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
VERIZON NORTH INC. f/k/a GTE NORTH
INCORPORATED.
_____/

Case No. **U-11756**
(E-file paperless)

STAFF'S ANSWER TO COMPLAINANTS' MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE, PETITION FOR REHEARING

The Michigan Pay Telephone Association and the Complainant Independent Payphone Providers (Complainants) seek clarification, or in the alternative, rehearing of the Michigan Public Service Commission's December 6, 2013 Opinion and Order. Michigan Public Service Commission Staff recommends that the Commission clarify its Order, but deny rehearing.

Complainants seek clarification on two points: (1) whether providers are entitled to interest on refunds and (2) whether the phrase "each provider" means each independent payphone provider or, each provider named in the Complaint.

1. Interest

Staff agrees with the Complainants that interest should be a component of the refund amount. The Commission has routinely awarded interest in similar cases. However, Staff disagrees that interest is required. In the absence of a statute that requires interest, any such award is discretionary on the part of the Commission. *Great Wolf Lodge of Traverse City, LLC v Public Service Com'n*, 489 Mich 27, 42-43; 799 NW2d 155 (2011). With regard to the methodology for interest calculation, the Commission did not specify what interest calculation should apply,

and Staff recommends this issue be addressed during the refund portion of this proceeding.

Staff therefore recommends the Commission clarify its Order to state that it awards interest on the overcharged amounts, but that the methodology will be determined in the refund phase of the case.

2. AT&T must issue refunds to all independent payphone providers.

On its face, the Commission's Order is clear, and unambiguous. It states that AT&T must refund "each independent payphone provider." Yet, AT&T recently filed their Refund Report, which only references the named Complainants. As such, Staff recommends the Commission clarify that when it said "each independent payphone provider" this was not a limitation to the named Complainants.
Staff anticipates that AT&T will argue that the law of the case doctrine prohibits refunds to all customers. However, such is not the case. In the previous appeal, the Commission had restricted refunds to named Complainants. MPTA argued on appeal that doing so was discriminatory in violation of 47 USC 276(a). The Court of Appeals found that the Commission's order was not discriminatory under 47 USC 276(a). *SBC Michigan v Michigan Public Service Com'n*, unpublished opinion per curiam of the Michigan Court of Appeals issued September 28, 2006 (Docket No. 254980). The Court of Appeals also noted that the Commission may not order relief to non-parties absent statutory authority citing *Bolt v. Lansing (On Remand),* 238 Mich. App 37, 57-58; 605 NW2d 745 (1999). However, MCL 484.2601(c) specifically provides that if a person violates the Michigan Telecommunications Act, the

Commission may order "a refund to the ratepayers of the provider of any collected excessive rates." The Court of Appeals did not decide the question whether the Commission could have ordered a refund to all customers, only that restricting refunds to the named complainants did not violate 47 USC 276a. As such, the law of the case doctrine is inapplicable, and the Commission was free to order refunds either to all ratepayers, or only to the named complainants. The Commission ordered refunds to "all independent payphone providers" and Staff recommends the Commission reiterate that it meant what it said, and that AT&T must provide a refund report which covers *all independent payphone providers* from April 15, 1997, until the date that AT&T Michigan ceased payphone service in Michigan.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF



Lauren D. Donofrio (P66026)
Assistant Attorney General
Public Service Division
6520 Mercantile Way, Suite 1
Lansing, MI 48911
Telephone: (517) 241-6680

DATED: January 27, 2014
11756/Answer to Motion/Rehearing

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
VERIZON NORTH INC. f/k/a GTE NORTH
INCORPORATED.
_____/

Case No. U-11756

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Corinna C. Swafford, being first duly sworn, deposes and says that on **January 27, 2014**, she served a true copy of **MPSC Staff's Answer to Complainants' Motion For Clarification, Or In The Alternative, Petition For Rehearing**, via e-mail only as indicated on the attached Service List.

Corinna C. Swafford

Subscribed and sworn to before me
this **27th** day of **January, 2014**.

Tina L. Bibbs, Notary Public
State of Michigan, County of Clinton
Acting in the County of Ingham
My Commission Expires: 11-13-2014

SERVICE LIST – U-11756

Ameritech Michigan
John M. Dempsey
DICKINSON WRIGHT, PLLC
301 E. Liberty St., Ste. 500
Ann Arbor, MI 48104
jdempsey@dickinsonwright.com

MCI
Albert Ernst
Christine M. Soneral
DYKEMA GOSSETT PLLC
201 Townsend Street, Ste. 900
Lansing, MI 48933
aernst@dykema.com
cmason@dykema.com

GTE
Harvey J. Messing
MILLER, CANFIELD, PADDOCK & STONE PLC
1 E. Michigan Ave., Ste. 900
Lansing, MI 48933
messing@millercanfield.com

MPTA
Hank Kelly
Kelley, Drye & Warren
333 West Wacker Drive
26th Floor
Chicago, IL 60606
hkelly@kelleydrye.com

MICHIGAN PAY TELEPHONE ASSOCIATION
Leland R. Rosier
CLARK HILL PLC
212 East Grand River Avenue
Lansing, MI 48906
lrrosier@clarkhill.com

VERIZON NORTH INC.
Michael G. Oliva
LOOMIS, EWERT, PARSLEY, DAVIS & GOTTING PC
124 W. Allegan St., Ste. 700
Lansing, MI 48933
mgoliva@loomislaw.com

AT&T MICHIGAN
Craig A. Anderson
Michael A. Holmes
225 W. Randolph Street, 25th Floor
Chicago, IL 60606
craig.anderson@att.com
holmes.michael@telecommich.org

Arthur J. LeVasseur
Fischer Franklin & Ford
500 Griswold St., Ste. 3500
Detroit, MI 48226
levasseur@fischerfranklin.com