

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR 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	)	Case No. U-14843
Rights-of-Way Oversight Act.	)	
_____	)	

MEDIATOR’S RECOMMENDATION

I.

BACKGROUND AND HISTORY OF PROCEEDINGS

AT&T Michigan seeks a permit for the use of public rights-of-way within the City of Belleville for the company’s telecommunications infrastructure. Failing to obtain a permit from the City through negotiation, AT&T Michigan brought its dispute with the City to the Michigan Public Service Commission for resolution pursuant to the provisions of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, known as the METRO Act, 2002 PA 48, MCL 484.3101 *et seq.*

Among its many goals, the METRO Act was adopted to encourage new entrants to and new investment in the telecommunications industry, and to streamline the process of authorizing access to and use of public rights-of-way by municipalities, while ensuring reasonable control and management of those rights-of-way by the municipalities, and effective review and disposition of disputes under the Act. MCL

484.3101(2). The METRO Act supplanted former sections 251 through 254 of the Michigan Telecommunications Act, formerly MCL 484.2251-484.2554.

In an order resolving a complaint brought pursuant to these earlier provisions, the Commission directed its Staff to initiate a collaborative process to clarify standards regarding rights-of-way and develop a means of more effectively implementing the statutory requirements. See October 24, 2000 order, Case No. U-12354, pp. 7, 24. As a result of this collaborative process, the Commission approved voluntary model right-of-way permit forms that could be used by municipalities and telecommunications providers to minimize disputes. See August 16, 2001 minute action. In enacting the METRO Act, the legislature endorsed the forms approved by the Commission in this minute action, providing in section 6:

For applications and permits issued after the effective date of this act, the commission shall prescribe the form and application process to be used in applying to a municipality for a permit under section 15 and the provisions of a permit issued under section 15. The initial application forms and, unless otherwise agreed to by the parties, permit provisions shall be those approved by the commission as of August 16, 2001. MCL 484.3106(1).

Section 6 also contains the dispute resolution provisions invoked by AT&T Michigan in this proceeding:

If the parties cannot agree on the requirement of additional information requested by the municipality or the use of additional or different permit terms, either the municipality or the provider shall notify the Commission, which shall appoint a mediator within 7 days from the date of the notice to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. The commission may order that the permit be temporarily granted pending resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the commission for a review and determination of the resolution of the dispute. Except as provided in subsection (3), the determination by the commission under this subsection shall be issued within 60 days from

the date of the request to the commission. The interested parties to the dispute may agree to an extension for up to 30 days of the 60-day requirement under this subsection. MCL 484.3106(2).

AT&T Michigan filed its request for dispute resolution ("Notification of Dispute") on April 20, 2006. AT&T Michigan principally alleges that the City of Belleville has promised to issue a permit in accordance with the provisions of the METRO Act, and has failed to do so. On April 26, 2006, I was appointed mediator. A copy of this notice was sent to the parties. On May 2, 2006, I sent a letter to the parties confirming the appointment and setting dates for the filing of statements of position and responses. In accordance with the schedule, AT&T Michigan filed a statement of position on May 10, 2006 that set forth the position as in its petition. AT&T Michigan also filed additional comments on May 17, 2006.

The City did not file comments, or respond to AT&T Michigan's petition or statement of position. Instead, on May 23, 2006, I received a letter from the City indicating that the City had completed the permit and forwarded it to AT&T Michigan. The City's letter apologizes for the delayed response, notes that AT&T Michigan has been most cooperative, and further indicates that the City is a very small organization. On May 23, 2006, I contacted AT&T Michigan's counsel to determine whether it received the permit and if so, whether it wished to withdraw its request for mediation. AT&T Michigan's counsel could not confirm at that point whether it had received the permit. As of the date and time of issuance of this Mediator's Recommendation, I have not received a communication from AT&T Michigan indicating that it wishes to withdraw its request for mediation and am therefore proceeding to issue this Mediator's Recommendation in accordance with the statutory timetable.

II.

DISCUSSION AND RECOMMENDED RESOLUTION

AT&T Michigan principally alleges that the City of Belleville has ignored its obligations to issue a permit under sections 15(1) and 15(3) of the METRO Act:

Except as otherwise provided in this section, a municipality shall, upon application, grant to providers a permit for access to and the ongoing use of all public rights-of-way located within its municipal boundaries. A municipality shall act reasonably and promptly on all applications filed for a permit involving an easement or public place. MCL 484.3115(1).

A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way. A provider's right to access and use of a public right-of-way shall not be unreasonably denied by a municipality. A municipality may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the provider's access and use. MCL 484.3115(3).

AT&T Michigan asserts that it has complied with all the necessary prerequisites to obtain a permit. It filed a timely application under the Act in accordance with section 5(3) of the Act, on a form approved by the Commission, and has paid the necessary fees. See, e.g., AT&T Michigan's Notification of Dispute, paragraphs 18-19, and accompanying affidavit of Joan Richards, paragraph 4-6. AT&T Michigan asserts that the City has repeatedly promised to issue a permit and has failed to do so. AT&T Michigan asserts that its first application was submitted to the City on October 16, 2003. In addition to seeking a permit on the standard (unilateral) form approved by the Commission on August 16, 2001, AT&T Michigan asks that the City be required to automatically renew the permit terms for an additional five years, once the initial permit

term expires. In its May 17, 2006 response, AT&T Michigan also seeks attorneys' fees and costs for what it characterizes as the City's contumacy.

I recommend that the City issue a permit of the form approved by the Commission on August 16, 2001. According to AT&T Michigan's unrefuted claims, this permit has already been drafted and provided to the City. See Attachment JR-3 to AT&T Michigan's Notification of Dispute. While I understand AT&T Michigan's frustration that the matter lingered with the City for so long without satisfactory resolution, AT&T Michigan could have brought this to the Commission for resolution at an earlier time. For this reason, I do not see a compelling need for the term of the permit to be essentially extended to 10 years. The legislature expressed a preference for the form permit approved by the Commission, and AT&T Michigan has already provided the City with a copy of that form permit. Part 7 of that permit sets forth the permit term, which contains more complicated provisions than simply a five-year term, such that the permit may be terminated earlier than five years under certain contingencies. Rather than speculate or provide for every conceivable future contingency, instead I recommend that the Commission clarify that AT&T Michigan may seek to renew the permit significantly in advance of its expiration. If AT&T Michigan were to seek to renew the permit 180 days prior to its expiration¹, then the City would have 45 days to respond under section 15(3) quoted above. This should give AT&T Michigan sufficient notice to take any necessary steps to protect its interest and ensure compliance with the Act. As provided in the Act, the City faces substantial fines and penalties if it fails to comply with the provisions of section 15. See MCL 484.3118.

¹ I chose the 180-day time period for discussion because prior to that point, AT&T Michigan can, with or without cause, terminate the permit before the five-year expiration under paragraph 7.1.3, presumably making any renewal unnecessary.

AT&T Michigan also seeks costs and attorney fees. Again, I understand AT&T Michigan's frustration with what it perceives to be baseless delays by the City, but the METRO Act, section 18, provides a complaint process with notice and an opportunity for a hearing before the commission finds that a person violated the act. MCL 484.3118. AT&T Michigan's Notification of Dispute does not constitute such a complaint, and I find the requested recommendations as to costs and attorney fees to be outside the scope of my authority in this matter.

In conclusion, my recommendations in this matter are:

1) That the City of Belleville forthwith issue AT&T Michigan a permit under the METRO Act, on the form submitted by AT&T Michigan; and

2) That the City is advised that AT&T may seek to renew its permit prior to the permit's expiration and that such an application triggers the City's obligations under section 15 of the METRO Act to respond within 45 days.

Should either of the parties to this case be unwilling to comply with the recommendations set forth above, they may submit, on or before June 24, 2006, a request for Commission review and determination of this dispute.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

**Sharon L.
Feldman**

Sharon L. Feldman
Administrative Law Judge

Digitally signed by Sharon L.
Feldman
DN: CN = Sharon L. Feldman, C
= US
Date: 2006.05.25 14:49:33 -04'00'

May 26, 2006
Lansing, Michigan
dp

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN	)		
	)	SS.	Case No. U-14843
County of Ingham	)		
_____	)		

P R O O F O F S E R V I C E

Dawn M. Prawdzik deposes and says that on the 26th day of May 2006, she served a copy of the attached Mediator's Recommendation upon those persons shown on Attachment A, by enclosing same in a sealed envelope addressed as indicated above and delivering the envelope to the Commission's mail courier for (1) postage prepayment and deposit with the United States Postal Service, or (2) delivery through interdepartmental mail (I.D.M.).

Dawn M.
Prawdzik

Digitally signed by Dawn M. Prawdzik
DN: CN = Dawn M. Prawdzik, C = US
Date: 2006.05.25 14:49:54 - 04'00'

Subscribed to before me this 26th
day of May, A.D. 2006.

Gloria Pearl
Jones

Digitally signed by Gloria Pearl Jones
DN: CN = Gloria Pearl Jones, C = US,
O = DLEG/MPSC, OU = Executive
Secretary
Date: 2006.05.25 15:04:34 -04'00'

Notary Public, Eaton County Acting in
Ingham County, Michigan

My Commission expires 6-5-07.

ATTACHMENT A

Steve Walters
City Manager
6 Main Street
Belleville MI 48111

John M. Dempsey, Esq.
Dickinson Wright PLLC
301 E Liberty St # 500
Ann Arbor, MI 48104