STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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The Michigan Pay Telephone Association, et al., Complainants, v. Michigan Bell Telephone Company, and Verizon 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 (Second Remand)

JOINT PETITION FOR APPROVAL
OF MEDIATION RESOLUTION AND REFUND DISTRIBUTION

As provided in Section 78 of the Administrative Procedures Act of 1969 ("APA"), as amended, MCL 24.278, and the Commission's Rules of Practice and Procedure, Rule 333, 1999 AC, R 460.17333, and encouraged by the Commission policy towards resolving contested issues, the Michigan Pay Telephone Association ("MPTA"), the MPTA member Complainants (except for the "Six parties" named in para. 19, *infra*), Michigan Bell Telephone Company d/b/a AT&T Michigan ("AT&T" or "AT&T Michigan") and Michigan Public Service Commission Staff("Staff") (collectively, "Parties") have resolved through mediation the remaining contested issues regarding this proceeding and hereby agree as follows:

1. The instant docket is the product of several years of litigation at the Commission, the Federal Communications Commission, and in the Courts. After several discussions and with

the assistance of a mediator, the MPTA, the Complainants, AT&T, and Staff have come to a joint resolution as set forth below. Before the details of the resolution are reviewed, the Parties provide a brief history of the proceedings.

2. On August 10, 1998, the MPTA and 62 Independent Payphone Providers ("IPP") filed a complaint against Ameritech Michigan[1] and Verizon alleging that the prices for services provided by Ameritech Michigan[2] and Verizon violated the requirements of Section 276, the FCC *Payphone Orders*, and the Michigan Telecommunications Act.

3. In its initial Opinion and Order entered in this proceeding on March 8, 1999 ("1999 Order"), the Commission held that the rates for network services to payphone providers had been set historically at the same rates charged to business customers, and that the Complainants had failed to show that the rates charged failed the New Services Test. 1999 Order, p. 8.

4. The Complainants petitioned the Commission for rehearing of its conclusions with respect to the New Services Test methodologies as adopted in the 1999 Order. The Commission denied the Complainants' motion for rehearing on May 11, 1999. The Complainants subsequently filed an appeal of the 1999 Order (and order denying rehearing) with the Michigan Court of Appeals, docket number 219950. On October 23, 2001, the Court of Appeals entered an order affirming the Commission's orders,[3] and the Complainants subsequently filed a timely Application for leave to Appeal with the Michigan Supreme Court, docket number 120386.

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[1] Now known as AT&T Michigan.

[2] At that time known as SBC.

[3] *Michigan Pay Telephone Ass'n v. Michigan Public Service Commission*, unpublished opinion per curium of the Court of Appeals, decided October 23, 2001 (Docket No. 219950).

5. In addition to appealing to the Michigan Court of Appeals, the Complainants filed a Petition for Declaratory Ruling with the FCC in FCC Docket No. 96-128 (the *Payphone Orders* proceeding).

6. In light of the intervening decisions by the FCC, on June 24, 2003, the Michigan Supreme Court vacated the Court of Appeals decision in No. 219950, and remanded the issue back to the Commission for reconsideration.[4]

7. On March 16, 2004, the Commission issued an Opinion and Order (the "March 2004 Order") reaching conclusions regarding certain aspects of the IPP rates assessed by AT&T. The March 2004 Order also required certain refunds from AT&T to Complainants (the "EUCL Refund").

8. On April 15, 2004, AT&T Michigan submitted a EUCL Refund Report pursuant to the March 2004 Order. On that same day, AT&T Michigan filed a Claim of Appeal with the Court of Appeals from the March 2004 Order, docket number 254980, and the Complainants filed a Petition for Rehearing and Reconsideration of the March 2004 Order with the Commission. The MPTA also filed a Claim of Cross Appeal on May 7, 2004.

9. On February 10, 2005, the Commission issued an Opinion and Order (the "February 2005 Order") (1) denying the Complainants' application for rehearing; (2) requiring the filing of revised tariffs; and (3) ordering that the Parties commence mediation proceedings to resolve any remaining disagreements regarding the EUCL Refund. (February 2005 Order p. 10.) On March 11, 2005, the MPTA filed a Claim of Appeal with the Court of Appeals from the February 2005 Order, docket number 261341, which was later consolidated with docket number 254980.

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[4] *Michigan Pay Telephone Ass'n v. Michigan Public Service Commission*, 466 Mich 883; 646 NW2d 471 (2002)(Docket No. 120386).

10. On May 26, 2006, during the pendency of the appeals, the MPTA filed a petition with the FCC, CC Docket No. 96-128, challenging the March 2004 Order regarding AT&T's overhead loading factor on local usage rates.

11. In an unpublished decision on September 28, 2006, the Michigan Court of Appeals upheld the March 2004 Order and February 2005 Order.[5] Petitioners and Respondents both sought leave to appeal to the Michigan Supreme Court, docket numbers 132432 and 132437. The Michigan Supreme Court denied leave to appeal.[6] The parties resolved all remaining EUCL Refund issues and the Commission entered an order approving the EUCL Refund and closing the case on December 18, 2007.

12. In a decision released on February 27, 2013 in CC Docket No. 96-128 the FCC remanded the New Service Test issue to the Commission for reconsideration.

13. On April 16, 2013, the Commission issued an Order Reopening Case Following Remand. AT&T, the MPTA (on behalf of the Complainants), and Staff all filed initial and reply briefs addressing the issues raised by the FCC's remand.

14. On December 6, 2013, the Commission issued an Order ("2013 Order") finding that AT&T's overhead loading on usage did not comply with the New Services Test and that the proper usage rate should have been $0.0190176 per minute of use as of April 15, 1997. The 2013 Order also required AT&T to provide refunds, based on that lower rate, for the period from April 15, 1997 to September 2010. 2013 Order, pp. 12-13, 16-17. The 2013 Order required AT&T to file a refund report within 30 days.

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[5] *SBC Michigan v Michigan Public Service Commission*, unpublished opinion per curiam of the Michigan Court of Appeals issued September 28, 2006 (Docket Nos. 254980, 261341).

[6] *Michigan Pay Telephone Association v Michigan Public Service Commission*, 477 Mich 1032; 727 NW2d 585 (2007).

15. AT&T filed a Refund Report as well as a Claim of Appeal to the Michigan Court of Appeals of the 2013 Order, docket number 319831, and the MPTA filed a petition for rehearing. The MPTA and Staff also filed objections to the Refund Report and AT&T filed a reply in support of the Refund Report.

16. On March 6, 2014, the Commission issued two separate orders: (1) Order on Petition for Rehearing, and (2) Order Appointing Mediator. In its rehearing order, the Commission granted the MPTA's petition for rehearing "to clarify the Commission's December 6, 2013 order . . . ." In its Order Appointing Mediator, the Commission directed the appointment of "an administrative law judge to mediate all disputed issues related to AT&T Michigan's 2014 Refund Report." The Mediator's report was originally due on or before June 6, 2014, but was extended by the Commission to August 1, 2014. (April 15, 2014 Order and June 19, 2014 Order.)

17. On April 1, 2014, the MPTA filed a Claim of Appeal from the 2013 Order and the March 6, 2014 orders, which was assigned Docket No. 321140. AT&T filed separate claims of appeal from each of the March 6, 2014 orders on April 4, 2014, which were assigned docket numbers 321192 (rehearing) and 321194 (appointment of mediator). The Court of Appeals granted a motion to consolidate the four appeals and hold all appeals in abeyance until the outcome of the rehearing process.

18. Following the March 6, 2014 Order Appointing Mediator, the Parties engaged in mediation as required by that order. As part of the mediation, the Parties engaged in discussions concerning a variety of issues regarding refunds, including the proper computation of any refund and what entities would be eligible to receive a refund, as ordered by the Commission.

19. After numerous lengthy meetings and discussions, the Parties have agreed on the refund amount with interest, which is specified in the attached Confidential Exhibit A, and which is to be paid by AT&T Michigan to the MPTA for the benefit of Complainants as specified therein, with the exception of the following (hereinafter, the "Six Parties"):

American Paytel Corporation

Davel Communications Group

Peoples Telephone Company, Inc.

PhoneTel Technologies, Inc.

Sheffield Systems, Inc.

Teleleasing Enterprises, Inc.

Counsel for the MPTA and Complainants filed a motion with this Commission seeking approval to withdraw from representation of the Six Parties in this proceeding. AT&T and Staff had no objection to the motion to withdraw from representation of the Six Parties. The Commission granted the motion on July 22, 2014. As stated in Counsel for MPTA's Motion to Withdraw, Counsel is no longer in contact with the Six Parties and is thus unable to speak to their interests. The MPTA takes no position regarding resolution of the claims of the Six Parties.

20. AT&T and Staff agree that in a mediated result, the maximum potential refund, including interest, for the Six Parties is $500,000. Counsel for MPTA shall provide to counsel for AT&T Michigan the last known address for each of the Six Parties within seven (7) days from the date of the Commission's Order granting this Joint Petition. AT&T Michigan shall give notice via mail to each of the Six Parties in the form set out in Exhibit B (Notice), and shall file a proof of such service with the Commission within thirty (30) days from the date of the Commission's Order granting this Joint Petition.

21. The Six Parties, or their verifiable successors in interest, shall have a period of thirty (30) days from the date of the service of the Notice to assert a claim for refund against this maximum aggregate amount of $500,000 by filing a notice with the Commission.

22. If any such claims are made by the Six Parties, the Commission shall conduct a contested case proceeding to determine the merits and amount of such claims, up to the maximum aggregate amount of $500,000 for the Six Parties. Upon such determination by the Commission, AT&T Michigan shall pay such claims as are approved by the Commission up to the maximum aggregate amount for the Six Parties of $500,000.

23. In the event no such claims by the Six Parties are made within thirty (30) days from the date of the service of the Notice, or in the event that there is any remaining balance of the $500,000 after payment of any claims by the Six Parties as determined by the Commission, the amount of $500,000, or the remaining balance thereof, shall be paid by AT&T Michigan within sixty (60) days thereafter as follows:

(1) The remaining balance up to $250,000.00 to be paid by AT&T Michigan as directed by Staff to Connect Michigan, a non-profit entity, to fund broadband adoption efforts in the State of Michigan, and

(2) Any remaining balance after the conditions in (1) are met to be retained by AT&T Michigan, free and clear of all claims.

24. In the Commission's March 6, 2014 Order on Petition for Rehearing, the Commission ordered that the issue of whether refunds should be limited to named complainants should be addressed during the mediation process. The Parties agree as part of the resolution of contested issues that refunds in this proceeding should be limited to named complainants, and further have agreed, in the interest of reaching a final resolution of the long-outstanding issues in

this case, that this resolution is expressly contingent on the Commission issuing an order granting this Joint Petition and affirmatively stating that refunds in this proceeding are limited to named complainants. Accordingly, the parties request that the Commission order granting this Joint Petition expressly state, consistent with the Commission's prior ruling in the earlier phase of this case involving refunds in the February 10, 2005 Order Denying Rehearing, that only complainants are entitled to the refunds at issue in this proceeding. If the Commission does not approve this limitation, then the Joint Petition shall not have effect and shall be considered withdrawn.

25. Within thirty (30) days of final payment of refunds to the Complainants and the Six Parties (if any such claims are made and approved), and the payment to Connect Michigan if applicable, pursuant to the terms described above, AT&T and the MPTA will move to withdraw all of their appeals regarding this docket that are pending in the Michigan Court of Appeals, specifically docket numbers 319831, 321140, 321192, and 321194, and thereafter will request that this Commission enter a final order closing this docket.

26. The Parties are in agreement that it is in everyone's best interest for AT&T Michigan to forward one check made payable to the MPTA, with the funds to be held in trust for the benefit of the Complainants (with the exception of the Six Parties) and counsel, and the MPTA will be responsible for distribution to the named Complainants and the attorneys, as was the case with the EUCL Refunds previously approved by the Commission.

27. The MPTA has agreed to defend, indemnify and hold AT&T Michigan harmless for all amounts that are due and owing to the Complainants under the Commission's Order. The MPTA will make appropriate disbursements to the Complainants and counsel. The Complainants (less the Six Parties) have given their consent for the payment to be made to

MPTA as evidenced by agreements among the MPTA, the Complainants (less the Six Parties), and its counsel.

28. Payment of a single refund check to the MPTA makes sense for a number of reasons. First, as noted in the Commission's February 2005 Order, Complainants' counsel has asserted an attorney lien against the refund amount, and the MPTA has amounts owed to it by some Complainants. Permitting payment of a single check to the MPTA would facilitate satisfaction of the lien.[7] Second, payment of a single refund check works to the convenience of all of the parties. This case is not ordinary, in the sense that there are numerous complainants amongst which the ultimate refund amount must be divided. Allowing payment of the agreed-upon refund amount to be paid to the Complainants (except for the Six Parties) through a single "administrator" (the MPTA) would promote administrative efficiency and minimize or eliminate disputes with AT&T Michigan regarding the amounts paid to the various named entities in this matter.

29. The Parties agree that payment will be made to the MPTA within thirty five (35) days following the Commission's Order granting this Joint Petition.

30. Accordingly, the MPTA, the Complainants, AT&T Michigan, and Staff collectively request that the Commission approve the disbursement of funds pursuant to the attached confidential Exhibit A and the process described herein regarding the Six Parties.

31. Should the Commission deny this Joint Petition, the Parties request in the alternative that the Commission extend the date for the Mediator's Report to October 1, 2014, to account for the change in circumstances.

[7] The Parties also agree that any fees owed pursuant to the attorney lien are accounted for in this payment from AT&T to MPTA, with the funds to be held in trust for the benefit of the Complainants, and that this payment is in full satisfaction of the attorney lien in this matter.

WHEREFORE, for each of the foregoing reasons, the Michigan Pay Telephone Association, the Complainants, AT&T Michigan, and Staff respectfully request that the Commission enter an order finding that the amounts reflected on the confidential Exhibit A shall be paid to the Michigan Pay Telephone Association for the benefit of the members of the MPTA, in full satisfaction of AT&T Michigan's obligations to the Complainants (except the Six Parties) under the Commission's orders in this proceeding, stating that the process set forth above for addressing potential refunds to the Six Parties is approved, stating that the liability for refunds in this case is limited to named Complainants, and stating that the resolution described in this Joint Petition is approved.

Respectfully submitted,

Michigan Pay Telephone Association and the Complainants

hkelly@kelleydrye.com

Digitally signed by: hkelly@kelleydrye.com
DN: CN = hkelly@kelleydrye.com
Date: 2014.07.23 09:54:42 -05'00'

Henry T. Kelly

Dated: July 23, 2014

Leland R. Rosier
CLARK HILL PLC
212 East Grand River Avenue
Lansing, MI 48906

Henry T. Kelly
KELLEY DRYE & WARREN LLP
333 W. Wacker Drive, Suite 2600
Chicago, IL 60606

Counsel for the Complainants

Michigan Bell Telephone Company d/b/a AT&T Michigan

Craig A. Anderson

Digitally signed by Craig A. Anderson
DN: cn=Craig A. Anderson, o=ATT Michigan, ou, email=ca9361@att.com, c=US
Date: 2014.07.23 11:16:57 -04'00'

Craig A. Anderson

Dated: July 23, 2014

Craig A. Anderson
AT&T Michigan
221 N. Washington Sq.
Lansing, MI 48933
517-334-3425

J. Tyson Covey
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
312-701-8600

Counsel for AT&T Michigan

Michigan Public Service Commission Staff

Lauren D. Donofrio

Digitally signed by Lauren D. Donofrio
DN: cn=Lauren D. Donofrio, o=Public Service, ou=Attorney General, email=donofriod@michigan.gov, c=US
Date: 2014.07.23 11:37:11 -04'00'

Lauren D. Donofrio

Dated: July 23, 2014

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

Counsel for Staff of the
Michigan Public Service Commission

Exhibit A

Public Version

Confidential Exhibit A will be filed separately.

PUBLIC ATTACHMENT A TO THE JOINT PETITION FOR APPROVAL OF MEDIATION RESOLUTION AND REFUND DISTRIBUTION

[redacted]

4M COMMUNICATIONS
A&L COMMUNICATIONS, INC.
A&R COMMUNICATIONS, INC.
A&S COMMUNICATIONS, INC.
BC STERLING COMMUNICATION, INC. D/B/A STERLING COMMUNICATIONS
BELL COIN SYSTEMS, INC FORMERLY D/B/A BELLCOIN SYSTEMS
CALVIN T. AND ISOBEL J. MAGILL D/B/A P&M PAY PHONE SERVICE
CASUAL COMMUNICATIONS CORP.
D&L COMMUNICATIONS
DAVID STROBBE D/B/A X-CHANGE COMMUNICATION
DAVREN INDUSTRIES
DOC COMMUNICATIONS
DONALD A. SILSETH D/B/A DONTEL COMMUNICATIONS
DONALD M. LICHON D/B/A TRI-COUNTY IPT
ETM COMMUNICATION, INC.
FIRST MICHIGAN TELECOMMUNICATIONS
FOUR C'S COMMUNICATIONS
GERLACH ENTERPRISES, INC. D/B/A GCI
GREAT LAKES TELECOMMUNICATIONS CORPORATION (pre & post NCI merger)
THE HAVERHILL CO.
INDEPENDENT TELECOMMUNICATIONS COMPANY
J&M SPECIALTIES
JOEL D. EPSTEIN D/B/A WEST MICHIGAN PAY PHONES
LAUREN COMMUNICATIONS
LEADER IN NEW COMMUNICATION, INC.
LEONARD BERTYN
MARTIN AND BETH GAYNOR D/B/A MG COMMUNICATION
MICHIGAN PAYTEL, INC.
MICHIGAN PUBLIC TELEPHONE COMPANY
MIDWEST TELECOMMUNICATIONS
MIDWEST TELEVISION COMMUNICATIONS, INC. D/B/A MIDWEST AUTOTEL SERVICES, INC.
NORTH AMERICAN INTERSTATE, INC.
NORTH AMERICAN PUBLIC COMMUNICATIONS
NORTH AMERICAN TELEPHONE CO. (NATCOM)
OAKLAND PAY PHONES, INC.
PDCOM, INC.
PHOTO QUICK, INC. D/B/A PQI COMMUNICATIONS
PUBLIC PAY-TEL
PREMIERE ENTERPRISE CORP.
RAINBOW COMMUNICATIONS, INC.
REPUBLIC TELEPHONE, INC.
RESOURCE PAYPHONE, INC.
RJ&E ENTERPRISES, INC.
RUSSELL D. NIEMI D/B/A LAKES PUBLIC TELEPHONE
SADOWSKI CONTRACTING, INC.
SGG, INCORPORATED D/B/A SAROKI GROUP
SMI COMMUNICATIONS, INC.
STEVEN C. HIDDID D/B/A KSM COMMUNICATIONS
SUBURBAN PAYPHONES
T&B PAYPHONES MANAGEMENT, INC.
TAK CONSULTANTS, INC. D/B/A NETWORK PAYPHONE SERVICES D/B/A TELECOM VENDOR SERVICE
TELECOM CONCEPTS
TELE-SERV, INC.
THOMAS J. KRUEGER D/B/A CHRISTIAN BROTHERS PAYPHONES
THOMAS MURPHY SALES
UNITED PAYPHONES, INC.
VISIONCOMM, INC.
WEST MICHIGAN PAY-TEL, INC.

Exhibit B

Re: Notice of Potential Refund in MPSC Case No. U-11756

To whom it may concern:

[Company name] is or was a party to Michigan Public Service Commission Case No. U-11756. The Commission has recently issued an order in that case approving refunds to be paid by AT&T Michigan for the period from April 15, 1997 through September, 2010, which may include potential refunds to [company name] regarding payphone local usage rates. A copy of the Order is attached hereto. The process for a claim to refund is as follows: A claim to a refund should be submitted in this docket (U-11756) and electronically submitted to the Commission within **thirty (30) days** from the date of service of this notice. The claim filed with the Commission shall contain the name of the company or individual making the claim and their relationship to [Company name], along with a statement that a refund claim is being made and current contact information. The claim shall be filed pursuant to the Commission's procedures. Documents can be submitted electronically through the Commission's E-dockets Website at: Michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an e-mail sent to mpscedockets@michigan.gov. Anyone requiring assistance prior to e-filing may contact the Commission staff at (517) 241-6180 or by e-mail at mpscedockets@michigan.gov.

Very truly yours,

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 **July 23, 2014**, she served a true copy of the **Joint Petition for Approval of Mediation Resolution and Refund Distribution with Exhibits**, via e-mail only as indicated on the attached Service List.

Corinna C. Swafford

Subscribed and sworn to before me
this **23rd** day of **July, 2014**.

Pamela A. Pung

Pamela A. Pung, Notary Public
State of Michigan, County of Clinton
Acting in County of Ingham
My Commission Expires: 05/07/2018

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