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February 7, 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 MPTA's Objections to Refund Report

Please call me with any questions concerning this filing.

Sincerely,

Craig A. Anderson

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Date: 2014.02.07 10:15:45 -06'00'

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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 7th day of February 2014, he caused copies of **AT&T Michigan's Reply to MPTA's Objections to Refund Report** 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
7th day of February 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
MPTA'S OBJECTIONS TO REFUND REPORT

Michigan Bell Telephone Company ("AT&T Michigan") hereby submits its Reply to the Complainants' Objections to Michigan Bell Telephone's Refund Report ("MPTA Obj."), submitted by the Michigan Pay Telephone Association ("MPTA") and its member-complainants. As discussed below, AT&T Michigan does not object to the Commission establishing a further process to determine the final refund amount, provided that the process is overseen by an Administrative Law Judge ("ALJ") rather than a hired mediator. AT&T Michigan does object to the MPTA's other attempts to improperly or unlawfully increase the refund amount or impose other obligations on AT&T Michigan.

A. Computation Issues

The MPTA purports to raise certain issues regarding AT&T Michigan's computation of refunds. AT&T Michigan agrees that the computation of refunds for a 17-year period, for which some relevant data either no longer exists or has not been provided by the Complainants, can be a complex process. Thus, while AT&T Michigan's Refund Report computed refunds using the best available data, AT&T Michigan would not object to the Commission establishing a process for AT&T Michigan and the Complainants and MPTA to arrive at agreed refund figures. AT&T Michigan does not agree with the MPTA's alternative computations set forth in the Objections.

Among other things, AT&T Michigan already pointed out the many flaws in the MPTA's computations in its Initial Brief in this second remand proceeding (AT&T Michigan July 26, 2013 Reply Br. at 42-50), and the MPTA's computations in the Objections to the Refund Report use a questionable proxy number for calls per month in the MPTA's regression analysis for 1997-2001.[1] Rather than attempt to debate such issues via paper pleadings, AT&T Michigan proposes that the Commission appoint an ALJ to oversee a process to arrive a final refund figures. AT&T Michigan opposes the MPTA's suggestion to employ a mediator rather than an ALJ. Mediators are expensive and lack authority to resolve specific disputes, should they arise. An ALJ should have the necessary expertise and experience to oversee the process without unnecessary expense for the parties.

Such a process should be limited to determining refund amounts and eligibility for refunds. In particular:

- For April 2001-September 2010, the MPTA agrees that AT&T Michigan's computations can be used, except to the extent any Complainant can prove that its number of phones or calls was different than what AT&T Michigan used. MPTA Obj. at 3. AT&T Michigan believes that its computations are reliable because they are based on actual records, but if a Complainant has different records AT&T Michigan is willing to review and respond to them.

- For April 15, 1997 through March 2001, it appears that no party has actual call records or bills. The MPTA proposes that refunds be based either on the regression analysis in the Objections to the Refund Report or on the estimates in the MPTA's June 21, 2013 Initial Brief in this remand. MPTA Obj. at 11. AT&T Michigan has not yet had an opportunity to respond to the new regression analysis, but would do so in any further process here.

[1] The MPTA based its calls-per-month figure on a period when the numbers of calls spiked, so a longer period (resulting in a lower calls-per-month figure) may well be more appropriate.

- Regarding eligibility for refunds, it is undisputed that some Complainants are no longer in business and have wound up their affairs such that there is no entity that could receive a refund. Any process regarding refunds would necessarily include a process to determine which Complainants can prove they still exist and are elegible to receive a refund.

- Regarding all these issues, it is important to bear in mind that the burden of proving a right to damages and the amount of damages (*i.e.*, refunds) is on the party seeking damages. The Commission recognized this from the start in this remand, stating in the April 16, 2013 Order Reopening Case Following Remand (at 4) that "it shall be the burden of the MPTA to demonstrate the amount of the refund obligation."

A few other computation and data issues require comment. First, the MPTA accuses AT&T Michigan of destroying evidence. That is patently false. As explained in the Refund Report, the ALJ concluded during hearings in 2004 that AT&T Michigan had no obligation to produce the kind of call and billing data the MPTA is referring to, and that the MPTA's members should have that data for themselves. AT&T Refund Report at 13, citing 15 Tr. 1687-88. Tellingly, the MPTA does not even mention this ruling or the discussion of it in the Refund Report, even though it defeats the MPTA's theory that AT&T Michigan is required to retain or produce call records for the MPTA's benefit. Indeed, while the MPTA quotes portions of the transcript from the first remand in this case to claim that AT&T Michigan should have produced billing records in 2003 that could be used to compute refunds today (MPTA Obj. at 9-10), it fails to mention that the ALJ found that entire line of questioning to be irrelevant, stating that "this was covered in my ruling on the [MPTA's] motion to compel that [AT&T Michigan] was not required to produce that information" because the MPTA's members already had it. 18 Tr. 2300.

The MPTA also contends that AT&T Michigan's refund numbers are "grossly inaccurate." MPTA Obj. at 6. Yet the MPTA gives just two examples, and the first of those involves a discrepancy of 1% (with a jump to 15% in one month). AT&T Michigan can review the one-month outlier, but this example hardly undermines the entire Refund Report. Similarly, the MPTA points to an alleged discrepancy in the number of messages shown on SGG/Saroki Group's bills and in the Refund Report. AT&T Michigan has not yet been able to determine the cause of this alleged discrepancy, but this is a subject that can be addressed in any further process under an ALJ.

B. Other Refund Issues

The MPTA's Response raises a handful of other issues regarding refunds. These can be resolved prior to any further process in this case, because all of the MPTA's proposals should be rejected.

1. Interest

The MPTA contends that the Commission should revise its decision to add interest to the refunds. This is the same argument raised in the MPTA's Petition for Rehearing, and AT&T Michigan already responded to the argument in its response to that Petition. AT&T Michigan repeats and incorporates that same response by reference here.

2. Refunds to Non-Parties

The MPTA contends that AT&T Michigan should be required to pay refunds to IPPs that are not parties to this case. This is the same argument raised in the MPTA's Petition for Rehearing, and AT&T Michigan responded to the argument in its response to that Petition. AT&T Michigan repeats and incorporates that same response by reference here.

Simply put, the MPTA's request is unlawful. Damages (or refunds) to non-parties could be allowed only if authorized by some statute. There is no statute authorizing the Commission to award refunds to non-parties. As the Commission told the Michigan Court of Appeals and Supreme Court when the MPTA raised the same issue in the first remand in this case, "[t]he Michigan Telecommunications Act *does not authorize a prevailing party to obtain monetary relief for non-parties*." 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 from *2006 Appeal Decision*, 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). Moreover, the Court of Appeals affirmed the *2004 Refund Order* by holding that there was no statutory authority for the Commission to award refunds to non-parties. *SBC Michigan v. Michigan Pub. Serv. Comm'n*, Docket No. 254980, slip op. at 9 (Mich. App., Sept. 28, 2006). Similarly, while the MPTA claims that not awarding refunds to non-parties would be discriminatory, the Commission and Court of Appeals have already rejected that argument. *Id*.; Feb. 10, 2005 Order Denying Rehearing, at 10.

3. Complainants That Are No Longer in Business

As AT&T Michigan explained in its Refund Report, several of the original 62 complainants in this case appear to have gone out of business at some point since the case began in 1997. AT&T Refund Report at 4-5. For such entities there is no company or person to which AT&T Michigan could reasonably pay a refund. *Id*. AT&T Michigan therefore stated that complainants that seek refunds should be required to present proof of their current existence, authority to provide payphone service, et cetera. *Id*. at 5-6. The Complainants apparently refuse

or are unable to provide such proof. Instead, the MPTA responds with technical arguments about how long a payphone provider has to retain a copy of its registration with the Commission and claims that some complainants are individuals rather than corporations. MPTA Obj. at 16-17. That argument is wrong on the law. The MPTA relies on Section 317 of the MTA, which does not even address payphone providers, and ignores Section 320 of the MTA, which expressly requires payphone providers to register with the Commission and renew that registration annually. More importantly, the MPTA misses the point. It is undisputed that many of the original complainants have gone out of business since 1997, or else have merged, changed names, or otherwise altered their business status. AT&T Michigan obviously does not have access to detailed information on the status of each of the 62 Complainants, and in many cases would have no idea who should receive a refund or whether any entity still exists that is eligible to receive a refund. For example, if a complainant provided payphone service without registering with the Commission under Section 320 of the MTA it was providing service unlawfully and would not be entitled to any refund.

This is why it is incumbent on the Complainants, as the parties seeking refunds and bearing the burden of proof on refunds, to provide the information necessary to demonstrate their current existence and eligibility for refunds. *See* Order Reopening Case Following Remand, at 4. So far they have failed to provide that information. AT&T Michigan should not be required to provide refunds to entities that cannot even prove they currently exist and have provided service lawfully.[2]

4. Costs of Computing Refunds

[2] The MPTA's reference to corporations "reinstating" their corporate existence under MCL 450.1925 (MPTA Obj. at 17) is speculative and therefore meaningless. The MPTA does not allege, much less prove, that any of the defunct member-complainants have reinstated their corporate existence. Moreover, reinstatement of corporate status under MCL 450.1925 has many prerequisites, such as paying back fees and penalties. It is not as simple as submitting a form.

The MPTA asserts in passing that AT&T Michigan should pay the MPTA's costs of computing refunds. MPTA Obj. at 7, 15, 19. But the MPTA offers no argument in support of that request, because the request is baseless. It is AT&T Michigan that took the laboring oar in computing refunds, using the best data available to it; the MPTA, which has the burden of proof on refunds, simply filed objections and proposed corrections. Any costs the MPTA incurred are no different from the costs any litigant incurs in making its case and responding to other parties, and such litigants must bear their own costs. Moreover, the MPTA tried to make AT&T Michigan pay the MPTA's attorneys' fees in this case (MPTA June 24, 2013 Br. at 56), but the Commission did not award any fees, just as it denied the same request in 2004 (*2004 Refund Order* at 26-27). The MPTA's cost-shifting request should be rejected as well.

February 7, 2014

Respectfully submitted,

AT&T MICHIGAN

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