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June 22, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Re: **MPSC Case No.: U-147878**

Dear Ms. Kunkle:

Please find attached the Petition for Intervention of the Michigan Municipal League, the Michigan Townships Association and the Michigan Coalition to Protect Public Rights of Way and Certificate of Service. Please file in your usual manner.

If you have any questions, do not hesitate to contact me.

Very truly yours,

**KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK**

**Michael J.
Watza**

Digitally signed by Michael J. Watza
DN: CN = Michael J. Watza, C = US,
O = Kitch Drutchas Wagner Valitutti
and Sherbrook
Reason: I am approving this
document
Date: 2006.06.22 13:57:33 -04'00'

Michael J. Watza
Direct Line: (313) 965-7983
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REC/rec

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of

SPRINT COMMUNICATIONS

COMPANY, L.P.'S petition for de novo
review pursuant to MCL 484.3117 of
Determination No. 5 made by the
METRO Authority.

MPSC Case No.: U-14878

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CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
)ss.
COUNTY OF WAYNE)

The undersigned, being first duly sworn, deposes and states that he/she served papers as follows:

1. Document(s) served: The Michigan Municipal League, the Michigan Townships Association and the Michigan Coalition to Protect Public Rights of Way's Petition to Intervene

2. Served Upon: Roderick S. Coy
 Clark Hill, PLC
 212 East Grand River Ave.
 Lansing, MI 48906
 email: rcoy@clarkhill.com

Steven D. Hughey
Assistant Attorney General
Public Service Division
6545 Mercantile Way, Ste. 15
Lansing, MI 48911
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Melvin Farmer, Jr.
Director METRO Authority
MI Dept. of Labor & Economic Growth
611 West Ottawa, 4th Floor
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email: farmerm@michigan.gov

3. Method of Service: Email
4. Date served: June 22, 2006

Michael J.
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Valitutti and Sherbrook
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Michael J. Watza

Subscribed and sworn to before me
this 22nd day of June, 2006.

My Commission expires

Donna L.
Lloyd

Digitally signed by Donna L. Lloyd
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US, O = Kitch Drutchas Wagner
Valitutti and Sherbrook
Date: 2006.06.22 13:58:13 -04'00'

Notary Public, Wayne County, Michigan

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **SPRINT** CASE NO.: U-14878
COMMUNICATIONS COMPANY, L.P.'S
petition for de novo review pursuant to
MCL 484.3117 of Determination No. 5
made by the METRO Authority.

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PETITION TO INTERVENE

NOW COME the Michigan Municipal League, the Michigan Townships Association, and the Michigan Coalition to Protect Public Rights of Way (collectively, the "Petitioners"), by and through their attorneys Kitch Drutchas Wagner Valitutti & Sherbrook, and hereby petition the Michigan Public Service Commission ("MPSC") for leave to intervene in the above-entitled matter pursuant to Rule 201 of the MPSC's Rules of Practice and Procedure. In support thereof, the Petitioners states as follows:

1. The Michigan Municipal League ("MML") is a non-partisan association of Michigan cities and villages working through cooperative efforts to strengthen the quality of municipal government and administration by providing technical assistance and information to local officials regarding municipal issue, improving the training and education of these officials, preserving the home rule philosophy of municipal government, and creating a greater public understanding of municipal responsibilities, governance and administration

2. The Michigan Townships Association (“MTA”) is the largest local government association in Michigan, dedicated to championing local authority and aiding township officials in serving their growing township populations efficiently, effectively and economically.
3. The Michigan Coalition to Protect Public Rights of Way (“PROTEC”) is an organization of Michigan cities interested in protecting their citizens' control over public rights-of-way, and their right to receive compensation from the telecommunications companies that use public property.
4. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (hereinafter the “METRO Authority”) is granted the exclusive power, pursuant to MCL 484.3103, to assess fees on telecommunication providers with regard to telecommunications facilities located in public rights-of-way.
5. Section 8(5) of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (hereinafter the “METRO Act” or the “Act”) requires telecommunications providers to pay an annual maintenance fee to the METRO Authority.
6. The annual maintenance fee applicable to telecommunication providers is based on the linear feet occupied by the provider’s facilities on public rights-of-way, regardless of the quantity or type of the provider's facilities utilizing the public right-of-way or whether the facilities are leased to another provider. MCL 484.3108(5).
7. On July 19, 2005, and pursuant to its obligation under MCL 484.3103(5) to promulgate rules for the implementation and administration of the METRO Act, the METRO Authority enacted Determination No. 5. (Exhibit1).

8. Determination No. 5 was intended to clarify the maintenance fee requirements of the METRO Act. After examination of the language of Section 8(5) of the METRO Act, regarding the imposition of annual maintenance fees, the METRO Authority determined that “Section 8(5) stipulates that the maintenance fee charged a provider is based on the linear feet of facilities in the public rights-of-way occupied by the provider regardless of whether leased or owned.” (Exhibit 1).
9. Sprint Communications Company, L.P. brought the instant action challenging the METRO Authority’s interpretation of the METRO Act and seeking a determination by the MPSC as to whether or not maintenance fees should be assessed against telecommunications providers for telecommunications services leased from other entities.
10. In its May 5, 2006 Order and Notice of Hearing, the MPSC stated that this case involves questions of first impression and identified the pertinent issues as whether providers of telecommunication services are required to pay METRO Act fees for facilities that are leased from other entities.
11. In order to have standing to intervene in this matter, the Petitioners must be able to show that their interests are in danger and that these interests are within the zone of interest intended to be protected or regulated by the statute under consideration by the MPSC. *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150; 250 L Ed 184 (1970).
12. The Petitioners have an interest in the foregoing proceeding because they represent the communities who will ultimately benefit from the maintenance fees collected by the METRO Authority and whose rights-of-way are ultimately

being used by the telecommunications providers. These interests are firmly within the zone of interest protected and regulated by the METRO Act.

13. The Petitioners have extensive experience in representing the rights of Michigan municipalities and, therefore, are the entities best suited for representing the various interests of the Michigan communities which will be affected by the MPSC's decision in this matter.
14. Furthermore, if the MPSC determines that the Petitioners do not have standing as a matter of right, then the MPSC should grant the Petitioners permissive intervention, as the Petitioners may provide useful information that may aid the MPSC in making its decision.
15. The Petitioners' position is that the METRO Authority did not err in its interpretation of the METRO Act and that telecommunications providers are required to pay maintenance fees under the METRO Act for telecommunications facilities that are leased from other entities.
16. The Act references a variety of interests in telecommunications lines and facilities that are subject to the Act and the annual maintenance fees attendant thereto. These interests include facilities that are "occupied", "located", "used", "owned", and "leased" by the telecommunications providers. See, *e.g.*, MCL 484.3102(j) & (k); MCL 484.3105(1) & (3); MCL 484.3108(3), (4), (5), (6)(b), (7) & (9).
17. The Act, and accordingly, METRO Authority Declaration No. 5, does not limit the nature of a telecommunication provider's interest in the facilities to "fee" ownership, as petitioner Sprint Communications Company, L.P. suggests.

18. Additionally, it is clear that the METRO Authority may prescribe the forms, standards, methodology, and procedures for assessing fees under the METRO Act and that its power to assess maintenance fees against telecommunications providers is exclusive. MCL 484.3108(10); MCL 484.3103.
19. Further, the METRO Act defines a “telecommunications provider” as an entity which, for compensation, provides one or more telecommunication services. MCL 484.3102(k); MCL 484.2102 (ff). It separately includes entities which own telecommunications facilities in its definition. MCL 484.3102(k)(ii).
20. The Act further defines “telecommunications facilities” as equipment or personal property which is “used to . . . provide telecommunication services or signals”, and not necessarily those pieces of equipment owned by a telecommunications provider. MCL 484.3102(j).
21. The METRO Act states that “A provider using or seeking to use public rights-of-way in a metropolitan area for its telecommunication facilities shall obtain a permit under section 15 from the municipality and pay all fees required under this act.” MCL 484.3105(1) (emphasis added). Section 15 of the Act defines such a permit as being for “access to and the ongoing use of” public rights of way. MCL 484.3115(1).
22. The plain language of Section 8(5) of the Act requires telecommunications providers to pay maintenance fees regardless of the quantity or type of the provider's facilities utilizing the public right-of-way or whether the facilities are leased to another provider. MCL 484.3108(5) (emphasis added). As such, no distinction is made in the Act between telecommunications providers who own telecommunications facilities and those who lease facilities.

23. The Petitioners reserve the right to raise other claims and issues.
24. Accordingly, the Petitioners respectfully request that Sprint Communications Company, L.P.'s petition for de novo review pursuant to MCL 484.3117 of Determination No. 5 made by the METRO Authority be dismissed and the relief requested therein be denied together with an award of fees and costs incurred as a result of this filing.

WHEREFORE, the Michigan Municipal League, the Michigan Townships Association, and the Michigan Coalition to Protect Public Rights of Way request that this Petition to Intervene be granted and that the Petitioners be treated as a full party to all these proceedings.

Respectfully submitted,

KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK

By: Michael J. Watza
MICHAEL J. WATZA (P38726)
REBECCA E. CHAVEZ (P68817)
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Dated: June 22, 2006

Exhibit 1

to

**Michigan Municipal League, Michigan
Townships Association, and the
Michigan Coalition to Protect Public
Rights of Way's Petition to Intervene**



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
METRO AUTHORITY

David C. Hollister
Director

Determination No. 5 – Public Rights-of-Way Leased/Owned Fee Payments July 19, 2005

Purpose

Clarify the maintenance fee requirements of Section 8(5) of the METRO Act, which reads:

“The fee required under this section is based on the linear feet occupied by the provider regardless of the quantity or type of the provider’s facilities utilizing the public right-of-way or whether the facilities are leased to another provider.”

Some providers lease facilities from other providers and have raised the question of whether both providers are paying and/or are required to pay for the occupancy of the same linear footage in the public right-of-way.

Analysis

Based on the reports received from telecommunication providers, the METRO Authority is unable to determine whether maintenance fees for telecommunication facilities in public rights-of-way are being paid for by the facilities’ owners or lessees. The basic issue is whether payment is based on individual occupancy of the public right-of-way. The METRO Authority interprets Section 8(5) of the METRO Act as follows:

- If a provider qualifies as a “telecommunication provider” under Section 2(k) of the METRO Act, the fee requirement of Section 8(5) of the Act is applicable, regardless of whether the provider owns or leases the facilities in the public right-of-way.
- Telecommunication providers, as defined by Section 2(k) of the METRO Act, whose facilities occupy a public right-of-way must pay a maintenance fee based on their individually reported linear footage occupied, regardless of whether their facilities are leased or owned.
- Educational institutions, privately owned utilities/affiliates, and publicly owned utilities are not required to obtain permits, pay fees, or fulfill mapping requirements of the METRO Act for telecommunication facilities located in the public rights-of-way used solely for their respective internal services. If these providers provide or lease their telecommunication services to other external entities for compensation, permits must be obtained; maintenance fees must be paid; and mapping requirements must be fulfilled pursuant to Sections 8(18), 8(19), & 8(20) of the Act.

METRO Authority Determination

Section 8(5) stipulates that the maintenance fee charged a provider is based on the linear feet of facilities in the public rights-of-way occupied by the provider regardless of whether leased or

owned. Therefore, the maintenance fee is charged to each individual provider for their individual use of the public right-of-way, regardless of other providers that may be occupying the same facilities.

A decision or assessment of the Authority is subject to a de novo review by the Michigan Public Service Commission upon the request of an interested person pursuant to Section 17 of the METRO Act.