

# PUBLIC VERSION

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

AT&T Services, Inc. and AT&T Corp.

Complainants,

v.

Proceeding No. 19-222  
File No. EB-19-MD-007

123.Net (d/b/a Local Exchange Carriers of  
Michigan, Inc. and/or Prime Circuits)

Defendant.

**123.NET’S (d/b/a LEC-MI) AMENDED ANSWER TO  
THE FORMAL COMPLAINT OF AT&T SERVICES, INC. AND AT&T CORP.**

Pursuant to 47 C.F.R. § 1.724, Defendant 123.Net (d/b/a Local Exchange Carrier of Michigan, Inc. and/or Prime Circuits) (“LEC-MI” or “Defendant”) answers the Formal Complaint of AT&T Services, Inc. and AT&T Corp. (“AT&T” or “Complainant”), paragraph by paragraph, as follows:

**INTRODUCTION AND SUMMARY**

LEC-MI is a competitive local exchange carrier (“CLEC”) that has been successfully providing advanced, IP-based information and telecommunications services in Michigan for nearly 20 years. The company is headquartered in Southfield, Michigan, strategically located at the head-end of most primary tier-one transit carriers. For much of that time, LEC-MI had been participating with two other Michigan-based carriers—Westphalia Telephone Company (“Westphalia”) and Great Lakes Comnet (“GLC”)—to deliver long distance voice traffic to various long distance providers, including AT&T. That relationship carried on without apparent

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incident for many years. The details described below were, however, unknown to LEC-MI until after the relationship ended.

In about 2010, GLC began entering into arrangements with third-party carriers under which AT&T-bound toll-free traffic was routed to LEC-MI for switching and carriage on to GLC for further carriage on to AT&T. AT&T personnel were contemporaneously monitoring, reviewing, and corresponding with Westphalia personnel about the traffic and Westphalia's invoices. During that time, the volume of AT&T-bound traffic that LEC-MI received as part of GLC's new relationships multiplied many times in a short period of time. Despite having various personnel reviewing Westphalia's invoices during the time this traffic was rapidly increasing, AT&T did not voice any complaints to LEC-MI about certain end office charges Westphalia was assessing.

AT&T's 2014 informal complaint first alerted LEC-MI that GLC and Westphalia had been engaged in a unilateral billing scheme in which they billed and, in some cases, collected from AT&T various sums for services GLC or Westphalia claimed they performed, even though LEC-MI provided them, and evidently billed AT&T for end-office switching services (pocketing any sums AT&T may have paid). LEC-MI promptly terminated its relationship with GLC and Westphalia upon its discovery of their billing scheme.

Separately, AT&T, GLC, and Westphalia engaged in litigation in various federal and state forums, including over the LEC-MI-related charges that Westphalia billed to AT&T. Those various cases were resolved via a Court-approved settlement agreement in which AT&T granted a general release to Westphalia and GLC. AT&T attempted to draft that release so as to carve out its claims here; but that effort was futile. Under clear Michigan law, AT&T's release extends

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to LEC-MI—the putative principal under AT&T’s apparent-agency claims here—such that AT&T’s claims here are barred by the doctrines of release and res judicata.

Moreover, as explained in greater detail in LEC-MI’s accompanying Legal Analysis, AT&T’s claims are time-barred (in part), and defective as a matter of law because LEC-MI is not responsible for the unilaterally directed billing scheme undertaken by Westphalia and GLC that actually harmed LEC-MI. Finally, even if none of those dispositive defenses existed, the Commission cannot grant AT&T the damages it seeks with the required degree of certainty. The FCC’s pending rulemaking concerning the intercarrier-compensation obligations AT&T owed for the VoIP-originated traffic that AT&T admits LEC-MI switched and transported precludes an award to AT&T in the amount sought. AT&T has undertaken no effort to separate the traffic between the wireless-originated traffic for which end office charges should not have been assessed, and VoIP-originated traffic, for which end office charges were appropriately billed, and therefore cannot prove its damages with any reasonable certainty.

## **RESPONSES TO NUMBERED PARAGRAPHS OF AT&T’S COMPLAINT**

1. Paragraph 1 is AT&T’s characterization of its Formal Complaint and authority upon which it is brought, to which no answer is required. To the extent a response is required, LEC-MI denies the allegations of Paragraph 1 and denies that LEC-MI is liable to AT&T for the matters alleged in the Complaint.

2. LEC-MI admits that AT&T and certain other long distance carriers filed informal complaints against LEC-MI and two other local exchange carriers (“LECs”) alleging improper billing practices. The remainder of the allegations contained in Paragraph 2 are legal conclusions to which no answer is required. Further, LEC-MI denies that it at any point billed AT&T for the referenced access services, and admits only that Westphalia billed those charges

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for its own benefit, without LEC-MI's knowledge or consent. To the extent Paragraph 2 contains or refers to any factual allegations set forth in more detail later in its Formal Complaint, LEC-MI responds to those allegations to the extent and in the same way that LEC-MI responds to those allegations where they later appear. To the extent this paragraph contains any other factual allegations, they are denied.

3. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges on certain unidentified wireless-originated toll-free calls that Westphalia ascribed to LEC-MI's operating company number ("OCN") in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T with GLC and Westphalia. LEC-MI's cited response to AT&T's informal complaint speaks for itself, but LEC-MI denies as untrue AT&T's mischaracterization that, in agreeing that Westphalia "assessed" and "erroneously billed" those charges, LEC-MI somehow admitted that *it* (LEC-MI) assessed or billed those charges, which it did not. To the extent this paragraph contains any other factual allegations, they are denied.

4. LEC-MI admits only that it has not directly issued any credits or refunds to AT&T, and that the parties engaged in settlement efforts, including Staff-supervised mediation.<sup>1</sup> LEC-MI is without sufficient knowledge or information to form a belief as to whether "any other

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<sup>1</sup> After AT&T brought to LEC-MI's attention that it had been billed and paid Westphalia and GLC for end office charges that they had unilaterally ascribed to LEC-MI's OCN, LEC-MI promptly disavowed Westphalia's and GLC's authority to issue any such charges on AT&T's wireless-originated toll-free traffic and urged Westphalia and GLC to credit AT&T's account and make whatever refunds may have been appropriate. GLC and Westphalia, continuing to act in their own interests and to the detriment of LEC-MI, ignored that request. As covered in greater detail in the Legal Analysis attached to this Answer, and as AT&T acknowledged in the Formal Complaint proceeding with GLC and Westphalia, GLC and Westphalia's unilateral mis-billing included various actions to the detriment of LEC-MI, including, inter alia, billing and retaining revenue for LEC-MI's transport services and billing and reportedly retaining revenue on end office charges that WTC unilaterally chose to bill in connection with LEC-MI's OCN.

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entity” has issued any credits or refunds to AT&T, but notes that AT&T obtained significant consideration from GLC and Westphalia as part of a settlement and disputes AT&T’s attempt to allocate all of that consideration to other charges and none of it to the charges at issue here. LEC-MI admits that the Complaint describes wrongdoing by Westphalia but denies that the Complaint leaves no serious questions as to LEC-MI’s liability. Additionally, the portion of the Joint Declaration cited speaks for itself, and LEC-MI denies that the same is a complete or accurate representation of the statements contained therein. LEC-MI also denies AT&T’s allegations that the referenced settlement did not resolve the dispute with regards to the charges at issue in this claim, consistent with LEC-MI’s Answer and Legal Analysis. The remaining allegations contained in Paragraph 4 are legal conclusions to which no answer is required. To the extent Paragraph 4 contains or refers to any factual allegations set forth in more detail later in its Formal Complaint, LEC-MI responds to those allegations to the extent and in the same way that LEC-MI responds to those allegations where they later appear. To the extent this paragraph contains any other factual allegations, they are denied.

5. LEC-MI denies that it has engaged in any improper billing of AT&T, or that it has ever conceded the same. LEC-MI admits only that, without LEC-MI’s knowledge or consent, Westphalia and GLC, which also provided services to AT&T on the calls at issue, billed AT&T certain tariffed charges that Westphalia unilaterally ascribed to LEC-MI’s OCN. The remaining allegations contained in Paragraph 5 are legal conclusions to which no answer is required. To the extent Paragraph 5 contains or refers to any factual allegations set forth in more detail later in its Formal Complaint, LEC-MI responds to those allegations to the extent and in the same way that LEC-MI responds to those allegations where they later appear. To the extent this paragraph contains any other factual allegations, they are denied.

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6. Paragraph 6 is an outline of AT&T's Complaint, to which no answer is required. To the extent a response is required, LEC-MI denies the allegations of Paragraph 6 consistent with its Answer and Legal Analysis.

7. In response to Paragraph 7, LEC-MI admits that it is a common carrier for the access services at issue, that it currently has a stand-alone tariff on file with respect to its interstate access services, and that the Commission, in certain circumstances, has jurisdiction over complaints alleging a violation by a common carrier of a provision of the Federal Communications Act ("Act" or "Communications Act") or Commission rules that authoritatively implement the Act. The references to and excerpts of the GLC tariff cited in Paragraph 7 speak for themselves, and no response is required. As explained more fully in LEC-MI's Legal Analysis, AT&T's Complaint is defective as a matter of law and the Commission should dismiss it with prejudice. LEC-MI denies that the Complaint alleges facts that constitute a violation of the Act by LEC-MI. To the extent this paragraph contains any other factual allegations, they are denied.

8. The allegations contained in Paragraph 8 are legal conclusions to which no answer is required. To the extent Paragraph 8 contains or refers to any factual allegations set forth in more detail later in its Formal Complaint, LEC-MI responds to those allegations to the extent and in the same way that LEC-MI responds to those allegations where they later appear. To the extent this paragraph contains any other factual allegations, they are denied. LEC-MI denies that AT&T is entitled to any relief, including damages, from LEC-MI.

9. Paragraph 9 contains AT&T's characterization of its Formal Complaint and a summary of its legal contentions, to which no response is required. The documents filed with AT&T's Formal Complaint speak for themselves, and LEC-MI refers the Commission to those

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documents for their contents. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

10. Paragraph 10 contains AT&T's certification under 47 CFR § 1.721(a)(8), which speaks for itself and for which no answer is required. LEC-MI admits only that the parties engaged in settlement efforts, including Staff-supervised mediation. To the extent this paragraph contains any other factual allegations that require an answer, they are denied.

11. Admitted.

12. LEC-MI's response to AT&T's Informal Complaint and the declarations cited in Paragraph 12 speak for themselves. As noted above in response to Paragraph Nos. 3 and 5, LEC-MI denies that it improperly charged AT&T in any way, and admits only that Westphalia improperly and unilaterally billed AT&T for certain tariffed charges it ascribed to LEC-MI without LEC-MI's knowledge or consent. LEC-MI admits that it has not issued any credits or refunds to AT&T in connection with AT&T's transactions with Westphalia and/or GLC. The remaining allegations contained in Paragraph 12 are legal conclusions to which no answer is required. LEC-MI responds to AT&T's contentions in greater detail in the Legal Analysis filed with this Answer. To the extent this paragraph contains any other factual allegations, they are denied.

13. Paragraph 13 contains an explanation of the extension of the deadline for AT&T to file its Formal Complaint to which no response is required. The consent motions and letter order referenced therein speak for themselves. To the extent this paragraph contains any factual allegations that require an answer, they are denied. AT&T's claims are time-barred for the reasons given in this Answer and the accompanying Legal Analysis.

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14. Paragraph 14 contains AT&T's certification under 47 CFR § 1.718, which speaks for itself and for which no answer is required. To the extent this paragraph contains any other factual allegations that require an answer, they are denied.

15. Paragraph 15 contains AT&T's certification under 47 CFR § 1.721(a)(9), which speaks for itself and for which no answer is required, except LEC-MI admits that AT&T's Formal Complaint is based on a number of the same facts as AT&T's Informal Complaint and the *Great Lakes Comnet Order*<sup>2</sup> ("GLC Order"), as is AT&T's general release to Westphalia and GLC that forecloses AT&T's claims in this action, as explained more fully in the Legal Analysis accompanying this Answer. To the extent this paragraph contains any other factual allegations that require an answer, they are denied.

16. LEC-MI is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 16. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

17. Paragraph 17 contains AT&T's certification under 47 CFR § 1.721(a)(3), which speaks for itself and for which no answer is required. LEC-MI is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 17, except that LEC-MI admits that AT&T is an exchange carrier ("IXC") that in some instances provides end users the ability to make and/or receive long distance and/or toll free ("8YY") calls, and that counsel's information appears on the Complaint.

18. Admitted as to the location of LEC-MI's principal place of business and that LEC-MI operates as a local exchange carrier ("LEC") and competitive local exchange carrier

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<sup>2</sup> See *AT&T Services, Inc. et al. v. Great Lakes Comnet, Inc. et al.*, 30 FCC Rcd. 2586, ¶¶ 1-42 (2015).



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(“CLEC”) under the Act and the Commission’s Rules. The portion of the Act cited speaks for itself. To the extent Paragraph 18 contains or refers to any factual allegations set forth in more detail later in its Formal Complaint, LEC-MI responds to those allegations to the extent and in the same way that LEC-MI responds to those allegations where they later appear.

19. LEC-MI admits only that Great Lakes Comnet, Inc. (“GLC”) and Westphalia operated as a CLEC and incumbent local exchange carrier (“ILEC”), respectively, and that they also provided AT&T with access services in connection with the AT&T toll-free calls at issue in this proceeding. LEC-MI admits that Westphalia performed certain billing functions in connection with its access services, but denies that Westphalia was LEC-MI’s billing agent for the charges at issue in this proceeding and denies it is liable for Westphalia’s or GLC’s actions. The GLC Order and Joint Declaration cited speak for themselves. To the extent Paragraph 19 contains or refers to any factual allegations set forth in more detail later in its Formal Complaint, LEC-MI responds to those allegations to the extent and in the same way that LEC-MI responds to those allegations where they later appear.

20. Paragraph 20 contains a summary of the topics addressed in the factual and regulatory background section of the AT&T’s Formal Complaint, to which no response is required. To the extent this paragraph contains any factual allegations to which an answer is required, they are denied.

21. The allegations in this paragraph are legal conclusions to which no response is required, but to the extent a response is deemed required, the cited law speaks for itself. Further answering, LEC-MI denies that the cited excerpts are a complete recitation of applicable law.

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22. The allegations in this paragraph are legal conclusions to which no response is required, but to the extent a response is deemed required, the cited law speaks for itself. Further answering, LEC-MI denies that the cited excerpts are a complete recitation of applicable law.

23. LEC-MI denies that the cited authority addresses “this scenario directly”; for the reasons given in this Answer and Legal Analysis, LEC-MI is not liable to AT&T irrespective of the Commissions’ *Eighth Report & Order* and associated rule. The remaining allegations in this paragraph are legal conclusions to which no response is required, but to the extent a response is deemed required, the cited law speaks for itself. Further answering, LEC-MI denies that the cited excerpts are a complete recitation of applicable law.

24. The allegations in this paragraph are legal conclusions to which no response is required, but to the extent a response is deemed required, the cited law speaks for itself. LEC-MI further states that AT&T mischaracterizes the Commission’s rules relating to the panoply of circumstances under which a CLEC may bill and collect tariffed access charges from long distance carriers, including the unsubstantiated claims that CLECs can only collect access charges for calls routed to or from their own end users that pay a fee (which ignores, inter alia, the right of tandem and transport providers to tariffed access charges). Further answering, LEC-MI denies that the cited excerpts are a complete recitation of applicable law.

25. LEC-MI admits only that the 8YY traffic at issue in this Formal Complaint is the same as that at issue in the GLC Order, but denies that the GLC Joint Statement is a complete or accurate statement of facts vis-à-vis LEC-MI. Further answering, the cited documents speak for themselves.

26. Because LEC-MI provided tandem and transport services on the Trunk Group 331 traffic at issue in this proceeding, LEC-MI does not have direct knowledge of the source of each

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call for which it provided those services, but LEC-MI admits that at least some, if not all, of that traffic was originated by customers of wireless and VoIP providers.

27. Subject to LEC-MI's response in Paragraph 26, admitted.

28. Subject to LEC-MI's response in Paragraph 26, admitted.

29. LEC-MI denies that it billed AT&T and admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. The declarations referenced herein speak for themselves. To the extent this paragraph contains any further factual allegations that require an answer, they are denied.

30. Admitted.

31. LEC-MI admits only that it, GLC, and Westphalia all provided certain respective switched access services to AT&T in connection with the traffic at issue, and that thereafter Westphalia unilaterally billed AT&T for, inter alia, certain transport services that LEC-MI provided that Westphalia claims it or its affiliate GLC performed, as well as certain switching services that Westphalia characterized as end office rather than tandem switching charges, which Westphalia unilaterally ascribed to LEC-MI's OCN. To the extent this paragraph contains any further factual allegations that require an answer, they are denied.

32. Admitted.

33. Admitted.

34. LEC-MI admits only that Westphalia billed the end office charges at issue to AT&T, which Westphalia unilaterally ascribed to LEC-MI's OCN, but denies the legal conclusion that Westphalia acted as LEC-MI's billing agent for the end office charges at issue in

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this proceeding. Further answering, LEC-MI is without sufficient knowledge or information to form a belief as to the truth of any allegations in Paragraph 34 regarding AT&T's bills from Westphalia, and denies any contention that AT&T received any charges directly billed by LEC-MI.

35. LEC-MI admits only that in early 2010 the volume of toll-free traffic that LEC-MI, GLC, and Westphalia carried to AT&T began to increase and that, starting in about February 2012, increased substantially over the course of a few months, including the roughly 25x increase referred to by AT&T associated with the toll-free traffic at issue in this proceeding. Consistent with its foregoing responses, LEC-MI denies any and all allegations in Paragraph 35 that it billed AT&T for these charges. To the extent further response is required, the GLC Order speaks for itself.

36. LEC-MI incorporates the admissions made in response to the preceding paragraph, but denies that it billed AT&T for such charges. Further responding, LEC-MI did not receive or have access to the referenced billing records but, upon information and belief and based on AT&T's own allegations, denies that the nature of such traffic was disguised from AT&T. Rather, AT&T at all times possessed—through its own records, including its CDRs, and the access bills it received with Westphalia, which included the rising volume of database query charges—the information necessary to contemporaneously determine the nature of the traffic and charges at issue and knew or should have known that this increase in traffic was due to 8YY aggregated traffic no later than May of 2010. *See also* Declaration of Michael Starkey, ¶¶ 8, 28-29, 40-50 (“Starkey Decl.”) (LEC-MI\_00096, LEC-MI\_00108 to LEC-MI\_00109, LEC-MI\_00115 to LEC-MI\_00122). As the recipient of the calls at issue, AT&T was at all times capable of identifying the calling party numbers and discovering that the overwhelming majority

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of calling party numbers on this growing body of traffic were from NPA-NXXs and exchanges dispersed all over the country, and well outside of LEC-MI's extremely limited geographic and numbering-authority footprint. To the extent this paragraph contains any other factual allegations, they are denied.

37. Paragraph 37 contains legal conclusions to which no response is required, but to the extent a response is required, the cited portion of the GLC Order speaks for itself. Moreover, LEC-MI denies that any joint stipulations entered into between AT&T, GLC and Westphalia that are adverse to LEC-MI, a non-party to that proceeding, and adopted by the Commission, are not binding on LEC-MI as an improper use of offensive, non-mutual collateral estoppel. LEC-MI further denies that the nature of the traffic was "disguised," and reiterates its position concerning AT&T's (actual or constructive) knowledge from the preceding paragraph as if fully set forth here. Further answering, LEC-MI denies that the cited portion of the GLC Order is a complete statement of the Commission's holding, and denies that AT&T has fairly characterized that reference, which relates to which LEC provided transport services on AT&T's traffic, and is irrelevant to AT&T's ability to assess the validity of the end office charges it was receiving from Westphalia. To the extent this paragraph contains any other factual allegations, they are denied.

38. As detailed above, LEC-MI denies that the referenced charges were "of LEC-MI." LEC-MI admits only that AT&T sent the March 20, 2013 letter referred to in this paragraph. LEC-MI incorporates here its responses to the preceding two paragraphs concerning what AT&T knew, or should have known, about the traffic at issue, including, without limitation, its denial that the "nature of the traffic" was "disguis[ed]." To the extent this paragraph contains any other factual allegations, they are denied.

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39. The allegations contained in Paragraph 39 are legal conclusions to which no answer is required. LEC-MI incorporates here its response to the preceding three paragraphs, and again denies that the nature of the traffic was “disguised,” denies that AT&T “paid LEC-MI,” and denies that AT&T needed anything but its own records and Westphalia’s billings to “disclose[] the 8YY aggregation traffic.” LEC-MI further denies that it was in a position to “disclose” anything to AT&T because, unlike AT&T, LEC-MI did not receive or have access to the referenced billing records or to AT&T’s own records. LEC-MI responds to AT&T’s legal contentions in the Legal Analysis filed along with this answer. To the extent this paragraph contains any other factual allegations, they are denied.

40. The allegations contained in Paragraph 40 are legal conclusions to which no answer is required. LEC-MI incorporates here its responses to the preceding four paragraphs. Further, LEC-MI denies that it billed AT&T, erroneously or otherwise, and admits only that Westphalia billed AT&T erroneously and without authorization from LEC-MI. The cited paragraphs of the Joint Declaration speak for themselves. To the extent that this paragraph contains any other factual allegations, they are denied.

41. LEC-MI denies that it billed AT&T, erroneously or otherwise, and denies that AT&T paid LEC-MI those charges. To the extent this paragraph contains any other factual allegations, they are denied.

42. LEC-MI admits the statements contained in Paragraph 42 regarding the dates AT&T filed its Informal Complaint and LEC-MI filed its response to the same. The cited portions of the Informal Complaint and LEC-MI’s response thereto speak for themselves. Further, LEC-MI denies that it was, or that it admitted it was, in any way responsible for erroneous end office billing charges to AT&T and denies that it admitted that the charges vel non

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were erroneously billed (as AT&T admits, the disputed charges are a mixture of wireless-originated traffic, for which Westphalia should not have billed end office switching charges, and VoIP-originated calls, for which the end office charges were not improper). LEC-MI admits only that, as it previously acknowledged, without LEC-MI's knowledge or consent, Westphalia erroneously billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent this paragraph contains any other factual allegations, they are denied.

43. The allegations in Paragraph 43 do not relate to LEC-MI, and therefore no response is required. To the extent a response is required, the cited proceedings and GLC Order speak for themselves.

44. Paragraph 44 contains an explanation of AT&T's effort to extend its deadline to file its Formal Complaint, to which no response is required. The motions referenced therein speak for themselves. LEC-MI admits only that it did not contest that Westphalia billing was improper, but denies that it did not contest any so-called liability issue as to LEC-MI itself. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

45. The allegations contained in Paragraph 45 are legal conclusions to which no answer is required. The portions of the Act cited in Paragraph 45 speak for themselves. Further answering, LEC-MI denies that the cited sections of the Communications Act are a complete recitation of applicable law.

46. The allegations contained in Paragraph 46 are legal conclusions to which no answer is required. LEC-MI responds to AT&T's legal contentions in the Legal Analysis filed with this Answer. Further, LEC-MI denies that it billed AT&T for the referenced charges and denies that it is liable for any of Westphalia's erroneous end office billing charges to AT&T.

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LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

47. The excerpt of the Commission's *Eighth Report & Order* speaks for itself, and LEC-MI denies that the cited excerpts are a complete or accurate recitation of the Order or applicable law. Additionally, the allegations contained in Paragraph 47 are legal conclusions to which no answer is required. Further, LEC-MI denies that it imposed, billed, or is liable for any of Westphalia's erroneous end office billing charges to AT&T. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

48. The excerpt of the *Northern Valley Order* speaks for itself, and LEC-MI denies that the cited excerpts are a complete recitation of the order. The allegations contained in Paragraph 48 are legal conclusions to which no answer is required. Further, LEC-MI denies that it billed or is liable for any of Westphalia's erroneous end office billing charges to AT&T. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

49. The allegations contained in Paragraph 49 are legal conclusions to which no answer is required. Further, LEC-MI denies that it billed or is liable for any of Westphalia's



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erroneous end office billing charges to AT&T. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

50. The portion of the GLC tariff cited in Paragraph 50 speaks for itself, and no response is required. Further, LEC-MI denies that it billed or is liable for any of Westphalia's erroneous end office billing charges to AT&T. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent this paragraph contains any factual allegations that require an answer, they are denied. AT&T is estopped from arguing that the GLC tariff does not adequately describe LEC-MI's end office switched access services; for over a decade AT&T had been paying, without dispute, for the end office switching charges that AT&T acknowledges LEC-MI provides as an input to AT&T's long distance services. The remaining allegations contained in Paragraph 50 purporting to interpret the tariff are legal conclusions to which no response is required.

51. The excerpts of GLC's tariff cited in Paragraph 51 speak for themselves, and no response is required. AT&T is estopped from arguing that the GLC tariff does not adequately describe LEC-MI's end office switched access services; for over a decade AT&T had been paying, without dispute, for the end office switching charges that AT&T acknowledges LEC-MI provides as an input to AT&T's long distance services. The remaining allegations contained in

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Paragraph 51 purporting to interpret the tariff are legal conclusions to which no response is required.

52. The excerpts of GLC's tariff cited in Paragraph 52 speak for themselves, and no response is required. LEC-MI further states that the tariff adequately identifies the service provided using the "local switching" moniker commonly found in ILEC tariffs and 47 C.F.R. § 61.26(a)(3), which is why AT&T does not dispute, and has never disputed, LEC-MI's end office charges for calls originated by and terminated to LEC-MI's end users. AT&T is estopped from arguing that the GLC tariff does not adequately describe LEC-MI's end office switched access services; for over a decade AT&T had been paying, without dispute, for the end office switching charges that AT&T acknowledges LEC-MI provides as an input to AT&T's long distance services. The remaining allegations contained in Paragraph 52 purporting to interpret the tariff are legal conclusions to which no response is required.

53. Paragraph 53 contains only a preface to AT&T's request for damages to which no response is required. LEC-MI denies that AT&T's analysis of damages is conservative, credible, or reasonably certain. To the extent that Paragraph 53 incorporates any portion of the referenced Joint Declaration, the declaration speaks for itself and no response is required. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

54. LEC-MI denies that it engaged in 8YY aggregation activities, and admits only that, upon information and belief, GLC and Westphalia engaged in the alleged 8YY aggregation. LEC-MI is without sufficient knowledge or information to form a belief as to the basis or accuracy of AT&T's analysis of the traffic volumes at issue. LEC-MI has provided AT&T certain data relating to the traffic at issue. The declaration cited speaks for itself, and requires no response. Further, the remaining allegations contained in Paragraph 54 are legal conclusions to

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which no response is required. LEC-MI responds to AT&T's legal contentions regarding the sufficiency of its measurement of alleged damages in the Legal Analysis filed along with this answer. To the extent this paragraph contains any factual allegations that require an answer, they are denied.

55. LEC-MI is without sufficient knowledge or information to form a belief as to the basis or accuracy of AT&T's analysis of the traffic volumes at issue. The declaration cited speaks for itself, and requires no response. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. Further, LEC-MI denies that it had an "8YY aggregation scheme," and denies that the traffic at issue "began in earnest" in February 2012. *See* Starkey Decl. at ¶¶ 8, 28-29, 49 (LEC-MI\_00096, LEC-MI\_00108 to LEC-MI\_00109, LEC-MI\_00121). The remaining allegations contained in Paragraph 55 are legal conclusions to which no response is required.

56. The allegations contained in Paragraph 56 are legal conclusions to which no response is required. Consistent with its foregoing responses, LEC-MI denies that it overcharged AT&T for any services. LEC-MI also denies the false claim in footnote 35 that "LEC-MI representatives ... had also calculated the amount by which AT&T was overcharged for interstate, originating end office charges." As part of confidential settlement discussions, which should be maintained as such, LEC-MI provided volume data for two separate trunk groups, to which AT&T ascribed the "overcharged" label. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly

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provided access services to AT&T, for which LEC-MI's analysis shows that AT&T was *underbilled* for the switched access services LEC-MI did in fact provide to AT&T. LEC-MI denies that AT&T is entitled to any recovery from LEC-MI.

57. The allegations contained in Paragraph 57 are legal conclusions to which no response is required. The portion of the tariff cited in Paragraph 57 speaks for itself, and for which no response is required. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. LEC-MI denies that AT&T is entitled to any recovery from LEC-MI, including for any calculation of interest for any period of time related to this dispute.

58. Paragraph 58 contains AT&T's explanation of extensions of deadlines to convert its Informal Complaint to a Formal Complaint. The remaining allegations contained in Paragraph 58 are legal conclusions to which no response is required.

59. The allegations in this paragraph are legal conclusions to which no response is required, but to the extent a response is deemed required, the cited section of the Act speaks for itself. Further answering, LEC-MI denies that the cited excerpts are a complete recitation of applicable law. Additionally, the GLC Order speaks for itself, and LEC-MI denies that this is an accurate representation of the order regarding LEC-MI's role in the overcharges AT&T received for 8YY aggregation traffic. LEC-MI denies that it billed or was in any way responsible for any end office charges Westphalia erroneously assessed to AT&T. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. LEC-MI also denies AT&T's

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allegations regarding when it discovered or should have discovered any overcharges (for which Westphalia, not LEC-MI, was responsible) with reasonable diligence. *See* Starkey Decl. at ¶¶ 8, 28-29, 49 (LEC-MI\_00096, LEC-MI\_00108 to LEC-MI\_00109, LEC-MI\_00121). LEC-MI further denies AT&T's allegations in Paragraph 59 that any billing for the traffic was disguised or that AT&T could not have, with reasonable diligence, understood the nature of the traffic and charges billed. *Id.* To the extent this paragraph contains any further factual allegations that require an answer, they are denied.

### **COUNT I** **(Section 201, 47 U.S.C. § 201(b))**

60. LEC-MI incorporates here its responses to the allegations contained in Paragraphs 1-59.

61. The portion of the Act cited in Paragraph 61 speaks for itself, and no response to which is required. Further answering, LEC-MI denies that the cited excerpt is a complete recitation of applicable law.

62. The portion of the Act cited in Paragraph 62 speaks for itself, and no response to which is required. Further answering, LEC-MI denies that the cited excerpt is a complete recitation of applicable law.

63. The allegations contained Paragraph 63 are legal conclusions to which no answer is required. LEC-MI denies that it assessed, imposed, or is liable for any erroneous end office charges Westphalia assessed to AT&T, and denies that it violated the Commission's rules. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. LEC-MI

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responds to AT&T's legal contentions in the Legal Analysis filed along with this Answer. To the extent there are any further factual allegations in this paragraph, they are denied.

64. The allegations contained Paragraph 64 are legal conclusions to which no answer is required. LEC-MI denies that it issued or is liable for any erroneous end office charges Westphalia assessed to AT&T, and denies that it violated the Act. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent there are any factual allegations in this paragraph that require a response, they are denied.

65. The allegations contained Paragraph 65 are legal conclusions to which no answer is required. To the extent there are any factual allegations in this paragraph that require a response, they are denied. LEC-MI specifically denies that it violated the Act and denies that AT&T is entitled to any recovery from LEC-MI.

### **COUNT II** **(Section 203, 47 U.S.C. § 203(c))**

66. LEC-MI responds to the allegations contained in Paragraph 66 to the extent and in the same way that LEC-MI responded to the allegations contained in Paragraphs 1-59.

67. The portion of the Act cited in Paragraph 67 speaks for itself, and no response to which is required. Further answering, LEC-MI denies that the cited excerpt is a complete recitation of applicable law.

68. The allegations contained Paragraph 68 are legal conclusions to which no answer is required. To the extent there are any factual allegations in this paragraph that require a response, they are denied. LEC-MI specifically denies that it violated the Act.

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69. LEC-MI admits only that portions referenced in Paragraph 69 by AT&T appear in the GLC tariff, which speaks for itself, and that end users of any wireless carriers with which GLC contracted are not LEC-MI's end users. Further responding, LEC-MI does not have sufficient knowledge or information as to the truth of the remaining allegations of Paragraph 69, and these allegations are legal conclusions to which no response is required.

70. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in the GLC tariff, which speaks for itself. Further responding, LEC-MI does not have sufficient knowledge or information as to the truth of the remaining allegations of Paragraph 70, and these allegations are legal conclusions to which no response is required. To the extent any response is required, LEC-MI again admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T.

71. The allegations contained Paragraph 71 are legal conclusions to which no answer is required. To the extent any response is required, LEC-MI denies the allegations in this paragraph for the same reasons given in response to Paragraph 52.

72. The allegations contained Paragraph 72 are legal conclusions to which no answer is required. LEC-MI denies that it billed or was in any way responsible for any end office charges Westphalia erroneously assessed to AT&T. LEC-MI admits only that, without LEC-MI's knowledge or consent, Westphalia billed AT&T certain tariffed charges that Westphalia ascribed to LEC-MI's OCN in connection with the access services that LEC-MI provided in the jointly provided access services to AT&T. To the extent there are any further factual allegations in this paragraph that require a response, they are denied.

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73. The allegations contained Paragraph 73 are legal conclusions to which no answer is required. To the extent any response is required, LEC-MI denies that it violated the Act, that it billed the referenced charges to AT&T or that it owes a refund in any amount to AT&T due to GLC or Westphalia's erroneous and unauthorized billing.

### **PRAYER FOR RELIEF**

74. LEC-MI denies the allegations contained in Paragraph 74. As fully explained in the Legal Analysis, AT&T is not entitled to any of the relief requested in this paragraph.

### **AT&T LEGAL ANALYSIS**

75. LEC-MI admits only that this dispute is confined to the end office charges that Westphalia (and GLC) ascribed to LEC-MI's OCN and billed AT&T and that, despite being on notice that those charges were not associated with LEC-MI's end users, AT&T erroneously paid a portion of those charges to Westphalia and then released all claims relating thereto vis-à-vis LEC-MI. LEC-MI admits that the Complaint describes undisputed wrongdoing by Westphalia but denies that it is undisputed that AT&T is entitled to compensation. AT&T did receive compensation via settlement with GLC and Westphalia, and is not entitled to any recovery from LEC-MI. The remaining allegations contained in Paragraph 75 are legal conclusions, for which no response is required. To the extent there are any further factual allegations in this paragraph that require a response, they are denied.

76. LEC-MI admits only that it has acknowledged that Westphalia should not have billed end office-related charges on AT&T's long-distance traffic that did not originate with LEC-MI's end users, consistent with Commission precedent. LEC-MI denies that it has or had



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any liability to AT&T and denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

77. LEC-MI admits only that it has acknowledged that Westphalia should not have billed end office-related charges on AT&T's long-distance traffic that did not originate with LEC-MI's end users, consistent with Commission precedent. LEC-MI denies that it has or had any liability to AT&T and denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

78. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in Section 201(b) of the Communications Act, which speaks for itself. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

79. LEC-MI denies that it violated the Act or billed the end office charges for the reasons given above, and denies the legal conclusion stated in this paragraph for the reasons given above and in its accompanying Legal Analysis. LEC-MI denies AT&T's mistaken proposition that the "Commission's rules forbid CLECs from assessing end office charges on calls originated or terminated by other carriers." LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

80. LEC-MI denies the legal conclusion stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

81. LEC-MI acknowledges the FCC's *Eighth Report & Order* and associated rule in 47 C.F.R. § 61.26, but denies the remaining legal conclusions or relevance of the authority stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

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82. LEC-MI acknowledges the FCC's *Eighth Report & Order* and associated rule in 47 C.F.R. § 61.26, but denies the remaining legal conclusions or relevance of the authority stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

83. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in the cited authority, which speaks for itself. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

84. LEC-MI denies the conclusory legal conclusion in this paragraph that it billed the charges to AT&T. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

85. LEC-MI denies the conclusory legal conclusion in this paragraph that it violated the Act or billed the charges to AT&T, and denies that AT&T is entitled to any recovery from LEC-MI. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

86. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in Section 203(c) of the Communications Act, which speaks for itself. LEC-MI denies the conclusory legal conclusion in this paragraph that it violated the Act or billed the charges to AT&T. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

87. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in the GLC tariff, which speaks for itself. LEC-MI denies the conclusory legal conclusion in this paragraph that it billed the charges to AT&T. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

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88. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in the GLC tariff, which speaks for itself. LEC-MI denies the conclusory legal conclusion in this paragraph that it billed the charges to AT&T. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

89. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in the GLC tariff, which speaks for itself. LEC-MI denies the conclusory legal conclusion in this paragraph that it billed the charges to AT&T. AT&T is estopped from arguing that the GLC tariff does not adequately describe its end office switched access services; for over a decade AT&T has been paying, without dispute, for the end office switching charges that AT&T acknowledges LEC-MI provides as an input to AT&T's long distance services. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

90. LEC-MI denies the conclusory legal conclusion in this paragraph that it violated the Act or its tariff and that it billed the charges to AT&T. LEC-MI further denies that AT&T is entitled to any recovery from LEC-MI. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

91. LEC-MI denies the conclusory legal conclusion in this paragraph that Westphalia was its billing agent for the referenced charges. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis, except that LEC-MI agrees that Michigan law governs the alleged agency and tort issues raised in this dispute.

92. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in Section 217 of the Communications Act and cited authority, which speak for themselves. LEC-

## PUBLIC VERSION

MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

93. LEC-MI admits only that the excerpted phrases quoted by AT&T appear in the cited authority, which speak for themselves. LEC-MI denies the remaining legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

94. LEC-MI agrees that AT&T's claims are based solely on Westphalia's apparent authority for the complained-of acts, but denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

95. LEC-MI denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

96. LEC-MI denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

97. LEC-MI denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

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98. LEC-MI denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI further denies that AT&T is entitled to any recovery from LEC-MI. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

99. LEC-MI denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI further denies that AT&T had “no knowledge of the improper billing” and states that AT&T was better situated than LEC-MI to detect Westphalia’s actions and either did or should have recognized that Westphalia was not acting under authority given by LEC-MI. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

100. LEC-MI denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

101. LEC-MI denies that proper application of the governing legal principles results in any liability for LEC-MI and specifically denies that Westphalia had apparent authority to bill for the charges at issue. LEC-MI further denies that AT&T is entitled to any recovery from LEC-MI. LEC-MI denies the legal conclusions stated in this paragraph for the reasons given above and in its accompanying Legal Analysis.

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## AFFIRMATIVE DEFENSES

First Affirmative Defense: AT&T's Complaint should be dismissed because AT&T fails to state a claim upon which relief may be granted.<sup>3</sup>

Second Affirmative Defense: AT&T's claims are barred, in part, by the statute of limitations.<sup>4</sup>

Third Affirmative Defense: AT&T's request for damages is barred because it failed to mitigate damages.<sup>5</sup>

Fourth Affirmative Defense: AT&T's Claims are barred by the doctrines of release and/or res judicata.<sup>6</sup>

Fifth Affirmative Defense: AT&T's Claims are barred by the doctrines of waiver, estoppel, laches, and ratification.<sup>7</sup>

Sixth Affirmative Defense: AT&T's Claims are barred by the voluntary payment doctrine.<sup>8</sup>

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<sup>3</sup> Legal Analysis §§ I-III.

<sup>4</sup> Legal Analysis § V.

<sup>5</sup> Legal Analysis §§ II-III.

<sup>6</sup> Legal Analysis § I.

<sup>7</sup> *Id.*

<sup>8</sup> Legal Analysis §§ I-III.

# PUBLIC VERSION

DATED: October 3, 2019

Respectfully submitted,

123.NET d/b/a LOCAL EXCHANGE  
CARRIERS OF MICHIGAN, INC.

By Its Attorneys,

/s/ Joseph P. Bowser

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# PUBLIC VERSION

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

AT&T Services, Inc. and AT&T Corp.

Complainants,

v.

Proceeding No. 19-222

File No. EB-19-MD-007

123.Net (d/b/a Local Exchange Carriers of  
Michigan, Inc. and/or Prime Circuits)

Defendant.

## VERIFICATION

Pursuant to 47 C.F.R. § 1.721(m), I, Dan Irvin, have read the foregoing Amended Answer and supporting papers and, to the best of my knowledge, information, and belief, formed after reasonable inquiry, certify that it is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.

DATED: September 30, 2019

  
\_\_\_\_\_  
Dan Irvin, President & CEO  
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Southfield, Michigan 48075  
(248) 228-8204



# PUBLIC VERSION

## CERTIFICATE OF SERVICE

I hereby certify that, on October 3, 2019, I caused copies of the Public and Confidential Versions of the Answer and Legal Analysis in Opposition to AT&T's Formal Complaint in this matter, along with its supporting exhibits, Information Designation, Declaration of Michael Starkey, and First Request for Interrogatories to AT&T to be served via ECFS (Public Version) and electronic mail (Confidential Version) on the following:

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/s/ Joseph P. Bowser  
\_\_\_\_\_  
Joseph P. Bowser