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January 31, 2014

Ms. Mary J. Kunkle
Executive Secretary
Michigan Public Service Commission
4300 West Saginaw Highway
Lansing, MI 48909

Re: 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

Dear Executive Secretary:

Enclosed for filing is the following document:

AT&T Michigan's Reply to Staff's Answer to Complainants' Motion for Clarification, or in the Alternative, Petition for Rehearing

Please call me with any questions concerning this filing.

Sincerely,

Craig A. Anderson

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Date: 2014.01.31 12:23:52 -06'00'

Craig A. Anderson
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CAA/ajb
Enclosure
Cc: Service List (w/enclosure)

STATE OF MICHIGAN
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 ILLINOIS)
) ss
COUNTY OF COOK)

Craig Anderson, first being duly sworn, deposes and says that he is employed at AT&T Michigan, and that on the 31st day of January 2014, he caused copies of **AT&T Michigan's Reply to Staff's Answer to Complainants' Motion for Clarification, or in the Alternative, Petition for Rehearing** to be served via U.S. Mail and/or electronic mail upon the parties listed on the attached service list.

Craig A. Anderson

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Craig A. Anderson

Subscribed and sworn to before me this
31st day of January 2014

Trina J. Sarlo

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Trina J. Sarlo
Notary Public, State of Illinois
My Commission Expires: December 1, 2014

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STATE OF MICHIGAN
MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of	)	
MICHIGAN PAY TELEPHONE ASSOCIATION	)	Case No. U-11756
et al., against AMERITECH MICHIGAN and GTE	)	(After Remand)
NORTH INCORPORATED	)	

AT&T MICHIGAN'S REPLY TO STAFF'S ANSWER TO COMPLAINANTS' MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE, PETITION FOR REHEARING

Michigan Bell Telephone Company ("AT&T Michigan") hereby submits its Reply to Staff's Answer ("Answer") to the Complainants' Motion for Clarification, or in the Alternative, Petition for Rehearing of the Commission's December 2013 order in this case.

Staff concedes that "the Commission may not order relief to non-parties absent statutory authority." Answer at 2. Staff contends, however, that § 601(c) of the Michigan Telecommunications Act ("MTA"), MCL 484.2601(c), authorizes the Commission to award refunds to independent payphone providers ("IPPs") that are not parties to the case. Answer at 2-3. Staff is incorrect. Section 601(c) does not grant any such authority, as the Commission and Court of Appeals have already recognized.

In its *2004 Refund Order*,[1] the Commission expressly relied on § 601 to order AT&T Michigan and Verizon to pay refunds to IPPs that were complainants in the case, but did not require refunds to any non-parties. *2004 Refund Order* at 26. When the MPTA sought rehearing on that issue, the Commission denied the request and explained that "[t]he only customers specifically at issue in this case are those 62 named member-complainants," and therefore only those complainants were entitled to refunds. *2005 Order Denying Rehearing* at 10.[2] When the

[1] Opinion and Order, Case No. U-11756 (After Remand) (Mar. 16, 2004) ("*2004 Refund Order*").

[2] Order Denying Rehearing, Case No. U-11756 (After Remand) (Feb. 10, 2005) ("*2005 Order Denying Rehearing*").

MPTA challenged that ruling on appeal, the Commission was even more adamant, explaining the law as follows:

> As this Court has held, there is no basis for a prevailing party in a case to obtain monetary relief for non-parties, unless statutory authorization for such recovery exists. [citing *Bolt v. City of Lansing*, 238 Mich App 37, 57-58; 604 NW2d 746 (1999)]. ***The Michigan Telecommunications Act does not authorize a prevailing party to obtain monetary relief for non-parties***. Consequently, the Commission correctly determined that ***the only parties entitled to refunds are those actually named as parties in the case***.

Brief of Appellee Michigan Public Service Commission, at 27, Docket No. 254980 (filed with Mich. Court of Appeals, Aug. 8, 2005) (emphasis added); *see also* MPSC Brief Opposing Applications for Leave to Appeal to Supreme Court, at 16-18 (filed with Mich. Supreme Court, Jan. 3, 2007) (same, also relying on "a long-established line of federal cases that address[ed] the power of administrative agencies" and found that they cannot award damages to non-parties).

The Commission's legal conclusion that the MTA "does not authorize" refunds to non-parties flatly refutes Staff's contrary reading of § Section 601(c). Moreover, the Court of Appeals affirmed the *2004 Refund Order* by holding that "absent statutory authority, the PSC *could not* grant monetary relief to non-parties."[3] *SBC Michigan v. Michigan Pub. Serv. Comm'n*, Docket No. 254980, slip op. at 9 (Mich. App., Sept. 28, 2006) ("*2006 Appeal Decision*") (emphasis added). Because the 2004 refund was expressly based on § 601 (*2004 Refund Order* at 26) and the Court of Appeals upheld the denial of refunds to non-parties, it necessarily found that § 601 did not permit such refunds. Thus, the Commission and Court of Appeals found that nothing in Michigan law gives the Commission authority to order refunds to non-parties. This is

[3] *See also Male v. Grand Rapids Educ. Ass'n*, 98 Mich App 742, 756 (1980) (no refund owed to members of union that had not opted into the class that brought the case); *Bolt v. City of Lansing (On Remand)*, 238 Mich App 37, 53-54 (2000) ("There is simply no provision in the constitution, the statutes, or the court rules that allows plaintiff to obtain monetary relief for persons not named as plaintiffs in this lawsuit"; "plaintiff's argument amounts to a request to dispense with all the applicable litigation rules that apply to all other litigants"; "we find no statutory or constitutional authorization for plaintiff to seek damages on behalf of nonpart[ies]").

both the law of the case[4] and the law of the state of Michigan,[5] and limits the refunds required by the December 2013 decision to actual parties only.[6]

January 31, 2014

Respectfully submitted,

AT&T MICHIGAN

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[4] *Grievance Administrator v. Lopatin*, 462 Mich 235, 260 (2000) ("an appellate court's determination of an issue in a case binds lower tribunals" in later proceedings); *Driver v. Hanley (After Remand)*, 226 Mich App 558, 565 (1997) ("[A] question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal of the same case."); *Michigan Elec. Coop. Ass'n v. Michigan Pub. Serv. Comm'n*, 2004 WL 1837822, at *2-*3 (Mich App 2004) (per curiam) (unpub.) (where Commission had rejected parties' arguments in a prior appeal of a Commission order, the law of the case doctrine "require[d]" that later proceedings "adhere to the holdings in that decision" and reach the same conclusion as to the legality of the Commission's action).

[5] Staff's reading of § 601(c) is baseless in any event. Section 601(c) authorizes refunds to ratepayers, but even if one assumed IPPs were ratepayers, nothing in § 601(c) authorizes refunds to ratepayers that are not parties to a case. Indeed, imposing such refunds would violate the Commission's longstanding recognition that an association like the MPTA has no standing of its own and cannot pursue a complaint in a representative capacity for non-parties. Brief of Appellee Michigan Public Service Commission, at 26-27, Docket No. 254980 (filed with Mich. Court of Appeals, Aug. 8, 2005); *2006 Appeal Decision* at 9. Moreover, even if Michigan law permitted refunds to non-parties (which it does not), nothing in Section 601 would make them mandatory and there would be good reason to deny them here. Any non-party IPPs have had 17 years to join this case as complainants, yet have knowingly chosen not do so. In addition, trying to compute and pay refunds to such long-silent, unidentified, probably defunct entities would be a logistical nightmare.

[6] AT&T Michigan also disagrees with Staff's position regarding interest on refunds, but has already addressed that issue in its response to the MPTA.