

BRIEF FOR *AMICUS CURIAE* FEDERAL COMMUNICATIONS COMMISSION IN
SUPPORT OF PETITIONS FOR REHEARING AND/OR REHEARING *EN BANC*

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 07-2469 & 07-2473

MICHIGAN BELL TELEPHONE COMPANY D/B/A/ AT&T MICHIGAN,
PLAINTIFF-APPELLEE,

v.

COVAD COMMUNICATIONS COMPANY; TALK AMERICA, INC.;
XO COMMUNICATIONS SERVICES, INC.,
INTERVENORS-DEFENDANTS – APPELLANTS,

MCLEOD USA TELECOMMUNICATIONS SERVICES, INC.; TDS METROCOM, LLC,
INTERVENORS,

J. PETER LARK, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE MICHIGAN
PUBLIC SERVICE COMMISSION AND NOT AS AN INDIVIDUAL; LAURA CHAPPELLE,
IN HER OFFICIAL CAPACITY AS COMMISSIONER AND NOT AS AN INDIVIDUAL;
MONICA MARTINEZ, IN HER OFFICIAL CAPACITY AS COMMISSIONER
AND NOT AS AN INDIVIDUAL,
DEFENDANTS-APPELLANTS.

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BRIEF FOR *AMICUS CURIAE* FEDERAL COMMUNICATIONS COMMISSIONS
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AND/OR REHEARING *EN BANC*

STATEMENT OF INTEREST

The Federal Communications Commission (“FCC”) has
primary responsibility for implementing and enforcing the
Communications Act of 1934, 47 U.S.C. § 151, *et seq.* This case
involves this Court’s review of a district court’s interpretation of

section 251(c) of that Act, 47 U.S.C. § 251(c), and the FCC's orders and rules construing that statutory provision. The FCC has an interest in ensuring that the Act, its rules, and its precedents are correctly interpreted.

INTRODUCTION AND ARGUMENT

At this Court's request, on April 2, 2009, the FCC filed a brief as *amicus curiae* urging reversal of the district court and setting forth the agency's interpretation of the pertinent provisions of the Communications Act and agency regulations and orders in dispute in the captioned cases. A divided panel of the Court recently affirmed the district court's judgment. *Michigan Bell Telephone Co. v. Covad Communications Co., et al.*, Nos. 07-2469 & 07-2473 (decided Feb. 23, 2010).

Over the dissent of Judge Sutton, the majority accorded no deference to the FCC's interpretations of the Communications Act and the agency's own implementing regulations and orders. *Id.*, slip op. at 7 n.6. On March 9, 2010, the Michigan Public Service Commission and a group of competitive local exchange carriers filed separate petitions for rehearing and/or rehearing *en banc* of the panel's decision.

This brief is to inform the Court that the FCC continues to stand behind the interpretation and arguments set forth in its April 2009 *amicus* brief. As the FCC pointed out in that brief (p.22), its statutory and regulatory interpretations are consistent with those contained in decisions of the Seventh and Eighth Circuits. *See Ill. Bell Tel. Co. v. Box*, 526 F.3d 1069 (7th Cir. 2008); *Southwestern Bell Tel. L.P. v. Mo. Pub. Serv. Com'n*, 530 F.3d 676 (8th Cir. 2008), *cert. denied*, 129 S.Ct. 971 (2009). In addition, the Ninth Circuit very recently issued an opinion in which it also adopted those interpretations. *See Pacific Bell Tel. Co. v. Calif. Pub. Util. Com'n*, Nos. 08-15568 & 08-15716 (9th Cir., filed Mar. 4, 2010), 20110 WL 725347.

We believe these facts may be relevant to the Court's
consideration of the petitions for rehearing and/or rehearing *en banc*.

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March 18, 2010

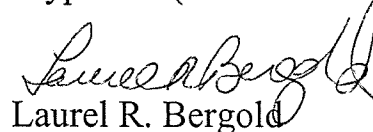
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FOR THE SIXTH CIRCUIT

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J. PETER LARK, IN HIS OFFICIAL CAPACITY)	
AS CHAIRMAN OF THE MICHIGAN PUBLIC)	
SERVICE COMMISSION AND NOT AS AN)	
INDIVIDUAL; ET AL.)	

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type volume limitation in Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because this brief contains 729 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), as calculated by Microsoft Word 2003.

2. The brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it uses a 14-point proportionally spaced typeface (Times New Roman).



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**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Michigan Bell Telephone Company, d/b/a AT&T Michigan, Plaintiff-Appellee

v.

J. Peter Lark, In His Official Capacity As Chairman Of The Michigan Public Service Commission And Not As An Individual; et al., Defendants-Appellants.

CERTIFICATE OF SERVICE

I, Lori Alexiou, hereby certify that the foregoing Brief for *Amicus Curiae* Federal Communications Commission in Support of Petitions for Rehearing and/or Rehearing *En Banc* was served this 18th day of March, 2010, by mailing true copies thereof, postage prepaid, to the following persons at the addresses listed below:

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