

May 17, 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 and
Proof of Service*.

If you should have any questions, please contact me.

Very truly yours,

? John M. Dempsey
Signature Not Verified

Digitally signed by John M. Dempsey
DN: cn=John M. Dempsey,
o=Dickinson Wright PLLC, c=US
Date: 2006.05.17 15:01:49 -0400
Location: Dickinson Wright PLLC

John M. Dempsey

JMD:mds
Enclosures

cc: Hon. Sharon Feldman
All Parties of Record

LANSING 34060-56 374220v2

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**

Michigan Bell Telephone Company, d/b/a AT&T Michigan, pursuant to the Mediator's letter of May 2, 2006, submits this response.

Pursuant to the Mediator's direction¹, both parties to this dispute were to have submitted their statements of position and terms of a recommended settlement on or before May 10, 2006. AT&T Michigan complied with this direction. The City of Belleville did not: it made no filing or transmittal that day, and it has made no such filing or transmittal as of the date of the filing of this response.

Consequently, the City of Belleville has defaulted. The statement of facts provided in AT&T Michigan's May 10th filing is, indeed, not disputed. Similarly, the discussion of the law contained in that filing is not in dispute: the METRO Act clearly requires the issuance of a permit – forthwith. Finally, the terms of a proposed settlement offered by AT&T Michigan are clearly reasonable. Since there is nothing at issue in this matter other than the City of Belleville's utter failure to comply with its duties under the METRO Act – despite having received funds from the METRO Authority under the Act – and as shown by the City of Belleville's failure even

¹ The Mediator's authority derives from MCL 484.3106(2).

to file a response here – any settlement and final outcome should provide the ultimate relief sought by AT&T Michigan in this matter: immediate issuance of a permit by the City of Belleville in compliance with the Act and on the form submitted (on numerous occasions) by AT&T Michigan, with the right to automatically renew the permit for an additional 5 years once the initial 5-year term expires.

As stated in AT&T Michigan's May 10th filing, any other outcome will only precipitate a similar dispute with the City of Belleville if a limited term is attached to the permit without an automatic right of renewal in place. The lack of any filing by the City of Belleville proves what AT&T Michigan has represented to the Commission in this matter: the untenable position of having to submit repeated applications, making repeated contacts, and getting continual non-responses from the City of Belleville.²

Absent significant consequences for disregard of the METRO Act like the City of Belleville's, other municipalities may be encouraged to engage in similar foot dragging when it is necessary for AT&T Michigan to apply for a new or renewed permit. It is important to make an example here to deter similar behavior by other municipalities. An ultimate order of the Commission on the terms proposed here by AT&T Michigan will help eliminate the repetition of any such noncompliant behavior by the City of Belleville and other municipalities.

² The City of Belleville is not located in a rural area of Michigan or, in some other respect, unable to comply with its responsibilities under the METRO Act, the Commission's Rules of Practice and Procedure, the Mediator's letter of May 3rd, or otherwise. It is a community of some 40,000 residents in Wayne County, "perched strategically at the edge of one of North America's most important metropolitan areas" according to its own website. It has a mayor, city council, full-time staff, and various boards and commissions. It "operates on an administrative process very similar to most other Michigan cities with the council-manager form of government," which "is the most common form of municipal governance practiced in Michigan." See http://www.belleville.mi.us/html/about_html.htm

Moreover, as a final element of relief, AT&T Michigan would request that the Mediator issue a recommendation that the Commission issue an order awarding AT&T Michigan its attorney fees and actual costs of having to prosecute this matter. AT&T Michigan makes this request due to the City of Belleville's utter lack of response to this issue. This is not a situation where parties have reached a legitimate impasse over a disputed issue; rather, relief for fees and costs is based on the City of Belleville ignoring its responsibilities under the METRO Act. In light of the City of Belleville's continuing failure to comply with its METRO Act obligations, such an award would be more than justified. Under the terms of the METRO Act, however, such an award can only be made after notice and hearing and a finding that the municipality has violated that Act. MCL 484.3118(2). There is no need, however, to undertake such a process for the Commission may award AT&T Michigan equivalent relief. The Commission can direct that AT&T Michigan reduce its next 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. Given the City of Belleville's contumacy, such relief is just and appropriate.³

In summary, AT&T Michigan respectfully requests that the Mediator issue a recommendation as follows:

(a) that the Commission enter an order directing that the City of Belleville forthwith issue AT&T Michigan a permit under the METRO Act, on the form submitted by AT&T Michigan;

³ Section 8 of the METRO Act provides that "[e]xcept as otherwise provided by this act, a provider shall pay to the authority an annual maintenance fee as required by this act." MCL 484.3108(1). The "except as otherwise provided by this act" clause makes possible the relief sought here. The mediator recommendation under Sections 6 and 7 of the METRO Act is not limited by any express terms of the Act; hence, the mediator may recommend, and the Commission may adopt, such relief.

(b) that the Commission order direct that the permit issued by the City of Belleville 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

(c) 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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Dated: May 17, 2006

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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)
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_____)

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 May 17, 2006, she caused a copy of the ***Response of AT&T Michigan*** to be served upon the attached service list via the methods shown below.

 Mindy D. Smith

Signature Not Verified

Digitally signed by Mindy D. Smith
DN: cn=Mindy D. Smith,
o=Dickinson Wright PLLC, c=US
Date: 2006.05.17 15:08:30 -0400
Location: Dickinson Wright PLLC

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 17^h day of May, 2006.

 **Susan C. Bohnett**

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

Digitally signed by Susan C. Bohnett
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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

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