

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the complaint of |) | |
| MICHIGAN PAY TELEPHONE ASSOCIATION |) | |
| et al. against AMERITECH MICHIGAN and |) | Case No. U-11756 |
| VERIZON NORTH INC. f/k/a GTE NORTH |) | |
| INCORPORATED. |) | |
| _____ |) | |

At the April 16, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Orjiakor N. Isiogu, Commissioner
Hon. Greg R. White, Commissioner

ORDER REOPENING CASE FOLLOWING REMAND

On August 10, 1998, the Michigan Pay Telephone Association (MPTA) filed a complaint regarding rates for the payphone services offered by AT&T Michigan, Inc. f/k/a SBC Michigan, Inc. f/k/a Ameritech Michigan, Inc. (AT&T) and Verizon North Inc. f/k/a GTE North Incorporated (Verizon). The MPTA's complaint sought a Commission determination that AT&T and Verizon had failed to comply with certain provisions of the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, the federal Telecommunications Act of 1996 (FTA), 47 USC 151 *et seq.*, and orders (Payphone Orders) issued by the Federal Communications Commission (FCC). Specifically, the complaint sought Commission determinations concerning whether: 1) prices for network services were consistent with the new services test (NST) adopted by the FCC; 2) the providers' payphone operations are required to pass an imputation test pursuant to Section 362 of

the MTA; and 3) the payphone services the providers provide to independent payphone providers (IPPs) are discriminatory.

On March 8, 1999, the Commission issued an order in which it found that the MPTA had failed to meet its burden to show that AT&T's and Verizon's payphone service rates did not comply with the NST. The Commission further stated that it was not persuaded that the NST required it to adopt the MPTA's approach, or that the results of that approach would be preferable to the rates then in place. The Commission specifically rejected the MPTA's assertion that the services sold to IPPs should be compared to the wholesale unbundled network elements sold to providers of basic local exchange service, which were priced in Case Nos. U-11280 and U-11281. The Commission found that IPPs should be charged as business customers, not as wholesale customers.

The Commission further rejected the MPTA's position that the end-user common line charge must be deducted from rates imposed on IPPs. However, the Commission did find that Section 362 of the MTA, MCL 484.2362, required AT&T and Verizon to each perform and file an imputation analysis and subsidy analysis regarding IPP services within 45 days of the date of the order.

The MPTA appealed the March 8, 1999 order to the Michigan Court of Appeals. On October 23, 2001, the Court of Appeals affirmed the Commission's determinations in an unpublished opinion in Docket No. 219950.

Thereafter, the MPTA applied for leave to appeal to the Michigan Supreme Court. While that appeal was pending, on March 4, 2002, the FCC entered an order finding that the Commission's March 8, 1999 order appeared to be inconsistent with the FCC's order in *In the matter of Wisconsin Public Service Commission*, CCB/CPD No. 00-01, Memorandum Opinion and Order, rel'd

January 31, 2002 (Wisconsin order). In April 2002, the MPTA and the Commission filed a joint motion before the Michigan Supreme Court to remand this matter to the Commission for further consideration in light of the Wisconsin order. On June 24, 2002, the Michigan Supreme Court vacated the Court of Appeals' decision and remanded this case to the Commission. *Michigan Pay Telephone Ass'n v Public Service Com'n*, 466 Mich 883; 646 NW2d 471 (2002).

Shortly after issuance the Wisconsin order, the FCC's Common Carrier Bureau released an order granting the MPTA's petition. The FCC concluded that the Commission's decision appeared to be inconsistent with the Wisconsin order and remanded the proceeding for re-evaluation of the pricing of intrastate payphone line rates and overhead ratios. On March 16, 2004, the Commission issued an order on remand that reaffirmed its earlier decision regarding the local usage component of AT&T's payphone rates.

On May 26, 2006, MPTA filed a second petition for declaratory relief with the FCC. MPTA argued that on remand the Commission failed to implement certain components of the FCC's orders related to AT&T's usage rates. MPTA argued that the Commission adopted a separate overhead allocation for usage without identifying what the overhead allocation was and did not employ a cost-based service mechanism. Thus, MPTA requested that the FCC find that the Commission failed to follow the requisite NST with respect to AT&T's local usage overhead allocation and service.

On February 27, 2013, the FCC issued an order addressing the May 26, 2006 petition, determining that the Commission erred by failing to explain how its usage rate is consistent with the NST and Payphone Orders. The FCC remanded the proceeding for the Commission to either provide an adequate explanation of how its usage rate is consistent with the NST or to require AT&T to justify a payphone usage rate consistent with the NST and Payphone Orders.

Based on the order from the FCC, the Commission shall reopen the proceedings in this case but will not allow any parties to supplement the record with additional evidence. The proceeding is limited to briefing regarding: 1) the proper payphone local usage rate in light of the FCC's Payphone Orders; and 2) the appropriate refund should the Commission determine that a lower local payphone usage rate applies. The following schedule shall apply to this proceeding:

- 1) AT&T shall file its initial brief by May 24, 2013.
- 2) MPTA shall file its initial brief by June 24, 2013.
- 3) The Staff shall file its initial brief by July 12, 2013.
- 4) AT&T's reply brief shall be filed by July 26, 2013.
- 5) MPTA's and the Staff's reply briefs shall be filed by August 9, 2013.

The Commission shall thereafter issue an order. In addition, the Commission finds that it shall be the burden of AT&T to justify a payphone usage rate that is consistent with the NST and Payphone Orders. The Commission further finds that it shall be the burden of MPTA to demonstrate the amount of the refund obligation.

Finally, during the course of the proceeding, the parties submitted various confidential documents and materials to the Commission. Due to the July 2011 flood that damaged much of the building housing the Commission offices, all of the confidential documents were destroyed. The Commission finds that the parties shall resubmit to the Commission all confidential materials previously provided to the Commission during the course of this proceeding.

THEREFORE, IT IS ORDERED that:

A. The record is reopened in this proceeding to allow AT&T Michigan, Inc., the Michigan Pay Telephone Association, and the Commission Staff to brief the issues on remand as set forth in this order.

B. The parties shall resubmit to the Commission all confidential materials previously provided during the course of this proceeding.

C. The parties shall comply with the briefing schedule set forth in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Orjiakor N. Isiogu, Commissioner

Greg R. White, Commissioner

By its action of April 16, 2013.

Mary Jo Kunkle, Executive Secretary

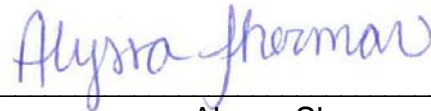
P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-11756

County of Ingham)

Alyssa Sherman being duly sworn, deposes and says that on April 16, 2013 A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.



Alyssa Sherman

Subscribed and sworn to before me
This 16th day of April 2013

Gloria Pearl Jones
Notary Public, Ingham County, MI
My Commission Expires June 5, 2016
Acting in Eaton County

Service List U-11756

Christine M. Soneral
Dykema Gossett PLLC
201 Townsend Street, Suite 900
Lansing MI 48933

AT&T Communications, Inc.
Candice Glover, Area Manager
External Affairs - Legislative & Regulatory
225 W. Randolph Street - 27C500
Chicago IL 60606

John M. Dempsey
Dickinson Wright, PLLC
301 E. Liberty Street, Suite 500
Ann Arbor MI 48104

Joseph E. Donovan
Constellation NewEnergy - Gas Division
100 Constellation Way, Suite 500
Baltimore MD 21202

Albert Ernst
Dykema Gossett PLLC
201 Townsend Street, Suite 900
Lansing MI 48933

GTE North Incorporated
The Corporation Company
30600 Telegraph Road
Bingham Farms MI 48025

Michael A. Holmes
Telecommunications Association of Michigan
600 W. Shiawassee Street
Lansing MI 48933

Steven D. Hughey
Michigan Dept. of Attorney General
Public Service Division
6520 Mercantile Way, Suite 1
Lansing MI 48911

Arthur J. Levasseur
Fischer Franklin & Ford
500 Griswold Sreet, Suite 3500
Detroit MI 48226

MCI Telecommunications Corporation a/k/a
Verizon Business Network Services Inc.
Paul Fuglie
501 S. Capitol Avenue
Suite 305
Lansing MI 48933

Service List U-11756

MCI Worldcom Communications, Inc.
Paul Fuglie
124 W. Allegan Street, Suite 1100
Lansing MI 48933

Harvey J. Messing
Miller Canfield Paddock & Stone PLC
1 E. Michigan Avenue, Suite 900
Lansing MI 48933

Verizon North Inc.
224 W. Exchange Street
Owosso MI 48867-2818

Michael G. Oliva
Loomis Ewert Parsley Davis & Gotting PC
124 W. Allegan Street, Suite 700
Lansing MI 48933

Leland R. Rosier
Clark Hill PLC
212 E. Grand River Avenue
Lansing MI 48906

Henry T. Kelly
O'keefe Ashenden Lyons & Ward
30 North LaSalle Street, Suite 4100
Chicago, IL 60602

Lisa M. Bruno-Herline
General Attorney
AT&T Michigan
444 Michigan Ave # 1750
Detroit, MI 48226