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January 21, 2014

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
4300 West Saginaw, P.O. Box 30221
Lansing, Michigan 48909

Re: MPSC Case No. U-11756.

Dear Ms. Kunkle:

Pursuant to the Commission's December 6, 2013 Order in the above-referenced matter, enclosed for filing is a copy of the **Complainants' Objections to Michigan Bell Telephone's Refund Report** which was filed electronically.

Please let me know if you have any questions or concerns regarding these documents.

Sincerely,

Henry T. Kelly

Digitally signed by: Henry T. Kelly
DN: CN = Henry T. Kelly C = US O = Kelley Drye & Warren LLP
Date: 2014.01.21 15:34:01 -05'00'

Henry T. Kelly

cc: Attached Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * * *

The Michigan Pay Telephone Association, et al., Complainants, v. Michigan Bell Telephone Company, and GTE North Incorporated, Respondents. Complaint Pursuant to Sections 203, 204, and 318 of the Michigan Telecommunications Act to Compel Respondents To Comply with Section 276 of the Federal Communications Act.	)	Case No. U-11756

To: All Parties of Record

CERTIFICATE OF SERVICE

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, Henry T. Kelly, an attorney, on oath state that I served a copy of the foregoing **Complainants' Objections to Michigan Bell Telephone's Refund Report** via electronic mail upon the on parties listed on the attached service on January 21, 2014.

Henry T. Kelly

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * * *

The Michigan Pay Telephone Association, et al.,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Michigan Bell Telephone Company, and GTE North Incorporated,	)	Case No. U-11756
	)	
	)	
Respondents.	)	
	)	
Complaint Pursuant to Sections 203, 204, and 318 of the Michigan Telecommunications Act to Compel Respondents To Comply with Section 276 of the Federal Communications Act.	)	

COMPLAINANTS' OBJECTIONS TO MICHIGAN BELL TELEPHONE'S REFUND REPORT

The Michigan Pay Telephone Association and the Complainant Independent Payphone Providers (hereinafter "Complainants"), pursuant to the Commission's December 6, 2013 Opinion and Order (the "*December 2013 Order*"), state as follows for their Objections to Michigan Bell Telephone Company's ("AT&T Michigan") January 6, 2014 Refund Report ("Refund Report.")

The Complainants attach to these objection a confidential report identifying additional information that both refutes the 2014 Refund Report, and provides additional data on the amount of the refund during the period for which AT&T Michigan claims it has no records. ("Complainants' Refund Report.") Exhibits 1 (Confidential) and Exhibits 2 (Confidential). Some of the Complainants were able, in the short period of time allotted by the Commission, to

report the total number of messages for each month that the 2014 Refund Report did not include data. *See e.g. Complainants' Refund Report for 4M Communications, SGG/Saroki Group and First Michigan Telecommunications.* For other Complainants that either do not have paper copies of their phone bills, or who do not have enough information from AT&T Michigan to complete an analysis, the Complainants have calculated a refund for those months that AT&T Michigan does not have records, using information provided in AT&T's 2004 Refund Report and 2013 Refund Report.

Even assuming that AT&T Michigan's claims that it lacks the records is accurate, there is sufficient information provided by AT&T Michigan for the Commission to calculate a refund. Complainants' Refund Report identifies the appropriate refunds for the period from April 15, 1997 to March 2001, based exclusively on AT&T Michigan's own records using the number of payphones on which AT&T Michigan previously agreed to pay a refund from the Commission's March 2004 Order, and the number of messages from AT&T Michigan's 2014 Refund Report. AT&T Michigan's data was then used to estimate the number of messages for which a refund would be due for the period from April 15, 1997 to March 2001. For the period after March 2001, AT&T Michigan's Refund Report was applied, except in those circumstances where certain payphone provided alternative data from their monthly bills.

The Commission should appoint a mediator to resolve the disputes between the Complainants' Refund Report and AT&T Michigan's Refund Report, but make absolutely clear that AT&T Michigan's failure to retain records required in a proceeding pending before the MPSC does not allow it to avoid responsibility for the refunds ordered by the December 2013 Order. The evidentiary record is clear that AT&T Michigan had possession of the billing information during the pendency of the case, that Complainants requested the information, and

that AT&T Michigan failed to inform the Commission that it had a practice of destroying the records that would be used to calculate the refund. The fact that AT&T Michigan now claims it lacks some of the records needed to calculate a refund cannot be permit AT&T Michigan to avoid its statutory obligations under Section 601 of the MTA.

The Commission should order that unless AT&T Michigan or a Complainant provides additional information through a mediation process, Complainants' Refund Report, with its regression analysis for the period from April 1997 to March 2001, and AT&T Michigan's Refund Report for the period from April 2001 to September 2010, shall apply. The Commission should also order AT&T Michigan to pay refunds with interest.

The Commission is also required by Michigan Law to permit corporations that have been dissolved to reinstate their corporate existence. Section 2834 of the Business Corporation Act permits a dissolved corporation to continue to function in the same manner as if dissolution had not occurred, and "[t]he corporation may sue . . . in its corporate name . . . in the same manner as if dissolution had not occurred." MCL 450.2834. Moreover, Section 1925 of the Business Corporations Act permits corporations to reinstate their corporate existence by filing the appropriate forms with the Department of Licensing and Regulatory Affairs. MCL 450.1925. Therefore, the Commission should also establish a process to recognize the refund obligations to Complainants that have let their corporate status lapse.

I. AT&T Michigan's Refund Report Is Incomplete and Contains Errors, and the Commission Should Provide The Complainants Additional Time to Respond.

The *December 2013 Order* compelled AT&T Michigan report the amount by which its local usage rate exceeded the ceiling established by the Commission's Order, and to itemize the amount of refund that would be due to each independent payphone provider. The *December*

2013 Order further gave Complainants only 15 days to raise their objections to the Report. The 15 days allotted by the Commission is insufficient for all of the Complainants to raise their objections, particularly given that AT&T Michigan has not provided Complainants with sufficient information to know the telephones on which AT&T Michigan has identified a refund. Moreover, the errors that are apparent in AT&T Michigan's Refund Report demonstrate that additional time to review and respond to the Refund Report is warranted.

A. The Commission Should Require AT&T Michigan to Identify the Telephone Numbers in Each Month For Which it is Paying a Refund.

To fully assess AT&T Michigan's calculations, the Commission should require AT&T Michigan to identify each telephone number and the number of messages per line for which it is paying a refund. This information should be readily available. Presumably, in preparing the reports, AT&T Michigan aggregated the number of messages associated with each telephone number. The Commission should require AT&T Michigan to provide to Complainants the detail information for each telephone number for which it is issuing a refund, including the number of messages per line per month, so that Complainants can cross-reference to ensure they are being refunded for all telephone lines.

The Complainants note that AT&T Michigan attempted to provide aggregated data in 2004 that disguised many of AT&T Michigan's errors. However, when AT&T disaggregated their refund analysis to report the refund due on a per-ANI basis, both the Complainants and the Commission were able to address and respond to AT&T's mistakes. In Complainants' April 30, 2004 Objections to Michigan Bell's 2004 Refund Report, the Complainants established that AT&T's line counts for Great Lakes Telephone, A&R Communications and SGG Communications were grossly inaccurate, and AT&T Michigan ultimately agreed to make payment to these complainants on the accurate information. For example, the evidence adduced

at the hearing establishes that, from April 1997 through June 2002, AT&T Michigan calculated refunds for only about 25% of Great Lakes' telephones. Complainants' April 30, 2004 Objections to SBC Michigan's Refund Report, p. 4-5 and Ex. 2 (Confidential); *citing* Hearing Ex. C-66, pages 105-110 (Confidential); *See also* Complainants' April 30, 2004 Objections to SBC Michigan's Refund Report at 5-6 (relating to A & R Communications and SGG/Saroki Group.)

Complainants are also entitled to verify that they are receiving a refund for each telephone line on which AT&T Michigan reported an obligation to refund in the 2004 Refund Report. Consequently, AT&T Michigan should be required to report to the Complainants which telephone numbers it is paying a refund. Complainants will be then able to compare the telephone lines for which AT&T Michigan paid a refund in 2004, with the actual telephone lines on which AT&T Michigan reports a refund obligation arising from the Commission's December 2013 Order. When the Commission requires AT&T Michigan to provide a complete list of each telephone line ("ANI") it has designated to each particular Complainant, it will be possible to perform an ANI-to-ANI comparison to verify the correct amount owed.

The Commission's December 2013 Order contemplates a subsequent process to address the differences in the data. The Commission should include in that process an opportunity for the Complainants to review the additional data provided by AT&T Michigan.

B. AT&T Michigan's Report Contains Obvious Errors.

AT&T Michigan's report only provides a refund calculation for the period from April 2001 to September 2001; it provides no data or information for the period from April 15, 1997, the effective date of the refund obligation under the *December 2013 Order*, to March 2001. For the reasons set forth below, the Complainants question the credibility of AT&T Michigan's

statement that it has insufficient data, and object to Michigan Bell's assertion that the Complainants should be required to produce information to justify a refund. AT&T Michigan has the obligation under the Commission's orders to calculate a refund and provide a process and mechanism to make those payments, and AT&T Michigan cannot absolve itself of its legal obligations by simply claiming a lack of information. Given that AT&T Michigan has ignored its obligations, Complainants will need additional time to review AT&T Michigan's data, and respond to their calculations.

A sample comparison of the numbers reported by AT&T Michigan demonstrates that the numbers are grossly inaccurate. 4M Communications was able to compare the telephone bills from Michigan Bell against the purported message count in AT&T Michigan's Refund Report. For the period from April 2001 to December 2001, AT&T Michigan's Refund Report under-counted the number of telephone messages for which a refund is due by approximately 1% per month; in one month, AT&T undercounted the number of messages by approximately 15%. *See* Complainants' Refund Report, Exh. 1. 4M Communications was able to review its prior phone bills and identify the number of local messages for which a refund is due during the period from April 15, 1997 to December 2001. However, 4M needs additional time to review their records for the period from January 2002 to September 2010.

SGG/Saroki Group also conducted a telephone line by telephone line comparison between AT&T Michigan's claimed number of messages for which a refund was due against actual bill data. During the period from April 2001 to May 2002, AT&T Michigan's refund calculation identifies only 22% of the messages that SGG/Soroki Group was able to identify based on actual telephone bills.

In 2004, the Commission required AT&T Michigan to report the number of telephone numbers for which AT&T Michigan was required to calculate a refund of the Commission's March 2004 Refund Order ("AT&T 2004 Report.") The Complainants retained the list telephone numbers for which AT&T Michigan paid a refund in its April 2004 Report. There are several companies for which AT&T Michigan had a record of active pay telephones prior to 2004, and for which AT&T paid a refund, that AT&T Michigan now reports has having a small number of telephones. *See e.g.* Donalt Lichon d/b/a Tri-County.

II. AT&T Michigan's Destruction of its Billing Records Does Not Avoid Its Obligations to Pay Refunds For the Period Ordered By the Commission's December 6, 2013 Order.

The Commission's Order requires AT&T Michigan to pay a refund of its excessive rates for the period from April 15, 1997 to September 2010. *December 2013 Order* at 17. AT&T Michigan cannot ignore its obligations to provide refunds by now claiming it lacks information to make the calculation. First, AT&T Michigan's disingenuous claim about what data it does and does not maintain lacks credibility - AT&T Michigan has destroyed the evidence it was required to maintain to calculate refunds which it is statutorily obligated to pay. Second, even assuming AT&T Michigan does not have sufficient billing records to calculate a refund for the period from April 1997 to March 2001, there is credible evidence of what the appropriate refund is, and the Commission can rely on that evidence. In addition, AT&T Michigan should be obligated to reimburse the Complainants' their costs to calculate the refunds.

A. The Commission's Order Requires AT&T Michigan to Pay a Refund, and Complainants Do Not Have the Obligation to Produce Bill Records.

Section 601 of the MTA provides that, if

> a person has violated this act, the commission shall order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation, including, but not limited to, one or more of the following:
>
> * * *
>
> (c) A refund to the ratepayers of the provider of any collected excessive rates;

MCL § 484.2601.

Section 601 has required the Commission to award refunds since 1995, several years before this Complaint for a refund was started. Notably, Section 601 expressly requires **AT&T Michigan to *refund the ratepayers***, it does not require ratepayers to tell the carrier what it was unlawfully billed by the company. The MTA further provides that the Commission shall order remedies to compensate ratepayers who have suffered an economic loss, but the Commission's December 2013 Order requires Michigan Bell to pay a ***refund***. December 6, 2013 Order at 17. To comply with the Commission's Order, Michigan Bell has the obligation, as the carrier subject to the Commission's jurisdiction, to determine the ***refund*** based on the tariffed rates it assessed to payphones providers. *See In re Consumers Energy Application to Increase Rates*, 2012 WL 5856229 (Mich. Ct. App. Oct. 30, 2012) (Affirming a Commission order requiring a utility to calculate and distribute a refund to residential ratepayers without requiring ratepayers to make a claim or calculation).

A refund is different than the other relief available under Section 601 of the MTA; in addition to refunds, Section 601 allows "remedies . . . to make ratepayers and other persons who have suffered an economic laws." The instant case is not a case where Complainants have to prove "damages" or "lost profits"; this is a case where AT&T Michigan has overcharged payphone providers a rate for each message associated with the Complainants' payphones. While AT&T Michigan now claims it does not have the records to assess a "refund", that does

not excuse AT&T Michigan's wrongful conduct in destroying the information required to make the refund.

Assuming that Michigan Bell failed to maintain its records to calculate the refund to its ratepayers, the Commission is warranted to awarding other remedies to make the ratepayers whole. MCL § 484.2601; *Deward v. Michigan Pub. Serv. Comm'n*, 2009 WL 3199498 (Mich. Ct. App. Oct. 6, 2009). The Commission and courts have held that awarding refunds ***or*** remedies associated with overcharges by regulated providers need not be exact. *Ass'n of Businesses Advocating Tariff Equity v. Pub. Serv. Comm'n*, 174 Mich. App. 63, 435 N.W.2d 766 (1989) ("apportioning refunds in a manner deemed reasonable by the PSC, rather than requiring a perfect matching of refunds. . . ." is permissible.) The award of a refund or remedies by the Commission need not be exact; the remedies awarded by the Commission need only be reasonable and supported "by competent, material and substantial evidence." *Consumers Power Co. v. Pub. Serv. Comm'n*, 181 Mich. App. 261, 268, 448 N.W.2d 806, 809-10 (1989).

B. AT&T Michigan Destroyed its Records.

In 2002, the Complainants requested that AT&T produce all information in its possession about what amounts had been billed to the Complainants since April 15, 1997. 15 Tr. 1670. AT&T Michigan objected because it elected to not "burden" itself with retrieving the data. 15 Tr. 1675. What AT&T did not tell the Commission or ALJ Stump at the time is that AT&T Michigan destroys its records on a five-year rolling basis and that the billing records to make refund calculations from April 1997 were available at the time, but would not be available should the Commission later order refunds. 15 Tr. 1675-1679. AT&T Michigan's own witness later acknowledged on cross examination during the hearing, after it was too late, that it was expunging Complainants' billing records on a rolling basis:

Q. It would be Ameritech's practice to retail these bills for all 62 Complainants in its repository back five years?
A. Yes.
Q. Would that be at least five years or would it be more than that?
A. It would be no more than five years. The records roll off after five years.

18 Tr. 2298. Had AT&T Michigan produced its usage records at the time, or even retained the records, the Commission would have a full record from AT&T Michigan on the actual usage associated with each payphone line.

In addition, as the Commission noted in its December 2013 Order, AT&T Michigan was granted an extension from the FCC in 1997 for filing rates that were compliant with the FCC's New Services Test under the condition that AT&T Michigan agree to reimburse or provide a credit back to April 15, 1997 if the new rates were lower than the previous noncompliant rates. December 2013 Order at 16-17. Given the FCC's conditions under which the wavier was granted, AT&T Michigan was on notice that it needed to maintain the data necessary to calculate refunds or credits should its rates prove to be noncompliant.

The record of this proceeding is that AT&T Michigan was aware that the Commission could award refunds to the Complainants, AT&T Michigan expunged the evidence to be used to calculate the refunds, and the Complainants have submitted reasonable and competent evidence that can be used to calculate refunds if AT&T Michigan won't produce its records.

C. There is Evidence of the Appropriate Refunds Due.

The Commission is not without evidence of the appropriate refunds that are due, and AT&T Michigan, because it has spoliated evidence, cannot now dispute the Complainants' calculations. *Brady v. Cent. Excavators*, 316 Mich. 594, 25 N.W.2d 630 (1947) (where defendant, whose books covered transactions in question and showed amount of plaintiff's

damages, failed to produce the books, defendant could not complain of the approximation method used by court in making computation of plaintiff's damages.)[1]

For the period from April 1997 to September 2010, the Commission should award refunds, absent alternative information from a payphone provider, based on one of two calculations: 1) the Complainants Refund Report, which relies on the available information from AT&T Michigan's January 2014 Refund Report to extrapolate refunds for Complainants during the period from April 15, 1997 to March 2001, the period where AT&T Michigan failed to maintain evidence; or in the alternative, 2) the Report submitted by the Complainants as Exhibit I to their Initial Brief on Reopening Following Remand (filed June 21, 2013).

1. Complainants' Initial Brief on Reopening Following Remand Contains Reasonable Refund Calculations for the Period From April 1997 to March 2001.

In the 2003 proceedings, the Complainants submitted the testimony of Warren Fischer, who had compiled over 110,000 monthly bills from PSPs, and testified on the appropriate refund should the Commission adopt the Complainants NST Rate for the Line Rate and the Local Usage rate. *See*, Vol. 17 Tr. 2073-74; Vol. 18 Tr. 2013-2026; Exhs. 63-70. Mr. Fischer's analysis and Exhibit C-70 was updated to incorporate not only the method used by Michigan Bell for purposes of the Line Rate Refund, but also the short term borrowing interest rate used by Michigan Bell and the number of ANIs on which Michigan Bell paid a refund, at least up through January 2004. Initial Brief on Reopening, June 21, 2013, Exhibit I. This analysis relied on a sample of payphone providers' billing data for the period from 1997 to 2002 and developed

[1] Where there is a deliberate destruction of or failure to produce evidence in one's control a presumption arises that if the evidence were produced it would operate against the party who deliberately destroyed or failed to produce it. *Johnson v. Austin*, 406 Mich. 420, 440, 280 N.W.2d 9, 14 (Mich., Jun 25, 1979) (citations omitted.)

an average number of messages per phone during the appropriate periods, and applied that average against all PSPs.

2. AT&T's Refund Report Can Be Used to Identify Appropriate Refunds for the Period From April 1997 to March 2001.

Now that AT&T Michigan has provided its Refund Report, the Complainants are able to use AT&T Michigan's own data to perform a regression analysis for the number of messages per phone *on an individual* basis for each PSP – each PSP's message count would be based on AT&T's message count from the Refund Report. Moreover, the number of payphone lines associated with each PSP would be based on the refunds paid under the Commission's March 2004 order. After the Commission's 2004 Order, AT&T Michigan and Complainants reached a settlement on the number of payphones for which a refund would be paid to each IPP for the period from April 1997 to March 2004. Joint Petition, December 14, 2007. The telephone numbers associated with that agreed settlement should be used to calculate the refund for the period from April 1997.

Consequently, to identify the refund for the period from April 15, 1997 to March 2001, the Commission can rely on AT&T's own data for the number of telephone lines for which it previously agreed to pay a refund (a number which was agreed to by the Complainants), and the average number of messages per phone for each Complainant. In Complainants' Refund Report, for the period from April 1997 through March 2001, the number of messages per line were derived by dividing AT&T's record of actual messages for each Complainant in AT&T Confidential Exhibit 1 by its record of actual lines per Complainant from AT&T Michigan's 2004 Refund Report. This was a conservative approach since message counts per line were typically higher during the period April 1997 through March 2001 before payphone usage began trending downward from 2001 forward. Interest was also applied on the refund amounts

quarterly, consistent with the methodology used by AT&T Michigan in its 2004 Refund Report. For the period July 2004 through an estimated payment date of March 2014, the 30-day AA Nonfinancial Commercial Paper Interest Rates published by the Federal Reserve were used as a proxy for AT&T Michigan's short-term borrowing rates. These interest rates were used because this series tracked within a few basis points of AT&T Michigan's actual short-term borrowing rates from April 1997 - June 2004 (i.e. 5.49% in April 1997 v. AT&T's rate of 5.52%; 4.98% in June 1999 v. AT&T's rate of 4.95%; and 6.51% in December 2000 v. AT&T's actual rate of 6.54%).

Assuming there are not actual records available from AT&T Michigan for the refund, either of these calculations are an appropriate value for the over-charges assessed against the Complainants. Courts have held that remedies should place an injured party in as good a position as it should have been had the other parties complied with its obligations. *Body Rustproofing, Inc. v. Michigan Bell Tel Co*, 149 Mich.App. 385, 390; 385 N.W.2d 797 (1986). These remedies need not be proven with absolute certainty or mathematical precision, but may be proven "with a reasonable degree of certainty. *Michigan Bell*, 149 Mich.App. at 390-391; *see also Consumer Power Co. v. Public Service* Commission, 181 Mich.App. 261, 267-68, 448 N.W.2d 806, 809 (1989) (expert opinion testimony supporting the PSC's refund calculations and constituted competent evidence.)

D. AT&T Michigan Does Not Have a Unilateral Right To Offset.

The Commission should also reject AT&T Michigan's suggestion that Complainants are required to produce evidence of payment of the bills or that AT&T Michigan can offset unpaid bills from the refund. Refund Report at 3. AT&T Michigan does not provide names or amounts of these alleged debts, but asserts that "[i]t is possible that some of the 62 original

complainants ceased operations . . . while owing AT&T Michigan or its predecessors money for payphone services they purchased but had not paid for. . . ." Refund Report at fn. 3. There is no evidence even mentioning alleged debts, much less detailing them. AT&T Michigan has no right to offset unspecified amounts that it claims are due from IPPs. The MPTA and the Complainants are willing to resolve these issues and ensure that AT&T Michigan is made whole, but it should not be permitted to unilaterally claim there are unpaid amounts that it is entitled to offset.

The record evidence is that for each pay telephone line on Complainants' Exhibit 70, Michigan Bell had certified under federal law that the telephone line was an active line used for payphone services. Ex. 64-67. In addition, AT&T Michigan cannot reasonably dispute that it would disconnect its competitors' payphone lines in the event the competitor failed to make timely payment on the bill.

E. Complainants' Specific Recommendations for Determining the Refund.

The following are the Complainants' specific recommendations on calculating the refunds:

1. The Commission must first order AT&T Michigan to provide ANI-level detail of its Refund Report so that Complainants can confirm the telephone numbers on which AT&T Michigan is paying a refund, and then give Complainants a reasonable time to confirm the refunds associated with those lines.

2. The Commission should order that unless a Complainant produces additional information, the telephone numbers on which AT&T and Complainants reached settlement of the payment obligations under the March 2004 Order should apply for purposes of the refund obligations under the December 2013 Order.

3. To calculate the number of messages per phone per month for the period from April 2001 to September 2010, unless a Complainant produces additional information on the number of messages per telephone, AT&T Michigan's records associated with each telephone line shall apply.

4. To calculate the number of messages per phone per month for the period from April 1997 to March 2001, unless a Complainant produces additional information on the number of messages per line, the refund per line would be based on the regression analysis performed by Complainants on the Complainants' Refund Report. In the alternative, the Commission could award refunds in the amount as set forth in Exhibit I to Complainants' Initial Brief on Reopening.

5. The Commission should require AT&T Michigan to reimburse the Complainants for their costs in calculating refunds.

AT&T Michigan claims that it does not have "actual usage data." However, this does not mean that AT&T has *no* data that could be used to calculate a refund.[2] Should the Commission not agree with Complainants' recommendations, the Commission should order AT&T Michigan to submit itself to discovery on what records may be available.

III. The Refund Report Should Include Interest

For the reasons set forth in the Complainants January 6, 2014 Petition for Rehearing, the Complainants object to the Refund Report's failure to apply interest to the refunds. In assessing refunds in the *2004 Commission Order*, the Commission held that Michigan Bell must "include interest on the excess collected at the respective company's short-term borrowing rate computed

[2] Complainants note that AT&T Michigan must have some data dating back to 1997. In 2004, AT&T Michigan was able to determine the telephone numbers that were associated with each Complainant, so AT&T Michigan must have some information on which it is relying to calculate refunds.

on a quarterly basis." The Commission should impose a similar requirement on the refunds for excessive usage rates charged by AT&T Michigan. Complainants' Refund Report incorporates interest to be applied on the refunds, at the same effective interest rate as required by the *2004 Commission Order.*

IV. The Commission Should Process Refunds Similar to the Process Used Under the Commission's March 2004 Refund Order.

In the Commission's 2004 Order, after AT&T Michigan and Verizon submitted their proposed refunds, the Commission appointed a mediator to resolve the disputes among payphone providers for refunds. That process led to AT&T Michigan and Complainants submitting their Joint Petition for Final Approval of Refund Distribution. Joint Petition, December 14, 2007. In the Joint Petition, Michigan Bell and Complainants ultimately reached agreement on a settlement of certain contested issues, including most of the issues AT&T Michigan now raises in its Refund Report. Among the issues that the parties were able to resolve was the transfer of ownership of certain telephone lines during the course of the proceeding, and the process by which AT&T Michigan made payment to the Complainants. Joint Petition at para. 15, 17- 20.

The Complainants request that the Commission employ a similar process to resolve disputes. The Commission should appoint a mediator to address the specific issues associated with each Complainant. However, the Commission should not set out the specific criteria that each payphone provider need satisfy to obtain a refund. To do so would be to enter an order based on hypothetical scenarios that may or may not exist. For example, AT&T Michigan requests that each Complainant provide proof that it has maintained a current payphone registration with the MPSC. Refund Report at 5. However, there is no current obligation for payphone providers to register with the Commission, as Section 317 of the MTA was amended

to eliminate that obligation. Moreover, even while the obligation existed, payphone providers were only required to maintain a copy of their registration for one year. MCL 484.2317 (2005). The Commission cannot now penalize a payphone provider for not retaining records that were only required to be retained for one year.

In addition, AT&T Michigan's hypothetical scenarios do not make sense. AT&T Michigan argues that a Complainant must present valid proof from the Michigan Corporation, Securities, and Commercial Licensing Bureau (LARA) of good standing. However, some Complainants are individuals, not requiring licensure from LARA. Moreover, Section 1925 of the Business Corporations Act permits corporations to reinstate their corporate existence by filing the appropriate forms with the LARA. MCL 450.1925. Moreover, a dissolved corporation may continue to function in the same manner as if dissolution had not occurred, and "[t]he corporation may sue . . . in its corporate name . . . in the same manner as if dissolution had not occurred. MCL 450.2834.

The Commission should appoint a mediator to resolve these issues as the Commission did in 2004.

V. AT&T's Refund Report Does Not Identify Refunds Due to All Independent Payphone Providers.

For the reasons set forth in the Complainant's Petition for Rehearing, the Complainants object to the Refund Report because it does not report refunds due to all ratepayers. Issuing refunds to the Complainants while not ordering similar refunds to all independent payphone providers would result in a discriminatory rate-setting scheme in violation of Section 276 of the Federal Communication Act and the MTA. See, e.g., 47 U.S.C. § 276 ("LEC payphone services must be: (1) cost-based . . . and, (3) ***nondiscriminatory***"); 484.2304(1) (2005) (repealed) (requiring all rates to be just and reasonable), 484.2318(1) (prohibiting discrimination in the

provisioning of payphone services); *Attorney General for the State of Michigan v. Michigan Public Service Commission*, 1998 WL 1990431 (Mich. Ct. App. Aug. 18, 1998), *citing Bradford v. Citizens' Telephone Co*, 161 Mich. 385, 389-390; 126 NW 444 (1910).

The Commission should require AT&T Michigan to detail their plans to refund all independent payphone providers, not just Complainants.

IV. CONCLUSION.

The Complainants have demonstrated herein that AT&T Michigan has provided incomplete information to satisfy its obligations under the December 2103 Order. The Commission can still require refunds to the Complainants based on other records, but there should be a process to resolve the disputes. Complainants request the following to resolve their objections to AT&T's Refund Report:

1. Order AT&T Michigan to provide ANI-level detail of its Refund Report so that Complainants can confirm which telephone numbers AT&T Michigan is paying a refund, and then give Complainants a reasonable time to confirm the refunds associated with those lines.

2. Order that unless a Complainant produces additional information, the telephone numbers on which AT&T and Complainants reached settlement of the payment obligations under the March 2004 Order should apply for purposes of the refund obligations under the December 2013 Order.

3. To calculate the number of messages per phone per month for the period from April 2001 to September 2010, unless a Complainant produces additional information on the number of messages per telephone, AT&T Michigan's records associated with each telephone line shall apply.

4. To calculate the number of messages per phone per month for the period from April 1997 to March 2001, unless a Complainant produces additional information on the number of messages per telephone, the refund per line would be based on the regression analysis performed by Complainants on the Complainants' Refund Report. In the alternative, the Commission should award refunds in the amount as set forth in Exhibit I to Complainants' Initial Brief on Reopening.

5. Order AT&T Michigan to pay interest on the refunds at the AT&T Michigan short-term borrowing rate.

6. Order AT&T Michigan to revise its Refund Report to award refunds to all Independent Payphone Provider ratepayers.

7. Order AT&T Michigan to reimburse the Complainants for their costs in calculating refunds.

8. Appoint a mediator, at AT&T Michigan's expense, to resolve disputes regarding a Complainants' claim to refunds.

Respectfully submitted,

MICHIGAN PAY TELEPHONE ASSOCIATION AND THE COMPLAINANT INDEPENDENT PAYPHONE PROVIDERS.

Henry T. Kelly

Digitally signed by: Henry T. Kelly
DN: CN = Henry T. Kelly C = US O = Kelley Drye & Warren LLP
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Dated: January 21, 2014

One of the attorneys for the Complainants.

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * * *

The Michigan Pay Telephone Association, et al.,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Michigan Bell Telephone Company, and GTE North Incorporated,	)	Case No. U-11756
	)	
Respondents.	)	
	)	
Complaint Pursuant to Sections 203, 204, and 318 of the Michigan Telecommunications Act to Compel Respondents To Comply with Section 276 of the Federal Communications Act.	)	

EXHIBIT 1
CONFIDENTIAL
FILED UNDER SEAL

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * * *

The Michigan Pay Telephone Association, et al.,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Michigan Bell Telephone Company, and GTE North Incorporated,	)	Case No. U-11756
	)	
Respondents.	)	
	)	
Complaint Pursuant to Sections 203, 204, and 318 of the Michigan Telecommunications Act to Compel Respondents To Comply with Section 276 of the Federal Communications Act.	)	

EXHIBIT 2
CONFIDENTIAL
FILED UNDER SEAL

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * * *

In the matter of the complaint of	)	
MICHIGAN PAY TELEPHONE ASSOCIATION	)	
ET AL. against **AMERITECH MICHIGAN** and	)	Case No. U-11756
VERIZON NORTH INC. f/k/a GTE NORTH	)	
INCORPORATED	)	

To: All Parties of Record

CERTIFICATE OF SERVICE

STATE OF ILLINOIS	)	
	)	ss
COUNTY OF COOK	)	

I, Henry T. Kelly, an attorney, on oath state that I served a copy of the foregoing C**OMPLAINANTS' OBJECTIONS TO MICHIGAN BELL TELEPHONE'S REFUND REPORT** via electronic mail upon the parties listed on the attached service on January 21, 2014.

/s/ Henry Kelly
Henry T. Kelly

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