providers, interexchange carriers, payphone providers, competitive access providers and toll resellers.

**Figure 6
Number of Contributing Providers by Month**

Month	Number of Contributors
Sep-10	199
10-Oct	209
10-Nov	209
10-Dec	207
11-Jan	216
11-Feb	219
11-Mar	215
11-Apr	218
11-May	217
11-Jun	221
11-Jul	229
<u>11-Aug</u>	<u>229</u>

Administrative Costs

Pursuant to the MTA, “[t]he commission shall recover its actual costs of administering the restructuring mechanism from assessments collected for the operation of the restructuring mechanism.”²¹ The Commission has established a section within the Telecommunications Division to administer the ARM. The Access Restructuring Fund Administration Section was officially established in January 2011 and at that time administrative costs began to be recovered from the ARM. The Access Restructuring Fund Administration Section was not fully staffed until May 2011. The total yearly administrative costs through the end of September 2011 were \$194,943.73. Because the Access Restructuring Fund Administration Section was not established at the start of the fund, or fully staffed until well into the first year of operation, the total administrative

²¹ MTA Section 310(9)

costs are below what was anticipated and also below what is expected for the second year of operation.

Intrastate Access Reform in Other States

Intrastate access reform is an issue across the country and states are in various stages of implementing reform. According to a National Association of Regulatory Utility Commissioners' (NARUC) survey, many states have taken the same position as Michigan and require intrastate access charges to mirror interstate access charges. As of September 2011, 21 states require at least some method of access reform in order to achieve mirrored access rates. These states are Alabama, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia. While each state has its own methodology, these states are working to reduce the gap between intrastate and interstate access charges.

Of the states working toward access charge reform, several utilize funds to aid the transition toward equalizing intrastate and interstate access rates. In addition to Michigan, the states of Georgia, Maine, New Mexico, South Carolina, Texas, and Virginia all have funds to aid eligible providers in the conversion. Most of these states use their State Universal Service Fund, which is typically funded through a direct assessment on customer bills, to offer assistance to providers affected by intrastate access reform. Michigan does not currently have a state universal service fund. Instead, as described in detail above, PA 182 of 2009 established the separate Access Restructuring Mechanism to aid eligible providers in their step-down process to reform rates. Providers in Michigan pay into the fund and determine individually whether to pass that cost on to

their customers. A similar approach to generating money for an access reform mechanism has been employed in Texas, where providers are assessed as opposed to customers directly.

As a result of the FCC's October 27, 2011 Order addressing universal service fund and intercarrier compensation reform, all states will likely have to address or reassess intrastate access reform. As discussed in more detail below, the FCC's order establishes specific action for total intercarrier compensation reform, including the reform of intrastate access, even though intrastate access has historically been the sole jurisdiction of the states. The Commission will continue to monitor the activities of other states in this area.

National Intercarrier Compensation Reform

Intercarrier compensation has historically been used by regulators/providers as an implicit subsidy allowing providers to serve high cost areas while still offering service at reasonable rates. Under this system, carriers serving higher cost areas have traditionally been able to set their intercarrier compensation rates at levels substantially higher than providers serving lower cost areas. In addition to the implicit subsidy of higher intercarrier compensation rates, service to high cost areas is also explicitly subsidized through the federal universal service fund (federal USF). As broadband increasingly becomes an essential technology for individuals and business, complementing or even replacing voice-only communications, there has been a need to make significant changes to the policies governing intercarrier compensation and the federal USF. The FCC has spent many years working on reform to the federal USF and intercarrier compensation system and the Commission has monitored and participated in related FCC proceedings.

As the need to expand access to broadband replaces the need to subsidize historical voice networks, federal and state regulators, providers, and others have realized that reform of these two systems was overdue. With a renewed commitment to enacting reform, the FCC released a Notice of Proposed Rulemaking in early 2011 addressing these two topics. The Commission filed multiple sets of comments with the FCC. These comments are available on the Commission's website.²²

At its October 27, 2011 meeting, the FCC adopted a Report and Order and Further Notice of Proposed Rulemaking (FNPRM) addressing comprehensive federal universal service fund and intercarrier compensation reform. The FCC did not release the text of this order until November 18, 2011. The order is over seven hundred pages long. The Commission's legal and technical experts are in the process of reviewing the text of the FCC's Report and Order and FNPRM. While that review remains in process, the Commission has been able to analyze the previously released executive summary of the order which highlights some of the reforms to be included in the Report and Order and FNPRM. In this executive summary the FCC announced that it is adopting "a uniform national bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a [local exchange carrier]." Bill-and-keep is the process by which providers "look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary," and under a bill-and-keep framework all intercarrier compensation charges, including those charged for intrastate access, would be eliminated. In order to accomplish this with respect to intrastate access charges, the Commission understands that the FCC may be seeking to preempt state jurisdiction over

²² See comments filed with the FCC in WC Docket 10-90 on April 1, 2011, April 18, 2011, May 23, 2011, August 24, 2011, and September 6, 2011 at <http://www.dleg.state.mi.us/mpsc/orders/fcc/>.

intrastate access. Preemption would most likely have significant legal ramifications on Section 310 of the MTA and the Commission's operation of the ARM; however the possibility and extent of these ramifications will not be known until the Commission's full review of the Report and Order and FNPRM is complete and the order has been reviewed by the Attorney General.

Without the full review of the text of the FCC's Report and Order and FNPRM, the Commission cannot offer specific comments on how the MTA and the Commission's operation of the ARM will be affected. That being said, the FCC did stress that while bill-and-keep is the ultimate end-state, there will be a multi-year transition path and that to some extent states will retain a role in this process. It is known from the executive summary released by the FCC that the FCC will require carriers to first cap most intercarrier compensation rates. The next step will be a two-step process whereby as of July 2013 intrastate rates will be at parity with interstate rates. This step of the reform could directly impact non-eligible providers in Michigan, as under current Michigan law, non-eligible providers would have until January 1, 2015 to accomplish this same goal. Additionally, the FCC has stated that it is adopting a "transitional recovery mechanism to mitigate the effect of reduced intercarrier compensation revenues on carriers." Again, at the time of the preparation of this report, the Commission is in the process of reviewing the over seven hundred pages of text of the Report and Order and FNPRM and therefore cannot comment specifically on how Michigan's ARM might be affected. The Commission is committed to continued participation in the federal proceeding(s) related to federal universal service fund and intercarrier compensation reform.

Conclusion

To date, the Commission has implemented the requirements of amended Section 310 of the MTA. The ARM is operational and receives contributions from required providers and disburses to eligible providers on a monthly basis. Providers have filed appropriate tariffs to comply with the new rate requirements. The Commission has established the Access Restructuring Fund Administration Section to monitor on a daily basis the activities of the ARM, ensuring the contribution percentage is sufficient to fully fund the required disbursements and ensuring that all required providers are contributing in compliance with the law. As described in this report, the total contributions to the ARM for the first 12 months of operation were approximately \$17.5 million, sufficient to cover the approximately \$15.8 million in disbursements, the actual administrative costs of approximately \$195,000, and, due to the one month offset between the first contributions and the first disbursements, establish the required cash reserve.

Intercarrier compensation reform at the federal level through the FCC's October 27, 2011 Report and Order and FNPRM may likely impact the Commission's jurisdiction over intrastate rates and the Commission's operation of the ARM. As discussed in the report, the full extent of these impacts is not yet known at the time of the preparation of this report. As this report is being issued, the Commission is undertaking legal and technical review of the FCC's Report and Order and FNPRM and will be sure to apprise the Governor and Legislature of any impacts on the MTA.