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STATE OF MICHIGAN
IN THE SUPREME COURT

AT&T COMMUNICATIONS OF
MICHIGAN, INC. and TCG DETROIT,

Appellees,

v

Supreme Court Docket No. _____

MICHIGAN PUBLIC SERVICE
COMMISSION, COVENANT HOUSE
MICHIGAN and GREAT LAKES
TELECOM, INC.,

Court of Appeals Docket No. 235935

MPSC Case No. U-12759

Appellants.

NOTICE OF FILING

TO: Sandra Schultz Mengel, Chief Clerk
Michigan Court of Appeals
925 W. Ottawa Street
Michigan Hall of Justice – 2nd Floor
P.O. Box 30022
Lansing, MI 48909-7522

Ms. Dorothy A. Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, Suite 7
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Lansing, MI 48909

Pursuant to MCR 7.302(A)(3) as amended, please take notice that the Appellant
Michigan Public Service Commission in the above-captioned case has filed an Application for

leave to Appeal in the Michigan Supreme Court.

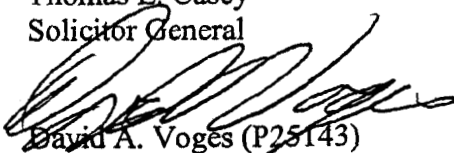
Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

By its counsel:

Michael A. Cox
Attorney General

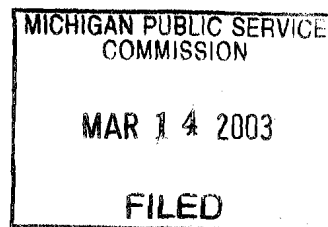
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Dated: March 13, 2003

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IN THE SUPREME COURT



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Appellants.

**MICHIGAN PUBLIC SERVICE COMMISSION'S
APPLICATION FOR LEAVE TO APPEAL**

MICHIGAN PUBLIC SERVICE COMMISSION

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Dated: March 13, 2003

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**STATEMENT IDENTIFYING THE JUDGMENTS OR ORDERS APPEALED
FROM, GROUNDS, AND RELIEF SOUGHT**

Appellant Michigan Public Service Commission (MPSC or Commission) seeks leave to appeal the March 6, 2003 Order of the Michigan Court of Appeals in *AT&T Communications v MPSC*, Docket No. 235935, transferring this appeal to the Ingham Circuit Court and respectfully requests this Honorable Court to grant the instant application or, in the alternative, to enter, pursuant to MCR 7.302(F)(1), a peremptory order reversing the Court of Appeals.

This application should be granted because it satisfies MCR 7.302(B)(2) and (3) in that it concerns issues of significant public interest, and of major significance to the jurisprudence of the state, involving the enforcement of the Michigan Telecommunications Act, MCL 484.2101, *et seq*, and MPSC orders that are intended to protect Michigan telecommunications consumers from the unauthorized switching of their toll telephone service.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

A. Proceedings

On December 14, 2000, two complaints were filed with the Commission alleging violations by AT&T and TCG Detroit (collectively AT&T) of the Michigan Telecommunications Act, MCL 484.2101 *et seq* (the MTA).¹ The first complaint, in Case No. U-12759, involved claims by Covenant House Michigan (Covenant House) and Great Lakes Telecom, Inc. (Great Lakes), (collectively, CH&GL) that certain actions by AT&T in its provision of local service and its handling of billing disputes constituted violations of the MTA. The second complaint, in Case No. U-12764, concerned similar claims brought by Molly-Maid and Great Lakes (collectively, MM&GL). AT&T filed answers to these complaints on February 1, 2001.

On May 24, 2001, the Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in each of these two cases. On July 11, 2001, the MPSC issued its Opinion and Order in Case No. U-12759 (Attachment 1) finding that AT&T had violated Sections 502(1)(c) and 507(1) of the MTA in its provision of, and billing for, unauthorized remote call forwarding services to Covenant House. The Commission ordered AT&T to pay a fine of \$30,000 for its violations of the MTA, \$15,000 of which were to be paid directly to Covenant House. AT&T was also ordered to reimburse Covenant House and Great Lakes Telecom, Inc. for all reasonable attorney fees and costs incurred in litigating MPSC Case No. U-12579; to issue all bill credits necessary to remove from Covenant House's current outstanding balance all unauthorized

¹ Although both of the complaints listed "American Telephone and Telegraph Company (a/k/a AT&T Corp., AT&T Inc.), Teleport Communications Group, Inc. (a/k/a Teleport Communications, TCG Detroit, and TCG Detroit Holdings I, Inc.)" as the respondents, the actual parties in interest—which have registered agents in Michigan—are AT&T Communications of Michigan, Inc., and TCG Detroit. Moreover, it should be noted that both of these companies are subsidiaries of AT&T Corp.

remote call forwarding charges since June, 2000; and to cease and desist from (1) issuing bills for amounts in excess of those that Covenant House had contracted to pay, (2) from threatening to terminate service to Covenant House for non-payment of disputed charges, and (3) from committing further violations of the MTA.

AT&T filed a claim of appeals with the Michigan Court of Appeals on August 8, 2001 in Court of Appeals Docket No. 235935. AT&T filed its brief on appeal on October 30, 2001. Appellee Michigan Public Service Commission filed its brief on appeal on December 4, 2001.

By order issued March 6, 2003 (Attachment 2), Judge E. Thomas Fitzgerald acting under MCR 7.203(F)(1) and 7.216(A)(10) transferred this appeal to the Ingham Circuit Court. That order provided:

This matter is TRANSFERRED to the Ingham Circuit Court for consideration of the merits of this case. See MCL 462.26(3). Jurisdiction lies with the Ingham Circuit Court. See MCL 462.26(7) and *LOTEL Inc v MPSC*, -- Mich App --; -- NW2d -- (2003)(decided February 21, 2003, docket number 230755). The appellants shall contact the Ingham Circuit Court to determine whatever paperwork and fees are necessary to effectuate the transfer. This Court does not retain jurisdiction.

B. Facts

Pursuant to notice, a joint prehearing conference was held in these cases on February 5, 2001 before Administrative Law Judge James N. Rigas. CH&GL, MM&GL, AT&T, and the Commission Staff (Staff) participated in the proceedings. Joint evidentiary hearings were conducted on March 29 and 30, 2001, and a single transcript, consisting of 539 pages, was created for use in both cases. The parties offered a total of 61 exhibits, 57 of which were received into evidence.

The record established at this hearing reflects that, beginning in 1997, Covenant House became an AT&T customer, handling its own local and long distance telecommunications

service needs by dealing directly with AT&T. According to its Director of Finance, Gregory Sevelis, Covenant House has been consistently and persistently overbilled by AT&T. According to testimony provided by Gregory Sevelis, some of the disputed billings relate to lines that should have been disconnected and features that either were never ordered or, if ordered, were found to be unnecessary and requested to be discontinued (see, T, Vol 4, pp 114-17). At one point, these old billing disputes involved tens of thousands of dollars. However, a great majority of those disputes have been resolved and, due to numerous credits issued by AT&T, the amount at issue totals only \$2,406.65 (Exhibit C-1, p 8).

In 1999, Covenant House sought alternative telecommunications service proposals in connection with its decision to relocate its headquarters. The testimony of Gregory Sevelis (T, Vol 4, pp 113-114) and Ted Apostoleris (T, Vol 4, pp 192-193) describe in detail the relationship between Covenant House and Great Lakes. On June 7, 1999, Great Lakes made an initial proposal to Covenant House that involved abandoning the Centrex system then in use and replacing it with a private branch exchange (PBX) system designed, installed, and maintained by Great Lakes, (Exhibits R-8 and R-9). It was contemplated that, in addition to providing the hardware needed for Covenant House's PBX system, Great Lakes would be in charge of procuring (from other service providers like AT&T) all telecommunications services needed to operate the system (T, Vol 4, pp 112-13). Great Lakes' owner, Ted Apostoleris, contacted AT&T account executive Daryl Peguese in September 1999 to obtain pricing information, including prices for T-1 trunks and direct inward dialing (DID) telephone numbers, necessary to prepare a formal bid for Covenant House's potential PBX system (T, Vol 4, pp 218-19).

During the pendency of a dispute over DID number block charges, another bill-related problem arose between AT&T and Covenant House. During the relocation of its headquarters in early to mid-2000, Mr. Apostoleris noted, Covenant House asked to have remote call forwarding

initiated (at a monthly charge of \$14.75 per line) for nine of its numbers. Bills subsequently received by this customer, however, indicated that AT&T had placed this advanced service on approximately 85 of Covenant House's lines, rather than just the 9 for which the service had actually been requested (see, Exhibit C-48). By September 2000, Covenant House convinced AT&T to discontinue the charges (T, Vol 5, pp 383-385). Covenant House therefore received both a bill credit covering the July through September 2000 portion of that non-requested service and a pledge by AT&T to immediately cancel remote call forwarding for the other 75 or 76 lines (*Id.*; T, Vol 5, pp 384-87). However, AT&T ignored its own service change order and, instead, continued billing Covenant House (through March 2001) for remote call forwarding on all of those numbers. AT&T was only able to characterize this continued billing as a "system switch" (T, Vol 5, p 378).

ARGUMENT

I. Jurisdiction of this appeal lies exclusively in the Michigan Court of Appeals, and the Court of Appeals erred in transferring this case to the Ingham Circuit Court.

In its March 6, 2003 order transferring this appeal to the Ingham Circuit Court, the Court of Appeals cited to MCL 462.26(7) and its recent decision in *Lotel, Inc v MPSC*, __Mich App__; __NW2d__; 2003 Mich App LEXIS 421 (2003) (Docket No. 230755, decided February 21, 2003) as authority for its holding in that order that jurisdiction over this appeal lies with the Ingham Circuit Court. For the reasons set forth below, the Court of Appeals has misinterpreted MCL 462.26, and has erred in its holding in *Lotel*.

In its February 21, 2003 Opinion in *Lotel*, the Court of Appeals held that the appeal in that case did not fall within the provisions of MCL 462.26(1) and that the Court of Appeals thus did not have jurisdiction over that appeal. To reach this conclusion, the Court of Appeals held that the Commission's April 24, 2000 opinion and order in that case "neither considered nor

resulted in the 'fixing' of any practice or service of Lotel," and that the "Commission did not conclude that Lotel had improper services or practices" (Opinion, p 6). The Court of Appeals found that the appeal in *Lotel* involved the application of a Commission rule to an individual customer within the meaning of MCL 462.26(7) and thus transferred that appeal to the Ingham Circuit Court pursuant to MCL 462.26(3). The Court of Appeals February 21, 2003 opinion in *Lotel* misinterpreted the plain statutory language of MCL 462.26 which governs the jurisdiction over appeals of Commission orders, misapplied existing Court of Appeals precedent interpreting that jurisdictional statute, and misconstrued the nature of the Commission order from which that appeal arose. Moreover, the Court of Appeals has prematurely and improvidently invoked the holding of its February 21, 2003 opinion in *Lotel* as a basis for transferring this and two other appeals of Commission orders pending in the Court of Appeals to the Ingham Circuit Court.²

A. The Court of Appeals in *Lotel* misinterpreted the plain statutory language of MCL 462.26 and erroneously concluded that jurisdiction over the instant appeal rests with the Ingham Circuit Court.

The provisions of the Michigan Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, are generally applicable to appeals from decisions of administrative agencies unless "an applicable special statutory review proceeding" exists. MCL 24.302. A special statutory review proceeding has been provided for appeals of final orders of the Michigan Public Service Commission. See *Sullivan v PSC*, 93 Mich App 391; 287 NW2d 188 (1979).

² By orders entered March 6, 2003, Judge F. Thomas Fitzgerald, acting under MCR 7.203(F)(1) and 7.216(A)(10) transferred this appeal and two other appeals to the Ingham Circuit Court, citing MCL 462.26(7) and *Lotel, Inc. v MPSC*, ___ Mich App ___, ___ NW2d ___, 2003 Mich App LEXIS 421 (2003), decided February 21, 2003 as authority for the transfer orders: *Ameritech Michigan v MPSC*, Court of Appeals Docket No. 244742; and *America's Digital Satellite Telephone Inc v MPSC*, Court of Appeals Docket No. 245306. The orders are attached as Attachments 3 and 4, respectively.

Section 4 of the Public Service Commission Act, MCL 460.4, provides in pertinent part:

Any order or decree of the public service commission shall be subject to review in the manner now provided by law for reviewing orders and decrees of the Michigan railroad commission or the Michigan public utilities commission.

In addition, section 203(7) of the MTA, MCL 484.2203(7) provides:

An order of the commission shall be subject to review as provided by section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

MCL 462.26 provides, in pertinent part:

(1) Appeal of commission order; time limit; jurisdiction. Except as otherwise provided in section 7 of Act No. 299 of the Public Acts of 1972, being section 460.117 of the Michigan Compiled Laws, section 5 of Act No. 246 of the Public Acts of 1921, being section 460.205 of the Michigan Compiled Laws, section 12 of Act No. 165 of the Public Acts of 1969, being section 483.162 of the Michigan Compiled Laws, section 20 of Act No. 19 of the Public Acts of 1967, being section 486.570 of the Michigan Compiled Laws, and except as otherwise provided in this section, **any common carrier or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within 30 days from the issuance and notice of that order shall file an appeal as of right in the court of appeals.** The court of appeals shall not have jurisdiction over any appeal that is filed later than the 30-day appeal period provided for in this subsection.

* * *

(3) Incorrectly initiated appeals. An appeal from any commission order that is filed in a timely manner but is incorrectly filed in either the circuit court for the county of Ingham or the court of appeals shall be transferred by that court, on its own motion or on motion of a party, to the proper court and shall proceed as if timely filed in that court.

* * *

(7) Commission orders affecting individual customers. An appeal from a commission order pertaining to the application of existing commission rules, tariffs, or rate schedules to an individual customer in a contested case shall be filed in the circuit court for the county of Ingham within 30 days of the issuance and notice of an order. (emphasis added).

The Court of Appeals in *Lotel*, and in its March 6, 2003 order here, erred in concluding that MCL 462.26(1) did not provide that court with jurisdiction over the instant appeal. See: Argument IB, *infra*.

The Court of Appeals compounded its error in *Lotel*, and in its March 6, 2003 order here, by concluding that MCL 462.26(7) served as a basis for circuit court jurisdiction in this case. The language of subsection (7) carves out a narrow exception to Court of Appeals jurisdiction in contemplation of agency decisions involving **“the application of Commission rules, tariffs or rate schedules to an individual customer.”** The instant case clearly does not involve the application of rules, tariffs or rates to individuals.³ See: Argument IC, *infra*. Rather, the Commission’s Opinion and Order in this case involved the application of the provisions of the **MTA to the practices and services of a telecommunication service provider.** Subsection (7) is inapplicable to the order under review here, and this case should not have been remanded to the Ingham Circuit Court.

Accordingly, a reading of the plain language of the jurisdiction statute discloses that the appropriate forum for review of this appeal is the Michigan Court of Appeals, and the Court of Appeals erred in ordering otherwise.

³ The Court of Appeals holding in *Lotel* on this point was based on a faulty premise. The Court of Appeals held in *Lotel* that, “The Commission applied its existing anti-slamming rule that had been set forth in case U-11900. Finally, the [Commission’s] decision applied that existing rule to an individual customer’s specific fact situation . . .” (Opinion, p 5) No Commission rule was implicated in those proceedings. The Commission’s anti-slamming “procedures” were issued by the Commission pursuant to order, as provided for by MCL 484.2505(2), and not a rule promulgated pursuant to the Michigan Administrative Procedures Act of 1969, MCL 24.201 *et seq.* Similarly, there was no rule applied in the instant appeal to an individual customer.

B. The Court of Appeals in *Lotel* misconstrued existing Court of Appeals precedent to support its erroneous conclusion that it lacked jurisdiction to entertain that appeal and to support its decision to remand that appeal to the Ingham Circuit Court.

In its February 21, 2003 opinion in *Lotel*, the Court of Appeals misconstrued two previous decisions of that court that supported the Commission's argument that the Court of Appeals is the proper forum for appeals such as that presented here.⁴

In *In re Motor Carrier Act*, 223 Mich App 288, 296-299; 566 NW2d 299 (1997) the Court of Appeals held:

Under MCL 462.26(1); MSA 22.45(1), an appeal as of right to this Court may be filed by any common carrier or other party in interest who is "dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services"

The question arises whether the PSC's orders, which provide a "framework" and "guidance" to motor carriers, constitutes the "fixing" of rates, fares, practices, and services that forms the basis for this Court's jurisdiction under MCL 462.26(1); MSA 22.45(1). "Fix" in MCL 462.26(1); MSA 22.45(1) should be construed in the sense the word was intended by the Legislature to be used in the statute. *In re Certified Question*, 433 Mich. 710, 723; 449 NW2d 660 (1989); *Aikens v Dep't of Conservation*, 387 Mich. 495, 499; 198 NW2d 304 (1972).

"Fixed" has numerous meanings. The first definition in Black's Law Dictionary, 4th ed, is "adjust or regulate." The PSC's decisions at issue adjust or regulate many practices of motor carriers in this state by, in effect, declining to enforce numerous provisions in the Motor Carrier Act. . . .

* * *

⁴ The Commission additionally relied in *Lotel* upon two published decisions of the Court of Appeals that had resolved appeals from Commission orders finding that a telecommunications provider had violated the anti-slamming provisions of the MTA. *In re Canales Complaint*, 247 Mich App 487; 637 NW2d 236 (2001) and *In re Martinez Complaint*, 251 Mich App 148; 649 NW2d 403 (2002). The Court of Appeals in *Lotel* dismissed this precedent in footnote 6 of its opinion, noting that in neither of those case had the jurisdictional issue been raised or decided. Such a distinction was not apparently a consideration when the Court, on its own initiative, issued an order on March 6, 2003 transferring this pending appeal to the Ingham Circuit Court even though the jurisdictional issue had not been raised. See: footnote 2, *supra*.

There is no better forum than this Court in which to appeal the decisions at issue here. While an appeal to the circuit court under MCL 600.631; MSA 27A.631 might be available, starting the appellate process in the circuit court would simply add an additional level to the appellate process in an appeal in which the record is complete. We think our Legislature had a more efficient appellate process in mind when it consolidated the method of appeal for numerous regulatory acts in the procedure set forth in MCL 462.26; MSA 22.45. **Indeed, we recognized in *Sullivan, supra*, p 396, that the Legislature intended nearly all PSC matters to be appealed under § 26. [Emphasis added.]**

In Atty General v Michigan Public Service Commission, 237 Mich App 27, 40-41; 602

NW2d 207 (1999) the Court of Appeals held:

Appellants argue, in the alternative, that if this Court does not have jurisdiction to review the orders at issue, then the Ingham Circuit Court has jurisdiction. There are three ways to seek review of a decision by an administrative agency: (1) review pursuant to a procedure specified in a statute applicable to the particular agency, (2) the method of review for contested cases under the APA, or (3) an appeal pursuant to § 631 of the Revised Judicature Act (RJA), MCL 600.631; MSA 27A.63 1, in conjunction with MCR 7.104(A). *Martin v Stine*, 214 Mich. App. 403, 407-408; 542 NW2d 884 (1995). Regarding the first of these, **the only statute specifically applicable to the PSC is MCL 462.26; MSA 22.45. Among its sections, appeals to the Ingham Circuit Court are mentioned only in MCL 462.26(7); MSA 22.45(7). However, appellants are not entitled to review under MCL 462.26(7); MSA 22.45(7) because the instant case does not involve a PSC "order pertaining to the application of existing commission rules, tariffs, or rate schedules to an individual customer in a contested case" Such language contemplates the application of some substantive rule to an individual customer. . . . [Emphasis added.]**

Under existing precedent at the time the Court of Appeals issued its February 21, 2003 opinion in *Lotel*, jurisdiction for that appeal, and the instant appeal as well, rested with the Court of Appeals, and not the Ingham Circuit Court.

The Court of Appeals in *Lotel* attempted to distinguish the holding in *Atty General* by ignoring the dispositive language quoted above, and by seizing instead upon language taken from that opinion out of context. The language relied upon by the Court of Appeals in *Lotel* provides:

Both orders are thus specific to this case and the parties to it. Therefore, as in *Marshall, supra*, appellants have no right to appeal those orders to this Court under MCL 462.26. . . . [237 Mich App at 38]

It must be observed, however, that the language relied upon by the Court of Appeals in *Lotel* was immediately preceded in that opinion by language that was pivotal to the Court's decision in *Atty General*:

[A]n order requiring that a utility must undertake some additional procedures before being allowed to provide a service is not an order "fixing" anything within the meaning of MCL 462.26(1); MSA 22.45(1).

Similarly, the PSC orders at issue in this case do not fix any rate, regulation, practice, or service. Instead, one pertains to procedures to be followed and the timing of consideration of Edison's five-year PSCR forecast, and the other involves a discovery dispute regarding allegedly sensitive and confidential information. [237 Mich App at 38]

It is clear that the appeal in *Atty General* fell outside the jurisdiction of the Court of Appeals because the Commission order appealed from there involved discovery matters, or contemplated additional and subsequent proceedings between those parties. In that respect, the Commission orders complained of "fixed" nothing and thus did not fall within the purview of MCL 462.26. In contrast, the Commission order in the instant matter "fixed" the practices of AT&T, and the Commission order was thus appealable to the Court of Appeals.

The reasoning employed by the Court of Appeals in *Lotel* leads to an unworkable, and unacceptable, result. Under the Court of Appeals view, Commission orders (1) specific to a particular case and the parties to it (and thus, according to the Court of Appeals, outside that Court's jurisdiction pursuant to *Atty General, supra* at 38), yet (2) not involving the application of a Commission rule to an individual customer (and thus not appealable to Ingham Circuit Court

pursuant to MCL 462.26(7) would escape judicial review entirely.⁵ Such a result would reflect the antithesis of the legislative intent recognized by the Court of Appeals in *In re Motor Carrier Act*, *supra* at 299, and would remove from the "efficient appellate process" provided for in MCL 462.26 an entire class of Commission orders that reflect a significant portion of Commission adjudicatory activity conducted in a deregulated telecommunications environment.

- C. **The Court of Appeals erred in transferring this case to the Ingham Circuit Court because the Commission order appealed here "fixed" a practice or service of AT&T within the meaning of MCL 462.26(1) and did not apply a Commission rule to an individual customer so as to bring the Commission order within MCL 462.26(7).**

On July 11, 2001, the MPSC issued its Opinion and Order in Case No. U-12759 finding that AT&T had violated Sections 502(1)(c) and 507(1) of the MTA in its provision of, and billing for, unauthorized remote call forwarding services to Covenant House. The Commission ordered AT&T to pay a fine of \$30,000 for its violations of the MTA, \$15,000 of which were to be paid directly to Covenant House. AT&T was also ordered to reimburse Covenant House and Great Lakes Telecom, Inc. for all reasonable attorney fees and costs incurred in litigating MPSC Case No. U-12579; to issue all bill credits necessary to remove from Covenant House's current outstanding balance all unauthorized remote call forwarding charges since June, 2000; and to cease and desist from (1) issuing bills for amounts in excess of those that Covenant House had contracted to pay, (2) from threatening to terminate service to Covenant House for non-payment of disputed charges, and (3) from committing further violations of the MTA.

The specific violations of the MTA found to have been committed by AT&T here are included in Article 5 of the MTA under the heading "Prohibited Activity".⁶ Clearly, the

⁵ The Commission would submit that the instant appeal in *AT&T Communications v MPSC*, might fall within this category of appeal.

⁶ It should be noted in this regard that these appeals address activity that the legislature has

Commission's finding that AT&T had violated Sections 502(1)(C) and 507(1) of the MTA represent a conclusion by the Commission that AT&T "had improper practices or services". *Lotel*, p 6.

Moreover, the Commission's July 11, 2001 order fining AT&T \$30,000, and ordering AT&T to cease and desist from further violations of the MTA, manifestly represent Commission action intended to "fix" the practices or services of AT&T within the meaning of MCL 462.26. See Arguments I A and B, *supra*. The Commission order at issue here clearly was intended to "regulate" the practices of AT&T. The Commission's imposition of a \$30,000 fine against AT&T was intended by the Commission to reflect the seriousness of the violation and was imposed, in part, because AT&T presented no evidence regarding steps taken to avoid additional violations. *Opinion and Order*, p 28. Moreover, AT&T was ordered to cease and desist from further violations of the MTA. It is difficult to view this Commission action as anything other than action intended to "regulate" AT&T's practices.

Lastly, the Court of Appeals' attempt to bring this appeal within the provisions of MCL 462.26(7) should be rejected. The fact that an individual customer initiated the complaint proceeding below does not lead to the conclusion that the Commission order appealed from "...pertains to the application of existing commission rules, tariffs, or rate schedules to an individual customer in a contested case..." within the meaning of MCL 462.26(7). The Commission order at issue here was directed entirely at AT&T for its violation of the MTA. Nothing in the Commission's July 11, 2001 order applies a Commission rule to the individuals who initiated the complaint against AT&T. There was no Commission rule implicated in these

specifically proscribed, and the legislature has provided for the imposition of substantial fines upon a finding of such violations.

proceedings, and thus nothing that could even arguably bring this Commission order within the purview of MCL 462.26(7)

CONCLUSION AND RELIEF

For the reasons set forth above, the Michigan Public Service Commission respectfully requests that this Honorable Court grant the instant application for leave to appeal or, in the alternative, issue a peremptory order under MCR 7.302(F)(1) reversing the March 6, 2003 order of the Court of Appeals and remanding this matter to the Court of Appeals for consideration of the appeal on the merits.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

By its counsel:

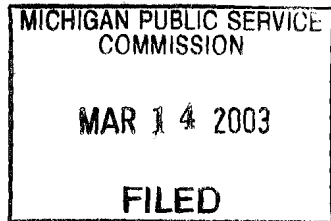
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A handwritten signature in dark ink, appearing to read "David A. Voges", followed by a horizontal line extending to the right.

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Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

Dated: March 13, 2003



STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
COVENANT HOUSE MICHIGAN and GREAT)
LAKES TELECOM, INC., against AMERICAN)
TELEPHONE & TELEGRAPH COMPANY (a/k/a)
AT&T Corp. and AT&T, Inc.) and TELEPORT)
COMMUNICATIONS GROUP, INC., (a/k/a)
Teleport Communications, TCG Detroit, and TCG)
Detroit Holdings I, Inc.).)

Case No. U-12759

In the matter of the complaint of)
MOLLY-MAID and GREAT LAKES TELECOM,)
INC., against AMERICAN TELEPHONE &)
TELEGRAPH COMPANY (a/k/a AT&T Corp. and)
AT&T, Inc.) and TELEPORT COMMUNICATIONS)
GROUP, INC., (a/k/a Teleport Communications,)
TCG Detroit, and TCG Detroit Holdings I, Inc.).)

Case No. U-12764

At the July 11, 2001 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On December 14, 2000, two closely-related complaints alleging violations of the Michigan Telecommunications Act, MCL 484.2101 et seq., MSA 22.1469(101) et seq. (the MTA), were

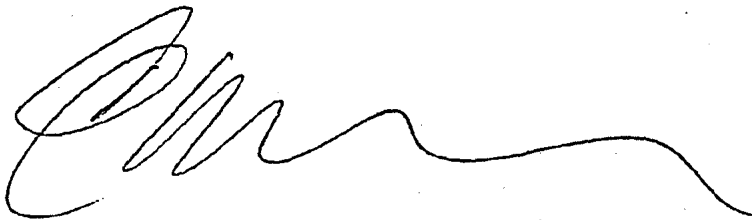
IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: AT & T Communications v MPSC
Docket No. 235935
L.C. No. 00-012759

E. Thomas Fitzgerald, Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

This matter is TRANSFERRED to the Ingham Circuit Court for consideration of the merits of this case. See MCL 462.26(3). Jurisdiction lies with the Ingham Circuit Court. See MCL 462.26(7) and *LOTEL Inc v MPSC*, -- Mich App -- ; -- NW2d -- (2003)(decided February 21, 2003, docket number 230755). The appellants shall contact the Ingham Circuit Court to determine whatever paperwork and fees are necessary to effectuate the transfer. This Court does not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR - 6 2003

Date


Chief Clerk

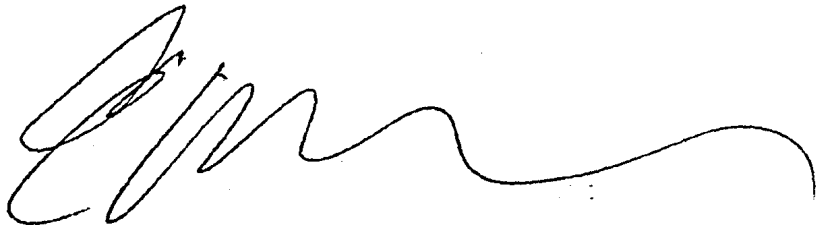
IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: Ameritech Michigan v MPSC
Docket No. 244742
L.C. No. 00-013079

E. Thomas Fitzgerald, Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

This matter is TRANSFERRED to the Ingham Circuit Court for consideration of the merits of this case. See MCL 462.26(3). Jurisdiction lies with the Ingham Circuit Court. See MCL 462.26(7) and *LOTEL Inc v MPSC*, -- Mich App -- ; -- NW2d -- (2003)(decided February 21, 2003, docket number 230755). The appellant shall contact the Ingham Circuit Court to determine whatever paperwork and fees are necessary to effectuate the transfer. This Court does not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR - 6 2003

Date


Chief Clerk

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: America's Digital Satellite Telephone Inc v MPSC
Docket No. 245306
L.C. No. 00-013457

E. Thomas Fitzgerald, Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

This matter is TRANSFERRED to the Ingham Circuit Court for consideration of the merits of this case. See MCL 462.26(3). Jurisdiction lies with the Ingham Circuit Court. See *LOTEL Inc v MPSC*, -- Mich App -- ; -- NW2d -- (2003)(decided February 21, 2003, docket number 230755). The appellant shall contact the Ingham Circuit Court to determine whatever paperwork and fees are necessary to effectuate the transfer. This Court does not retain jurisdiction.



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MAR - 6 2003

Date


Chief Clerk

STATE OF MICHIGAN
IN THE SUPREME COURT

AT&T COMMUNICATIONS OF
MICHIGAN, INC. and TCG DETROIT,

Appellees,

v

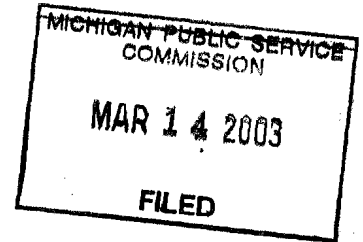
MICHIGAN PUBLIC SERVICE COMMISSION,
COVENANT HOUSE MICHIGAN and
GREAT LAKES TELECOM, INC.,

Appellants.

Supreme Court Docket No. _____

Court of Appeals Docket No. 235935

MPSC Case No. U-12759



**MICHIGAN PUBLIC SERVICE COMMISSION'S
MOTION FOR STAY PENDING APPEAL**

Appellant Michigan Public Service Commission (Commission), by counsel, files this motion for stay pursuant to MCR 7.209, MCR 7.302(C)(5), and MCR 7.302(G), and in support states:

1. By order issued March 6, 2003, the Court of Appeals transferred the instant appeal to the Ingham Circuit Court, citing as authority for that transfer MCL 462.26(3) and (7) and the Court of Appeals' decision in *Lotel, Inc v MPSC*, ___ Mich App ___; ___ NW2d ___; 2003 LEXIS 421 (2003) (Docket No. 230755, decided February 21, 2003).

2. The Commission has timely appealed the Court of Appeals decision in *Lotel* by filing an application for leave to appeal with this Court on March 13, 2003. Also on March 13, 2003, the Commission filed a motion for immediate consideration requesting that this Honorable Court immediately consider its application for leave to appeal filed in *Lotel*.

3. The Commission has timely appealed the Court of Appeals' March 6, 2003 order transferring this appeal to the Ingham Circuit Court by filing an application for leave to appeal with this Court on March 13, 2003. Additionally, the Commission would note that, also on March 6, 2003, the Court of Appeals issued orders that transferred two other appeals, *Ameritech Michigan v MPSC*, Court of Appeals Docket No. 244742, and *America's Digital Satellite Telephone Inc v MPSC*, Court of Appeals Docket No. 245306, to the Ingham Circuit Court. The Commission has filed an application for leave to appeal, a motion for stay pending appeal and motion for immediate consideration in these two other appeals contemporaneously with the filing of its application for leave to appeal and motion for immediate consideration in *Lotel*.

4. A stay of the Court of Appeals' March 6, 2003 order transferring this case to the Ingham Circuit Court is necessary because:

A. The Court of Appeals' March 6, 2003 order cites MCR 7.203(F)(1) and 7.216(A)(10), which relate to dismissal of appeals for lack of jurisdiction.

B. The Court of Appeals' March 6, 2003 order also cites to MCL 462.26(3) which provides, in part:

(3) Incorrectly initiated appeals. An appeal from any commission order that is filed in a timely manner but is incorrectly initiated in either the circuit court for the county of Ingham or the court of appeals shall be transferred by that court, on its own motion or on motion of a party, to the proper court and shall proceed as if timely filed in that court.

C. It is unclear, based upon the authority cited by the Court of Appeals in its March 6, 2003 order, whether that order is a judgment within the meaning

of MCR 7.215(E)(1) that is automatically stayed by the filing of a timely application for leave to appeal pursuant to MCR 7.302(5)(a).

5. The Court of Appeals' March 6, 2003 order should be stayed by this Court pending disposition of the Commission's appeal in *Lotel* and the instant case so that the litigants may be spared the burden of effectuating the transfer of this appeal to Ingham Circuit Court as ordered by the Court of Appeals.

WHEREFORE, Appellant Commission respectfully requests that this Court stay the effect of the Court of Appeals' March 6, 2003 order in this case pending appeal.

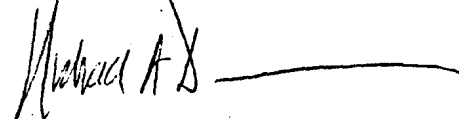
Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

By its Counsel:

Michael A. Cox
Attorney General

Thomas L. Casey
Solicitor General

A handwritten signature in dark ink, appearing to read "David A. Voges", followed by a horizontal line.

David A. Voges (P25143)
Michael A. Nickerson (P25138)
Assistant Attorneys General
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

Dated: March 13, 2003

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STATE OF MICHIGAN
IN THE SUPREME COURT

AT&T COMMUNICATIONS OF
MICHIGAN, INC. and TCG DETROIT,

Appellees,

v

Supreme Court Docket No. _____

MICHIGAN PUBLIC SERVICE
COMMISSION, COVENANT HOUSE
MICHIGAN and GREAT LAKES
TELECOM, INC.,

Court of Appeals Docket No. 235935

MPSC Case No. U-12759

Appellants.

_____ /

**MICHIGAN PUBLIC SERVICE COMMISSION'S
MOTION FOR IMMEDIATE CONSIDERATION**

Appellant Michigan Public Service Commission (Commission), by counsel in this matter pursuant to MCR 7.302(E), files this motion for immediate consideration of its motion for stay pending appeal, and in support states:

1. By published opinion issued February 21, 2003, the Court of Appeals held in *Lotel, Inc., d/b/a Coordinated Billing Services v MPSC, et al*, Docket No. 230755; 2003 Mich App LEXIS 421 (2003) that it did not have jurisdiction to entertain that appeal under MCL 462.26(1), and transferred that appeal to the Ingham Circuit Court pursuant to MCL 461.26(3) and (7).
2. Prior to the expiration of the appeal period in *Lotel* provided by MCR 7.302(c)(2), the Court of Appeals issued an order on March 6, 2003 transferring this appeal to the Ingham

Circuit Court and citing its February 21, 2003 opinion in *Lotel* as a basis for that transfer (Attachment A).

3. In the instant appeal, a claim of appeal had been filed August 8, 2001, and the appeal had been completely briefed in the Court of Appeals and had been awaiting oral argument, since December 4, 2001.

4. Immediate consideration of the Commission's motion for stay pending appeal is warranted because the Court of Appeals March 6, 2003 order specifically directs Appellants to contact the Ingham Circuit Court to determine "whatever paperwork and files are necessary to effectuate the transfer." On information and belief, Commission counsel is aware of at least one Appellant's counsel who expressed concern that the March 6, 2003 order takes immediate effect pursuant to MCR 7.215(G) and intends therefore to pursue the Circuit Court filing. The March 6, 2003 order of the Court of Appeals will, if not stayed by this Court, needlessly delay and impede the orderly and timely resolution of this appeal, and will needlessly require that action be taken by the Appellants to reinitiate the appeals in the Ingham Circuit Court, and require that Appellees respond to the appeal in that Court.

5. Appellant Commission's motion for immediate consideration, motion for stay pending appeal, and application for leave to appeal were served on the other parties to this appeal by overnight mail, as reflected in the enclosed proof of service.

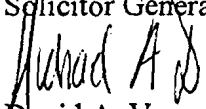
WHEREFORE, Appellant Michigan Public Service Commission respectfully requests that this Honorable Court grant this motion for immediate consideration.

MICHIGAN PUBLIC SERVICE COMMISSION

By its counsel:

Michael A. Cox
Attorney General

Thomas L. Casey
Solicitor General


David A. Voges (P25143)
Michael A. Nickerson (P25138)
Assistant Attorneys General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, MI 48911
Telephone: (517) 241-6680

Dated: March 13, 2003

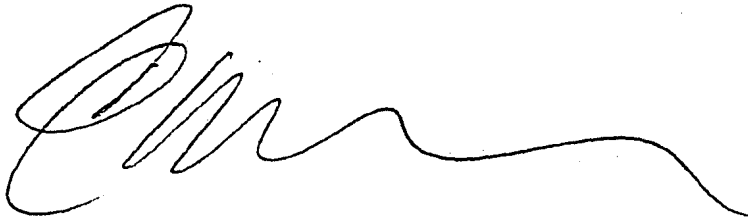
IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: AT & T Communications v MPSC
Docket No. 235935
L.C. No. 00-012759

E. Thomas Fitzgerald, Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

This matter is TRANSFERRED to the Ingham Circuit Court for consideration of the merits of this case. See MCL 462.26(3). Jurisdiction lies with the Ingham Circuit Court. See MCL 462.26(7) and *LOTEL Inc v MPSC*, -- Mich App -- ; -- NW2d -- (2003)(decided February 21, 2003, docket number 230755). The appellants shall contact the Ingham Circuit Court to determine whatever paperwork and fees are necessary to effectuate the transfer. This Court does not retain jurisdiction.

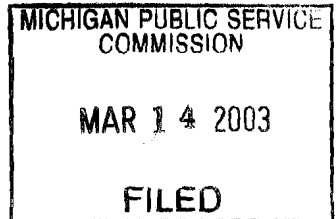


A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR - 6 2003

Date


Chief Clerk



STATE OF MICHIGAN
IN THE SUPREME COURT

AT&T COMMUNICATIONS OF
MICHIGAN, INC. and TCG DETROIT,

Appellees,

v

Supreme Court Docket No. _____

MICHIGAN PUBLIC SERVICE
COMMISSION, COVENANT HOUSE
MICHIGAN and GREAT LAKES
TELECOM, INC.,

Court of Appeals Docket No. 235935

MPSC Case No. U-12759

Appellants.

NOTICE OF HEARING

TO: All Parties of Record

Please take notice that the Appellant Michigan Public Service Commission's Application for Leave to Appeal will be heard by the Michigan Supreme Court on Tuesday, March 25, 2003, pursuant to MCR 7.302(A)(2).

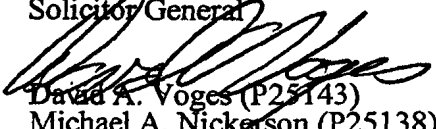
Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION

By its counsel:

Michael A. Cox
Attorney General

Thomas L. Casey
Solicitor General


David A. Voges (P25143)
Michael A. Nickerson (P25138)
Assistant Attorneys General
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6545 Mercantile Way, Suite 15
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Dated: March 13, 2003

STATE OF MICHIGAN
IN THE SUPREME COURT



AT&T COMMUNICATIONS OF
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COMMISSION, COVENANT HOUSE
MICHIGAN and GREAT LAKES
TELECOM, INC.,

Court of Appeals Docket No. 235935

MPSC Case No. U-12759

Appellants.

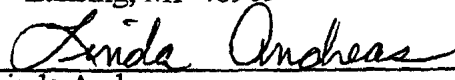
PROOF OF SERVICE

STATE OF MICHIGAN }
COUNTY OF INGHAM }

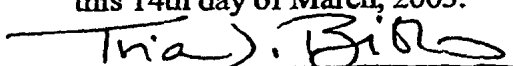
Linda Andreas, being first duly sworn, deposes and says that on **March 14, 2003**, she served a true copy of **Appellant Michigan Public Service Commission's Motion for Stay Pending Appeal, Motion for Immediate Consideration, Application for Leave to Appeal, Notice of Filing and Notice of Hearing** upon the following upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

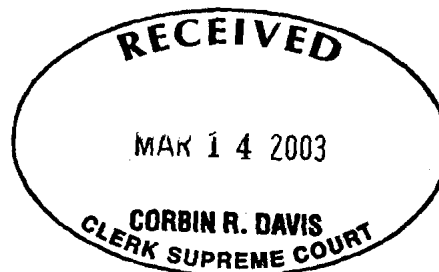
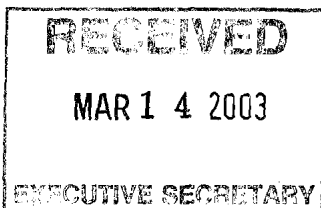
Sandra Schultz Mengel, Chief Clerk
Michigan Court of Appeals
925 W. Ottawa Street
Michigan Hall of Justice - 2nd Floor
P.O. Box 30022
Lansing, MI 48909-7522

Via personal delivery:
Dorothy Wideman
Michigan Public Service Commission
6545 Mercantile Way, Suite 7
Lansing, MI 48909


Linda Andreas

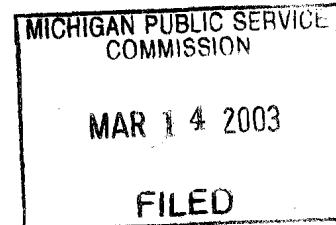
Subscribed and sworn to before me
this 14th day of March, 2003.


Tina L. Bibbs, Notary Public
Ingham County, Michigan
My Commission Expires: 11/13/2003



82

STATE OF MICHIGAN
IN THE SUPREME COURT



AT&T COMMUNICATIONS OF
MICHIGAN, INC. and TCG DETROIT,

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MICHIGAN PUBLIC SERVICE
COMMISSION, COVENANT HOUSE
MICHIGAN and GREAT LAKES
TELECOM, INC.,

Court of Appeals Docket No. 235935

MPSC Case No. U-12759

Appellants.

PROOF OF SERVICE

STATE OF MICHIGAN }
COUNTY OF INGHAM }

Linda Andreas, being first duly sworn, deposes and says that on **March 13, 2003**, she served a true copy of **Appellant Michigan Public Service Commission's Motion for Stay Pending Appeal, Motion for Immediate Consideration, Application for Leave to Appeal, Notice of Filing and Notice of Hearing** upon the following parties via overnight mail, plainly addressed as follows:

Counsel for AT&T Communications of Michigan, Inc.:

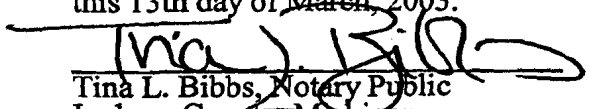
Arthur J. LeVasseur
Fischer, Franklin & Ford
Guardian Building, Suite 3500
500 Griswold Street
Detroit, MI 48226-3808

Counsel for Covenant House and Great Lakes Telecom, Inc.:

Frederick M. Baker, Jr.
Honigman Miller Schwartz & Cohn LLP
222 N. Washington Square, Suite 400
Lansing, MI 48933-1800


Linda Andreas

Subscribed and sworn to before me
this 13th day of March, 2003.


Tina L. Bibbs, Notary Public
Ingham County, Michigan
My Commission Expires: 11/13/2003