In the matter of the petition of
ACD Telecom, Inc., ARIALINK TELECOM, LLC,
CYNERGYCOMM.NET. INC., DAYSTARR, LLC,
LUCRE, INC., MICHIGAN ACCESS, INC., OSIRUS
COMMUNICATIONS, INC., SUPERIOR SPECTRUM
TELEPHONE AND DATA, LLC, TC3 TELECOM, INC.,
and TELNET WORLDWIDE, INC. for arbitration of
interconnection rates, terms, conditions and related
arrangements with MICHIGAN BELL TELEPHONE
COMPANY d/b/a/ AT&T MICHIGAN

MOTION OF COMPTEL FOR LEAVE TO FILE AND COMMENTS
IN SUPPORT OF JOINT CLECS’ PETITION FOR REHEARING

COMPTEL hereby respectfully moves for leave to file these comments in support of the
Joint CLECs’ Petition for Rehearing of the Commission’s decision on NIM Issue 8(c) in the
above captioned proceeding. The Commission erroneously found that dark fiber “may not meet
the definition of an entrance facility when it is incorporated into the CLEC’s network” and
therefore may not be used for interconnection purposes.\footnote{Michigan Public Service Commission Order in Case No. U-16906 at 11 (Feb. 15, 2012).} It is necessary for the Commission to
correct this error and reinstate the decision of the Arbitration Panel in order to protect the
interconnection rights of CLECs and enforce the interconnection obligations of AT&T Michigan
under the Communications Act of 1934, as amended, 47 U.S.C. §251, the Federal
Communications Commission’s (“FCC”) rules, and the Supreme Court’s decision in \textit{Talk}
I. Interest of COMPTEL

COMPTEL is the leading national trade association representing competitive communications service providers and their supplier partners. COMPTEL’s members provide local exchange telecommunications services in competition with incumbent local exchange carriers (“ILECs”), including Michigan Bell Telephone Company, d/b/a AT&T Michigan. COMPTEL’s members must interconnect their networks with the networks of the ILECs in order for their customers to be able to make calls to and receive calls from customers of the ILECs. COMPTEL’s members purchase entrance facilities from the ILECs in order to interconnect their networks with the ILECs’ networks for the purpose of exchanging traffic. COMPTEL filed an Amicus Curiae brief in support of the Michigan Commission’s ruling that AT&T Michigan must make entrance facilities used for interconnection purposes available to competitors at cost-based rates in the case of Talk America, Inc. v. Michigan Bell Telephone Company, d/b/a AT&T Michigan, 131 S.Ct. 2254 (2011). The Supreme Court affirmed that ruling. As a result, COMPTEL and its members have a significant interest in the question presented by Petitioners for rehearing especially to the extent that the Commission’s decision on NIM Issue 8(c) could be interpreted to significantly limit the interconnection rights and access to transmission facilities that the Supreme Court has so recently determined must be made available by ILECs to requesting carriers under the Communications Act and the FCC’s regulations.

II. The Commission Should Grant Rehearing

The Petitioners filed the petition for arbitration pursuant to Section 252 of the Communications Act and the Commission correctly acknowledged that the framework within
which the arbitration panel and the Commission must resolve the issues is contained in Section 251 and 252 of the Act, 47 U.S.C. §§251, 252, and the FCC regulations promulgated thereunder. The Commission’s ruling that dark fiber may not be used for interconnection purposes is inconsistent with the Act, the FCC’s regulations and the Supreme Court’s decision in *Talk America*. The Commission should grant rehearing and remedy this error.

Section 251(c)(2) of the Communications Act imposes on AT&T Michigan the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with its network for the transmission and routing of telephone exchange and exchange access at any technically feasible point. Section 51.5 of the FCC’s rules, 47 C.F.R. §51.5, defines interconnection as “the linking of two networks for the mutual exchange of traffic,” and Section 51.321(b) of the FCC’s rules, 47 C.F.R. §51.321(b), provides that technically feasible methods of obtaining interconnection include, but are not limited to, physical collocation at the premises of the incumbent LEC.

In *Talk America*, the Supreme Court stated that “[e]ntrance facilities are the transmission facilities (typically wires or cables) that connect competitive LECs’ networks with incumbent LECs’ networks” and affirmed that AT&T Michigan must lease to requesting carriers entrance facilities used for interconnection at cost-based rates. The Supreme Court further upheld the FCC’s interpretation of the Act and its own rules to impose on AT&T Michigan the obligation to “lease, at cost-based rates, any requested facilities for obtaining interconnection with the

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2 MPSC Order in Case No. U-16906 at 2.
3 131 S.Ct. at 2258.
4 131 S.Ct. at 2260.
incumbent LEC’s network unless it is technically infeasible to do so." In this case, Petitioners proposed language in their interconnection agreement that would require AT&T Michigan to provide them access to dark fiber entrance facilities to be used for interconnection purposes, including dark fiber transmission facilities that extend from the CLECs’ switches to their collocation arrangements in AT&T Michigan’s central offices. In ruling against the CLECs on NIM Issue 8(c), the Commission stated that it

is persuaded that dark fiber may not meet the definition of an entrance facility when it is incorporated into the CLEC’s network. In that configuration, it does not connect a pair of wire centers.  

The Commission’s ruling has no basis. All entrance facilities used by CLECs, whether dark fiber or not, are “incorporated into the CLEC’s network” to the extent they “connect competitive LECs’ networks with incumbent LECs’ networks” for the mutual exchange of traffic. Under the FCC’s rules, physical collocation at the premises of the incumbent LEC is a technically feasible method of obtaining interconnection that AT&T Michigan must make available to CLECs. Section 51.323 of the FCC’s rules, 47 C.F.R. §51.323, mandates that when an ILEC provides physical collocation, it shall provide an interconnection point or points, physically accessible by both the ILEC and the collocating telecommunications carrier, at which the fiber optic cable carrying an interconnector’s circuits can enter the ILEC’s premises.

The fact that the entrance facility goes from the CLEC’s switch into the CLEC’s collocation cage at AT&T Michigan’s central office before the traffic is delivered to AT&T Michigan at the agreed upon interconnection point does not change the nature of the transmission facility. It is still a fiber optic cable carrying an interconnector’s circuits from the

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5 131 S.Ct. at 2261 (emphasis added).

6 MPSC Order in Case No. U-16906 at 11.
interconnector’s switch into the ILEC’s premises, it still connects the CLEC’s network to the ILEC’s network and it is still an entrance facility. A dark fiber transmission facility connecting the CLEC’s network to the ILEC’s network is likewise an entrance facility used for obtaining interconnection that the CLEC is entitled to lease at cost-based rates under the FCC’s rules. The fact that the CLEC adds electronics to the dark fiber entrance facility to enable it to carry traffic does not alter the nature of the physical connection: it is still a fiber optic cable carrying an interconnector’s circuits from the interconnector’s switch into the ILEC’s premises, it still connects the CLEC’s network to the ILEC’s network and it is still an entrance facility. The Commission’s finding that dark fiber, once it is lit by a CLEC, is neither an entrance facility nor does it “connect a pair of wire centers” ignores the actual physical architecture of the telephone networks.

The Commission seems to have based its finding on AT&T Michigan’s arguments that “leased dark fiber, by its nature, must be within the CLEC’s network, as it requires CLEC electronics on either end to become lit” and therefore “cannot fit within the definition of entrance facilities” and that “because the CLEC owns the equipment in the collocation arrangement, it becomes a part of the CLEC’s network, which rules out the use of entrance facilities for provisioning direct service.” AT&T’s arguments, however, do not hold water. As demonstrated above, leased dark fiber that is lit by a CLEC still connects the CLEC switch to the ILEC central office for the purpose of exchanging traffic. Such use of lit dark fiber for interconnection purposes is permissible under the Communications Act, the FCC’s rules and the Supreme Court’s decision in Talk America and AT&T Michigan must make the dark fiber used for interconnection purposes available to CLEC’s at cost-based rates.

7 131 S.Ct. at 2261.
8 MPSC Order at 8.
CONCLUSION

COMPTEL respectfully requests that the Commission grant it leave to file these comments in support of the CLECs’ Petition For Rehearing. The Commission prevailed at the Supreme Court over AT&T Michigan’s vigorous objection on the issue of CLECs’ entitlement to lease entrance facilities used for interconnection purposes from ILECs at cost-based rates. The Commission should not allow AT&T Michigan to chip away at that victory by denying CLECs cost-based access to AT&T Michigan dark fiber between a CLEC switch and an AT&T Michigan central office that the CLEC lights to exchange traffic with AT&T Michigan. For the forgoing reasons and those stated in the CLECs’ Petition for Rehearing, COMPTEL urges the Commission to grant the CLECs’ Petition for Rehearing.

Respectfully submitted,

/s/

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April 24, 2012
STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the petition of

ACD Telecom, Inc., ARIALINK TELECOM, LLC,
CYNERGYCOMM.NET, INC., DAYSTARR, LLC,
LUCRE, INC., MICHIGAN ACCESS, INC., OSIRUS COMMUNICATIONS, INC., SUPERIOR SPECTRUM TELEPHONE AND DATA, LLC, TC3 TELECOM, INC.,
and TELNET WORLDWIDE, INC. for arbitration of
interconnection rates, terms, conditions and related arrangements with MICHIGAN BELL TELEPHONE COMPANY d/b/a/ AT&T MICHIGAN

Case No. U-16906

PROOF OF SERVICE

I, Mary C. Albert, hereby certify that on the 24th day of April 2012, I caused a copy of the foregoing Motion of COMPTEL for Leave To File and Comments In Support of Joint CLECs’ Petition For Rehearing to be served upon the parties on the attached service list by first class U.S. mail, postage prepaid or by electronic mail.

/s/

Mary C. Albert
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MPSC Case No. U-16906

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