

June 21, 2006

Via E-file/paperless

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

**Re: In the matter of the notification of AT&T Michigan of a dispute with the
City of Belleville under the Metropolitan Extension Telecommunications
Rights-of-Way Oversight Act.
MPSC Case No. U-14843**

Dear Ms. Kunkle:

Enclosed for filing in the above-referenced case is the *Response of AT&T Michigan to
Mediator's Recommendation* and *Proof of Service*.

If you should have any questions, please contact me.

Very truly yours,

?
Signature Not Verified

John M. Dempsey

Digitally signed by John M.
Dempsey
DN: cn=John M. Dempsey,
o=Dickinson Wright PLLC, c=US
Date: 2006.06.21 15:03:23 -04'00'

John M. Dempsey

JMD:mds
Enclosures

cc: Hon. Sharon Feldman
All Parties of Record

LANSING 34060-56 374220v3

C o u n s e l l o r s A t L a w

DETROIT BLOOMFIELD HILLS LANSING GRAND RAPIDS ANN ARBOR
WASHINGTON, D.C.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the notification of AT&T Michigan)
of a dispute with the City of Belleville under the)
Metropolitan Extension Telecommunications)
Rights-of-Way Oversight Act.)
_____)

Case No. U-14843

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Mindy D. Smith, being first duly sworn, deposes and says she is employed at Dickinson Wright PLLC; and that on June 21, 2006, she caused a copy of the ***Response of AT&T Michigan to Mediator's Recommendation*** to be served upon the attached service list via the methods shown below.


Signature Not Verified

Mindy D. Smith

Digitally signed by Mindy D. Smith
DN: cn=Mindy D. Smith,
o=Dickinson Wright PLLC, c=US
Date: 2006.06.21 15:03:57 -0400

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 21st day of June, 2006.


Signature Not Verified

Susan C. Bohnett

Digitally signed by Susan C. Bohnett
DN: cn=Susan C. Bohnett,
o=Dickinson Wright PLLC, c=US
Date: 2006.06.21 15:04:32 -0400

Susan C. Bohnett, Notary Public
Shiawassee County, Acting in
Ingham County, Michigan
My Commission Expires: 9/23/11

SERVICE LIST U-14843

Mediator	slfeldm@michigan.gov
MPSC Staff	rpancon@michigan.gov
City of Belleville	Steve Walters (via U.S. Mail) City Manager 6 Main Street Belleville, MI 48111

LANSING 34060-56 374222v5

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the notification of AT&T Michigan)
of a dispute with the City of Belleville under the)
Metropolitan Extension Telecommunications)
Rights-of-Way Oversight Act.)
_____)

Case No. U-14843

RESPONSE OF
AT&T MICHIGAN
TO MEDIATOR'S RECOMMENDATION

Michigan Bell Telephone Company, d/b/a AT&T Michigan, pursuant to the Mediator's letter of May 2, 2006, submits this response to the Mediator's recommendation issued to the parties dated May 26, 2006. Because AT&T Michigan does not completely concur with the Mediator's recommendations, it respectfully requests the Commission for a review and determination of a resolution of the dispute involved in this matter.¹

The Mediator's recommendation contained two conclusions. With regard to the first, AT&T Michigan does not disagree with the conclusion that the City of Belleville should "forthwith issue AT&T Michigan a permit under the METRO Act, on the form submitted by AT&T Michigan." (p. 6, ¶ 1) On the same date that the Mediator's recommendation was issued, AT&T Michigan came into possession of a METRO Act permit signed by Steven L. Walters, City Manager. The actual permit form used by the City of Belleville was not on any current form submitted by AT&T Michigan's area manager in charge of this activity but, rather, was on a form submitted several years ago by her predecessor. Nonetheless, AT&T Michigan's position is

¹ See Mediator's Recommendation at 6; MCL 484.3107.

that the permit it has now received is a lawful, binding permit under the METRO Act. Thus, with regard to the first conclusion, AT&T Michigan's position is that the Mediator's recommendation has been fulfilled.

With regard to the second conclusion, AT&T Michigan does not concur. Despite the track record of the City of Belleville – its demonstrated failure to comply with the requirements of law embodied in the METRO Act, as well as its demonstrated failure to comply with this Commission's procedural requirements—the Mediator essentially let the municipality off the hook for this conduct and did not recommend granting of AT&T Michigan's requested relief (1) of the right to extend the term of the permit or (2) for recovery of its costs to prosecute this matter.

Fundamentally, the Commission needs to decide whether there are any repercussions for a municipality to forego obedience to the METRO Act and whether providers must make repeated attempts to inspire municipal compliance.² If the Commission believes there needs be no downside to disobedience, then it might as well say so in an order in this docket. That will relieve providers from having to undertake repeated attempts to obtain METRO Act permits and, instead, encourage them to make filings immediately after a municipality fails to issue a permit within the time requirements of the Act. On the other hand, if the Commission believes there should be repercussions, it should adopt the recommendations contained in AT&T Michigan's May 17, 2006 response filing in this docket.³

² As stated in its pleadings in this docket, and as known by the Commission Staff, AT&T Michigan made numerous attempts to secure action before filing the request for mediation, as well as during the proceedings in the case.

³ Rather than make cumulative statements from that pleading, AT&T Michigan respectfully cites it to the Commission for review and incorporates it here by reference.

The Mediator's recommendation states that the City of Belleville failed to make any
Footnote continued on next page ...

In summary, AT&T Michigan respectfully requests that the Commission issue an order as follows:

(a) directing that the permit issued by the City of Belleville be deemed to grant AT&T Michigan a right to automatically renew the permit for an additional 5 years at the conclusion of the initial 5-year term; and

(b) that the Commission order direct that AT&T Michigan may reduce its next annual maintenance fee payment to the METRO Authority by the amount of the attorney fees and costs it has had to incur in order to prosecute this matter.

Respectfully submitted,

Craig A. Anderson (P28968)
Lisa M. Bruno (P52954)
AT&T MICHIGAN
444 Michigan Avenue, Room 1700
Detroit, MI 48226
(313) 223-8188

and

DICKINSON WRIGHT PLLC



John M. Dempsey

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By: _____

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Dated: June 26, 2006

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filings in support of its failure to issue a permit as required by the METRO Act (p. 3) and that AT&T Michigan's claims are "unrefuted" (p. 5).

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