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Via paperless e-Filing

May 15, 2006

Mary Jo Kunkle  
Michigan Public Service Commission  
P.O. Box 30221  
Lansing, MI 48909

Re: In the matter on the Commission's own motion to solicit comments on  
section 303 of 2005 PA 235  
MPSC Case No U-14819

Dear Ms. Kunkle:

Enclosed please find the comments of AT&T Michigan in the above docket. These comments are being filed electronically. Please call if you have any questions.

Very truly yours,



**Lisa M. Bruno**

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Lisa M. Bruno

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,     )  
to solicit comments on Section 303 of 2005 PA 235   )  
\_\_\_\_\_)

Case No. U-14819

**COMMENTS OF AT&T MICHIGAN**

Michigan Bell Telephone Company, d/b/a AT&T Michigan ("AT&T"), hereby submits its Comments pursuant to the Commission's April 13, 2006 Order.

**A. Background**

On November 21, 2005, the Governor signed into law 2005 PA 235 (Act 235) which amended the Michigan Telecommunications Act, MCL 484.2101 *et seq.* ("MTA"). Section 303 of the MTA states:

484.2303 Effect of sale or transfer of stock; addition, elimination, or modification of area code; prohibition; bankruptcy.

(1) The sale or transfer of shares of stock of a provider of primary basic local exchange service is not a sale or transfer of a license or a discontinuance of service.

(2) The commission has the authority to approve or deny a proposed addition, elimination, or modification of an area code in this state. The commission shall give public notice and shall conduct a public hearing in the affected geographic area before an addition, elimination, or modification of an area code is made in this state.

(3) A license issued under this act is not transferable to an unlicensed provider.

**(4) In case of the bankruptcy of a licensed provider, the commission shall establish the procedures for the transfer of the license to another qualified provider.** (emphasis added.)

Specifically, the amended MTA added section 303(4) that allows the Michigan Public Service Commission (“Commission”) to “establish procedures” for transferring the license of a bankrupt provider. MCL 484.2303(4).

In that regard, on April 13, 2006, the Commission issued an order providing interested parties with an opportunity to submit comments regarding procedures for transferring the license of a bankrupt provider to another qualified provider. The April 13, 2006 Order also specifically requested that any comments address the implications of federal bankruptcy law on Section 303(4) of Act 235.

#### **B. Interpretation of Section 303 (3) and (4)**

As an initial matter, AT&T is concerned with the interpretation of section 303(4), when read in conjunction with section 303(3). Subsection 3 states that “a license issued under this act is not transferable to an unlicensed provider.” Therefore, under no circumstances would a licensed provider be permitted to transfer its license to an unlicensed provider. The newly added subsection (4) requests that procedures be established when a licensed provider in bankruptcy transfers its license to another qualified provider. “Qualified provider” is not a defined term in the MTA, however AT&T assumes a qualified provider is one who is not licensed, otherwise there would be no need for the transfer.

Putting aside any bankruptcy law preemption arguments for the moment, which are addressed below, it is unclear what practical application the newly amended subsection 4 would have. If an unlicensed entity<sup>1</sup> wants to obtain the license of a provider, subsection 3 prohibits that transfer, irrespective of whether the provider is in bankruptcy. On the other hand, a licensed provider would have no need to obtain a license from the bankrupt provider, as that provider is

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<sup>1</sup> Sections 301 and 302 of the MTA discuss when a basic local exchange license is required and the approval process of an application for license.

already licensed. Perhaps the intent of subsection 3 is to have an unlicensed entity<sup>2</sup> prove it is qualified to become a licensed provider through the approval process set forth in Sections 301 and 302 of the MTA, but rather than issue a new license, the existing license of the bankrupt provider would be transferred to the newly qualified provider pursuant to subsection 4. Based on varied interpretations of these sections, AT&T Michigan questions what application the newly amended section 303(4) would have in practice.

**C. Implication of bankruptcy law on section 303(4)**

AT&T believes that bankruptcy law would preclude the Commission from establishing any meaningful “procedures for the transfer of license to another qualified provider” if such procedures failed to recognize the authority of the bankruptcy court to approve a sale of assets of the bankrupt provider, as the license becomes property of the bankruptcy estate once the provider files for bankruptcy.

Under 11 U.S.C. §541(a), property of the bankruptcy estate includes “all legal and equitable interests of the debtor in property as of the commencement of the [bankruptcy] case.” Licenses issued to debtors by governmental agencies have been held to be property of the bankruptcy estate under §541(a). *In re Barnes*, 276 F.3d 927 (7th Cir.2001)(a state-issued liquor license is property of the estate); *In re Central Arkansas Broadcasting Co.*, 68 F.3d 213 (8th Cir.1995)(radio station operating license issued by FCC is property of the estate); *In re Fugazy Express, Inc.*, 124 B.R. 426 (S.D.N.Y.1991)(radio call sign license is property of estate).

The bankruptcy court has exclusive jurisdiction over all matters involving property that has been determined to be property of the estate under §541(a). *Edwards v. Armstrong World Industries, Inc.*, 6 F.3d 312 (5th Cir.1993); *In re Universal Well Services, Inc.*, 222 B.R. 26

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<sup>2</sup> For example, an entity that has received approval of a bankruptcy court to purchase the assets, including the license, from the bankrupt provider.

(W.D.N.Y.1998). A governmental agency's attempts to cancel a license is subject to the automatic stay provisions of 11 U.S.C. §362. *Fugazy Express*, 124 B.R. at 431 (FCC must obtain relief from automatic stay prior to attempting to cancel license). However, a debtor-in-possession's (or trustee's) ability to transfer or sell a license may be subject to the approval and consent of the governmental agency that issued the license. *Barnes*, 276 F.3d at 928; *Central Arkansas Broadcasting*, 68 F.3d at 214.

One additional provision of the Bankruptcy Code restricts a governmental agency's ability to affect a license issued to a debtor. Under 11 U.S.C. s 525(a), "a governmental unit may not revoke ... a license ... to ... a debtor ... solely because such ... debtor ... has not paid a debt that is dischargeable in the [bankruptcy] case." In *Federal Communications Commission v. NextWave Personal Communications, Inc.*, 537 U.S. 293 (2002), the debtor had purchased broadband personal communications services licenses through an FCC auction. The FCC allowed the debtor to pay the purchase price in installments. Before debtor had paid all installments in full, debtor filed bankruptcy. Without obtaining any authorization from the Bankruptcy Court, the FCC cancelled debtor's licenses and commenced the process of auctioning these licensing to other parties. The U.S. Supreme Court held that §525 prohibits the FCC from revoking licenses that are property of the bankruptcy estate upon the debtor's failure.

The reality of the above case law seems to indicate that any procedures established by the Commission would be limited in scope to possibly: (a) requiring any bankruptcy court approved purchaser of the license to submit an application containing the information that would have been required to obtain its own license, and (b) a review of that application, since the license of a provider becomes property of the bankruptcy estate once the provider files for bankruptcy.

#### **D. Conclusion**

Based on the above, it is unclear how the legislature envisioned harmonizing sections 303(3) and (4). Moreover, it seems clear that the license becomes property of the bankruptcy estate once the provider files for bankruptcy. At best, bankruptcy law may permit the Commission to obtain information from the bankruptcy court approved purchaser of the license, prior to the consummation of the transfer of the license.

Respectfully submitted,

 Signature Not Verified

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Dated: May 15, 2006