

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

In the Matter of

**AT&T Services, Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
202-457-3090**

**AT&T Corp.
One AT&T Way
Bedminster, NJ 07921
202-457-3090**

Complainant,

v.

**123.Net (d/b/a Local Exchange Carriers of
Michigan and/or Prime Circuits)
24700 Northwestern Highway, Suite 700
Southfield, MI 48075**

Defendant.

**Proceeding Number EB 19-222
File No. EB-19-MD-007
Inf. Compl. File No. EB-14-MDIC-0003**

AT&T'S OBJECTIONS TO LEC-MI'S FIRST REQUEST FOR INTERROGATORIES

Pursuant to Section 1.730 of the Rules of the Federal Communications Commission ("Commission"), 47 C.F.R. § 1.730 and the Enforcement Bureau's Letter Scheduling Order of October 2, 2019, AT&T Corp. and AT&T Services, Inc. (on behalf of itself and its operating affiliates) (together, "AT&T") hereby submit these objections to the First Request for Interrogatories to AT&T ("Interrogatories") propounded by Defendant 123.Net, d/b/a LEC-MI ("LEC-MI").

GENERAL OBJECTIONS

1. AT&T objects to the Interrogatories to the extent that they do not meet the requirements of Section 1.730 of the Commission's rules. The Commission's rules allow

defendants to request up to ten *written* interrogatories, yet two of Defendants' requests are for the production of documents. Defendants have provided no explanation of why written interrogatories are not sufficient for their purposes or why document production is justified in this case.

2. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they seek information or documents that are protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege. Any inadvertent disclosure of material protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or exemption is not intended, and should not be construed, to constitute a waiver.

3. AT&T objects generally to any interrogatory that calls for proprietary and confidential information and/or trade secrets. Notwithstanding this objection, to the extent the Commission determines that discovery of such information is necessary, AT&T is willing to provide it but only pursuant to the terms of a Protective Order adopted in this proceeding.

4. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they seek information or documents that are publicly available to, or already in the possession of, Defendant or its Counsel.

5. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they purport to impose upon AT&T any obligation not imposed by the rules of the Federal Communications Commission.

6. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent they purport to require AT&T to provide information that is not presently within its possession, custody, or control.

7. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they imply the existence of facts or circumstances that do not or did not exist, and to the extent that they state or assume legal conclusions. In providing these responses and objections, AT&T does not admit the factual or legal premise of any of the Interrogatories.

OBJECTIONS TO SPECIFIC INTERROGATORIES

Interrogatory No. 1:

Identify all charges and other details reflected on (or produce a complete set of) Westphalia Telephone Company's ("Westphalia") invoices to You during the Relevant Period.

Objection: In addition to the General Objections, AT&T objects to this interrogatory as unduly burdensome and seeking information irrelevant to this Complaint. AT&T has already provided, and LEC-MI otherwise already possesses, the information about LEC-MI's invoices that is relevant to this Complaint. Regarding damages, AT&T's damages methodology is set forth in the Joint Declaration of Geri Lancaster and Kurt Giedinghagen (Ex. 1 to AT&T's Formal Complaint) ("Joint Declaration"). In particular, the amount that LEC-MI billed, and the amount that AT&T paid, for end office charges each month during the relevant period were identified, and AT&T's determination of the amount of end office charges it paid that were associated with 8YY aggregation traffic – which equals AT&T's damages – was explained. LEC-MI has not taken issue with AT&T's damages calculation or calculation methodology,¹ and therefore does not need any additional billing information regarding AT&T's damages.

Further, on December 2, 2017, AT&T voluntarily agreed to provide counsel for LEC-MI

¹ LEC-MI has challenged whether all of the traffic at issue is wireless-originated or otherwise non-compensable traffic, an issue AT&T will address in its Reply, but LEC-MI does not, and could not reasonably, contend that the LEC-MI billing information it seeks bears on that issue.

with all of the documents that were identified on AT&T's information designation in the *Great Lakes Comnet* case. See Ex. A. Those materials include the documents relevant to LEC-MI (*see id.*) that AT&T has in its possession and that were included in the information log. The fact that LEC-MI already has (and has had for some time) this material provides an additional reason to deny the LEC-MI discovery requests.

Also, in the Joint Declaration, it was explained that AT&T received the monthly LEC-MI invoices electronically, and the information on those electronic invoices necessary for AT&T's billing practices was inputted into AT&T's billing management systems. AT&T therefore does not have invoices that it can produce or reference, but it does have relevant information from those invoices in its billing systems. As explained in the Joint Declaration, and as acknowledged by LEC-MI's expert, the LEC-MI invoices were sent in the SECABS industry format, and that format includes a number of categories of information. LEC-MI therefore already knows what information was contained on the LEC-MI invoices sent to AT&T.

Furthermore, information about AT&T's "constructive or actual knowledge" of LEC-MI's improper billing, which LEC-MI says it desires for a defense to vicarious liability, is irrelevant to this Complaint. As AT&T will fully explain in its Reply, AT&T pleaded its claims based upon LEC-MI's direct violations of the Communications Act (although LEC-MI is also subject to vicarious liability). What AT&T knew or should have known regarding those violations is not pertinent to the direct claims.

Moreover, if, or to the extent, AT&T's claims hinge on vicarious liability, LEC-MI is still not entitled to discovery from AT&T regarding whether, or when, AT&T "knew or should have known" that the LEC-MI billing at issue was improper.

As an initial matter, the Commission stated in the *Great Lakes Comnet Order* that

“AT&T did not know that ... [Westphalia] billed on behalf of LEC-MI end office switching on wireless calls, which had the effect of disguising the nature of the Defendants’ arrangements and charges.” 30 FCC Rcd. 2586, ¶¶ 36-37, n.125 (2015). Therefore, the issue of what AT&T knew or could know from the LEC-MI end office charge billing has already been addressed by the Commission, and there is no need for discovery on that issue.

Further, even if the issue were not already addressed by the Commission, AT&T’s knowledge (actual or constructive) that the bills were improper is not the knowledge relevant to LEC-MI’s purported defense as a principal under a vicarious liability theory. The relevant knowledge for that defense concerns not whether AT&T knew the billing was improper, but whether AT&T knew Westphalia was (allegedly) acting for its own interests and against LEC-MI’s interests in preparing and sending bills (whether proper or improper) to AT&T for LEC-MI’s end office charges. *See* LEC-MI Legal Analysis at 12 (“A third party who knows or has reason to know that the agent acts adversely to the principal ... has not dealt in good faith” (quoting Restatement (Third) of Agency, § 5.04, cmt. b)) (emphasis added). LEC-MI does not, and could not, explain how the billing information it seeks is relevant to that issue.

Lastly, LEC-MI states that this information is not available to it from any source other than AT&T, but that conclusory statement is insufficient given that the invoices at issue were for LEC-MI’s own charges – LEC-MI bizarrely claims that the customer that was billed is the only source of billing information, when LEC-MI itself was the carrier directing the billing. Certainly, the billing information LEC-MI seeks is, or should be, in LEC-MI’s possession, custody or control; additionally, such information is, or should be, in the possession of Westphalia (or its affiliates). Indeed, in its response to AT&T’s Informal Complaint (Exhibit 5 to AT&T’s Formal Complaint), LEC-MI acknowledged that it had a relationship with

Westphalia and directed it to take certain actions with respect to billing. Yet, LEC-MI declined to place into the record any documentation regarding its billing arrangements with Westphalia or Great Lakes Comnet. LEC-MI does not explain why it does not already possess, control, or obtain the material it seeks (or cannot obtain it from Westphalia). In fact, LEC-MI acknowledges that it received information “regarding the invoices from the Relevant Period to the underlying dispute between AT&T, Westphalia and GLC,” indicating it already has the information it requests. (LEC-MI, Interrogatory 1.) Nevertheless, LEC-MI requests that “this information should be supplemented to show the scope of AT&T’s knowledge of any erroneous billing.” (LEC-MI, Interrogatory 1 (emphasis added).) But because, as explained above, AT&T’s knowledge in that respect has already been addressed and, in all events, is irrelevant to the defense LEC-MI asserts, LEC-MI is not entitled to any “supplemental” information on that issue.

Interrogatory No. 2:

Identify and produce all documents identifying the amount You paid, disputed, and/or withheld in connection with the invoices from Westphalia (or its agent or affiliate) to You during the Relevant Period.

Objection: In addition to the General Objections, AT&T objects to this interrogatory as unduly burdensome and seeking information irrelevant to this Complaint. AT&T has already provided, and LEC-MI otherwise already possesses, the information about LEC-MI’s invoices that is relevant to this Complaint. Regarding damages, AT&T’s damages methodology is set forth in the Joint Declaration. In particular, the amount that LEC-MI billed, and the amount that AT&T paid, for end office charges each month during the relevant period were identified, and AT&T’s determination of the amount of end office charges that were associated with 8YY

aggregation traffic – which equals AT&T’s damages – was explained. LEC-MI has not taken issue with AT&T’s damages calculation or calculation methodology,² and therefore does not need any additional billing information regarding AT&T’s damages.

Further, on December 2, 2017, AT&T voluntarily agreed to provide counsel for LEC-MI with all of the documents that were identified on AT&T’s information designation in the *Great Lakes Comnet* case. *See* Ex. A. Those materials include the documents relevant to LEC-MI (*see id.*) that AT&T has in its possession and that were included in the information log. The fact that LEC-MI already has (and has had for some time) this material provides an additional reason to deny the LEC-MI discovery requests.

Also, in the Joint Declaration, it was explained that AT&T received the monthly LEC-MI invoices electronically, and the information on those electronic invoices necessary for AT&T’s billing practices was inputted into AT&T’s billing management systems. AT&T therefore does not have invoices that it can produce or reference, but it does have relevant information from those invoices in its billing systems. As explained in the Joint Declaration, and as acknowledged by LEC-MI’s expert, the LEC-MI invoices were sent in the SECABS industry format, and that format includes a number of categories of information. LEC-MI therefore already knows what information was contained on the LEC-MI invoices sent to AT&T.

Furthermore, information about AT&T’s “constructive or actual knowledge” of LEC-MI’s improper billing, which LEC-MI says it desires for a defense to vicarious liability, is irrelevant to this Complaint. As AT&T will fully explain in its Reply, AT&T pleaded its claims

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based upon LEC-MI's direct violations of the Communications Act (although LEC-MI is also subject to vicarious liability). What AT&T knew or should have known regarding those violations is not pertinent to the direct claims.

Moreover, if, or to the extent, AT&T's claims hinge on vicarious liability, LEC-MI is still not entitled to discovery from AT&T regarding whether, or when, AT&T "knew or should have known" that the LEC-MI billing at issue was improper.

As an initial matter, the Commission stated in the *Great Lakes Comnet Order* that "AT&T did not know that ... [Westphalia] billed on behalf of LEC-MI end office switching on wireless calls, which had the effect of disguising the nature of the Defendants' arrangements and charges." 30 FCC Rcd. 2586, ¶¶ 36-37, n.125 (2015). Therefore, the issue of what AT&T knew or could know from the LEC-MI end office charge billing has already been addressed by the Commission, and there is no need for discovery on that issue.

Further, even if the issue were not already addressed by the Commission, AT&T's knowledge (actual or constructive) that the bills were improper is not the knowledge relevant to LEC-MI's purported defense as a principal under a vicarious liability theory. The relevant knowledge for that defense concerns not whether AT&T knew the billing was improper, but whether AT&T knew Westphalia was (allegedly) acting for its own interests and against LEC-MI's interests in preparing and sending bills (whether proper or improper) to AT&T for LEC-MI's end office charges. *See* LEC-MI Legal Analysis at 12 ("A third party who knows or has reason to know that the agent acts adversely to the principal ... has not dealt in good faith" (quoting Restatement (Third) of Agency, § 5.04, cmt. b)) (emphasis added). LEC-MI does not, and could not, explain how the billing information it seeks is relevant to that issue.

Lastly, LEC-MI states that this information is not available to it from any source other

than AT&T, but that conclusory statement is insufficient given that the invoices at issue were for LEC-MI's own charges – LEC-MI bizarrely claims that the customer that was billed is the only source of billing information, when LEC-MI itself was the carrier directing the billing. Certainly, the billing information LEC-MI seeks is, or should be, in LEC-MI's possession, custody or control; additionally, such information is, or should be, in the possession of Westphalia (or its affiliates). Indeed, in its response to AT&T's Informal Complaint (Exhibit 5 to AT&T's Formal Complaint), LEC-MI acknowledged that it had a relationship with Westphalia and directed it to take certain actions with respect to billing. Yet, LEC-MI declined to place into the record any documentation regarding its billing arrangements with Westphalia or Great Lakes Comnet. LEC-MI does not explain why it does not already possess, control, or obtain the material it seeks (or cannot obtain it from Westphalia). In fact, LEC-MI acknowledges that it received information “regarding the invoices from the Relevant Period to the underlying dispute between AT&T, Westphalia and GLC,” indicating it already has the information it requests. (LEC-MI, Interrogatory 1.) Nevertheless, LEC-MI requests that “this information should be supplemented to show the scope of AT&T's knowledge of any erroneous billing.” (LEC-MI, Interrogatory 1 (emphasis added).) But because, as explained above, AT&T's knowledge in that respect has already been addressed and, in all events, is irrelevant to the defense LEC-MI asserts, LEC-MI is not entitled to any “supplemental” information on that issue.

Interrogatory No. 3:

Identify all bases and produce all documents on which You based the re-rating and/or disputing of local end office switching, 8YY or 800 Database Query Charges included in Westphalia's invoices to you during the Relevant Period.

Objection: In addition to the General Objections, AT&T objects to this interrogatory as unduly burdensome and seeking information irrelevant to this Complaint. AT&T has already provided, and LEC-MI otherwise already possesses, the information about LEC-MI's invoices that is relevant to this Complaint. Regarding damages, AT&T's damages methodology is set forth in the Joint Declaration. In particular, the amount that LEC-MI billed, and the amount that AT&T paid, for end office charges each month during the relevant period were identified, and AT&T's determination of the amount of end office charges that were associated with 8YY aggregation traffic – which equals AT&T's damages – was explained. LEC-MI has not taken issue with AT&T's damages calculation or calculation methodology,³ and therefore does not need any additional billing information regarding AT&T's damages.

Further, on December 2, 2017, AT&T voluntarily agreed to provide counsel for LEC-MI with all of the documents that were identified on AT&T's information designation in the *Great Lakes Comnet* case. See Ex. A. Those materials include the documents relevant to LEC-MI (see *id.*) that AT&T has in its possession and that were included in the information log. The fact that LEC-MI already has (and has had for some time) this material provides an additional reason to deny the LEC-MI discovery requests.

Also, in the Joint Declaration, it was explained that AT&T received the monthly LEC-MI invoices electronically, and the information on those electronic invoices necessary for AT&T's billing practices was inputted into AT&T's billing management systems. AT&T therefore does not have invoices that it can produce or reference, but it does have relevant information from

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those invoices in its billing systems. As explained in the Joint Declaration, and as acknowledged by LEC-MI's expert, the LEC-MI invoices were sent in the SECABS industry format, and that format includes a number of categories of information. LEC-MI therefore already knows what information was contained on the LEC-MI invoices sent to AT&T.

Furthermore, information about AT&T's "constructive or actual knowledge" of LEC-MI's improper billing, which LEC-MI says it desires for a defense to vicarious liability, is irrelevant to this Complaint. As AT&T will fully explain in its Reply, AT&T pleaded its claims based upon LEC-MI's direct violations of the Communications Act (although LEC-MI is also subject to vicarious liability). What AT&T knew or should have known regarding those violations is not pertinent to the direct claims.

Moreover, if, or to the extent, AT&T's claims hinge on vicarious liability, LEC-MI is still not entitled to discovery from AT&T regarding whether, or when, AT&T "knew or should have known" that the LEC-MI billing at issue was improper.

As an initial matter, the Commission stated in the *Great Lakes Comnet Order* that "AT&T did not know that ... [Westphalia] billed on behalf of LEC-MI end office switching on wireless calls, which had the effect of disguising the nature of the Defendants' arrangements and charges." 30 FCC Rcd. 2586, ¶¶ 36-37, n.125 (2015). Therefore, the issue of what AT&T knew or could know from the LEC-MI end office charge billing has already been addressed by the Commission, and there is no need for discovery on that issue.

Further, even if the issue were not already addressed by the Commission, AT&T's knowledge (actual or constructive) that the bills were improper is not the knowledge relevant to LEC-MI's purported defense as a principal under a vicarious liability theory. The relevant knowledge for that defense concerns not whether AT&T knew the billing was improper, but

whether AT&T knew Westphalia was (allegedly) acting for its own interests and against LEC-MI's interests in preparing and sending bills (whether proper or improper) to AT&T for LEC-MI's end office charges. *See* LEC-MI Legal Analysis at 12 ("A third party who knows or has reason to know that the agent acts adversely to the principal ... has not dealt in good faith" (quoting Restatement (Third) of Agency, § 5.04, cmt. b)) (emphasis added). LEC-MI does not, and could not, explain how the billing information it seeks is relevant to that issue.

Interrogatory No. 4:

Identify all credits and refunds You received from Westphalia, GLC, or any other source toward amounts that Westphalia invoiced You during between January 2009 and present.

Objection: In addition to the General Objections, AT&T objects to this interrogatory as unduly burdensome and seeking information irrelevant to this Complaint. AT&T has already provided, and LEC-MI otherwise already possesses, the information about LEC-MI's invoices that is relevant to this Complaint. Regarding damages, AT&T's damages methodology is set forth in the Joint Declaration. In particular, the amount that LEC-MI billed, and the amount that AT&T paid, for end office charges each month during the relevant period were identified, and AT&T's determination of the amount of end office charges that were associated with 8YY aggregation traffic – which equals AT&T's damages – was explained. LEC-MI has not taken issue with AT&T's damages calculation or calculation methodology,⁴ and therefore does not need any additional billing information regarding AT&T's damages.

Further, on December 2, 2017, AT&T voluntarily agreed to provide counsel for LEC-MI

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with all of the documents that were identified on AT&T's information designation in the *Great Lakes Comnet* case. *See* Ex. A. Those materials include the documents relevant to LEC-MI (*see id.*) that AT&T has in its possession and that were included in the information log. The fact that LEC-MI already has (and has had for some time) this material provides an additional reason to deny the LEC-MI discovery requests.

Also, in the Joint Declaration, it was explained that AT&T received the monthly LEC-MI invoices electronically, and the information on those electronic invoices necessary for AT&T's billing practices was inputted into AT&T's billing management systems. AT&T therefore does not have invoices that it can produce or reference, but it does have relevant information from those invoices in its billing systems. As explained in the Joint Declaration, and as acknowledged by LEC-MI's expert, the LEC-MI invoices were sent in the SECABS industry format, and that format includes a number of categories of information. LEC-MI therefore already knows what information was contained on the LEC-MI invoices sent to AT&T.

Furthermore, information about AT&T's "constructive or actual knowledge" of LEC-MI's improper billing, which LEC-MI says it desires for a defense to vicarious liability, is irrelevant to this Complaint. As AT&T will fully explain in its Reply, AT&T pleaded its claims based upon LEC-MI's direct violations of the Communications Act (although LEC-MI is also subject to vicarious liability). What AT&T knew or should have known regarding those violations is not pertinent to the direct claims.

Moreover, if, or to the extent, AT&T's claims hinge on vicarious liability, LEC-MI is still not entitled to discovery from AT&T regarding whether, or when, AT&T "knew or should have known" that the LEC-MI billing at issue was improper.

As an initial matter, the Commission stated in the *Great Lakes Comnet Order* that

“AT&T did not know that ... [Westphalia] billed on behalf of LEC-MI end office switching on wireless calls, which had the effect of disguising the nature of the Defendants’ arrangements and charges.” 30 FCC Rcd. 2586, ¶¶ 36-37, n.125 (2015). Therefore, the issue of what AT&T knew or could know from the LEC-MI end office charge billing has already been addressed by the Commission, and there is no need for discovery on that issue.

Further, even if the issue were not already addressed by the Commission, AT&T’s knowledge (actual or constructive) that the bills were improper is not the knowledge relevant to LEC-MI’s purported defense as a principal under a vicarious liability theory. The relevant knowledge for that defense concerns not whether AT&T knew the billing was improper, but whether AT&T knew Westphalia was (allegedly) acting for its own interests and against LEC-MI’s interests in preparing and sending bills (whether proper or improper) to AT&T for LEC-MI’s end office charges. *See* LEC-MI Legal Analysis at 12 (“A third party who knows or has reason to know that the agent acts adversely to the principal ... has not dealt in good faith” (quoting Restatement (Third) of Agency, § 5.04, cmt. b)) (emphasis added). LEC-MI does not, and could not, explain how the billing information it seeks is relevant to that issue.

Lastly, LEC-MI states that this information is not available to it from any source other than AT&T, but that conclusory statement is insufficient given that the invoices at issue were for LEC-MI’s own charges – LEC-MI bizarrely claims that the customer that was billed is the only source of billing information, when LEC-MI itself was the carrier directing the billing. Certainly, the billing information LEC-MI seeks is, or should be, in LEC-MI’s possession, custody or control; additionally, such information is, or should be, in the possession of Westphalia (or its affiliates). Indeed, in its response to AT&T’s Informal Complaint (Exhibit 5 to AT&T’s Formal Complaint), LEC-MI acknowledged that it had a relationship with

Westphalia and directed it to take certain actions with respect to billing. Yet, LEC-MI declined to place into the record any documentation regarding its billing arrangements with Westphalia or Great Lakes Comnet. LEC-MI does not explain why it does not already possess, control, or obtain the material it seeks (or cannot obtain it from Westphalia). In fact, LEC-MI acknowledges that it received information “regarding the invoices from the Relevant Period to the underlying dispute between AT&T, Westphalia and GLC,” indicating it already has the information it requests. (LEC-MI, Interrogatory 1.) Nevertheless, LEC-MI requests that “this information should be supplemented to show the scope of AT&T’s knowledge of any erroneous billing.” (LEC-MI, Interrogatory 1 (emphasis added).) But because, as explained above, AT&T’s knowledge in that respect has already been addressed and, in all events, is irrelevant to the defense LEC-MI asserts, LEC-MI is not entitled to any “supplemental” information on that issue.

Interrogatory No. 5:

Identify all of your personnel with knowledge of Westphalia’s access charge invoices from the Relevant Period relating to the charges in dispute in this proceeding, and identify and describe in detail each of Your analyses of the charges in those invoices.

Objection: In addition to the General Objections, AT&T objects to this interrogatory as unduly burdensome and seeking information irrelevant to this Complaint. AT&T has already provided, and LEC-MI otherwise already possesses, the information about LEC-MI’s invoices that is relevant to this Complaint. Regarding damages, AT&T’s damages methodology is set forth in the Joint Declaration. In particular, the amount that LEC-MI billed, and the amount that AT&T paid, for end office charges each month during the relevant period were identified, and AT&T’s determination of the amount of end office charges that were associated with 8YY

aggregation traffic – which equals AT&T’s damages – was explained. LEC-MI has not taken issue with AT&T’s damages calculation or calculation methodology,⁵ and therefore does not need any additional billing information regarding AT&T’s damages.

Further, on December 2, 2017, AT&T voluntarily agreed to provide counsel for LEC-MI with all of the documents that were identified on AT&T’s information designation in the *Great Lakes Comnet* case. *See* Ex. A. Those materials include the documents relevant to LEC-MI (*see id.*) that AT&T has in its possession and that were included in the information log. The fact that LEC-MI already has (and has had for some time) this material provides an additional reason to deny the LEC-MI discovery requests.

Also, in the Joint Declaration, it was explained that AT&T received the monthly LEC-MI invoices electronically, and the information on those electronic invoices necessary for AT&T’s billing practices was inputted into AT&T’s billing management systems. AT&T therefore does not have invoices that it can produce or reference, but it does have relevant information from those invoices in its billing systems. As explained in the Joint Declaration, and as acknowledged by LEC-MI’s expert, the LEC-MI invoices were sent in the SECABS industry format, and that format includes a number of categories of information. LEC-MI therefore already knows what information was contained on the LEC-MI invoices sent to AT&T.

Furthermore, information about AT&T’s “constructive or actual knowledge” of LEC-MI’s improper billing, which LEC-MI says it desires for a defense to vicarious liability, is irrelevant to this Complaint. As AT&T will fully explain in its Reply, AT&T pleaded its claims

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based upon LEC-MI's direct violations of the Communications Act (although LEC-MI is also subject to vicarious liability). What AT&T knew or should have known regarding those violations is not pertinent to the direct claims.

Moreover, if, or to the extent, AT&T's claims hinge on vicarious liability, LEC-MI is still not entitled to discovery from AT&T regarding whether, or when, AT&T "knew or should have known" that the LEC-MI billing at issue was improper.

As an initial matter, the Commission stated in the *Great Lakes Comnet Order* that "AT&T did not know that ... [Westphalia] billed on behalf of LEC-MI end office switching on wireless calls, which had the effect of disguising the nature of the Defendants' arrangements and charges." 30 FCC Rcd. 2586, ¶¶ 36-37, n.125 (2015). Therefore, the issue of what AT&T knew or could know from the LEC-MI end office charge billing has already been addressed by the Commission, and there is no need for discovery on that issue.

Further, even if the issue were not already addressed by the Commission, AT&T's knowledge (actual or constructive) that the bills were improper is not the knowledge relevant to LEC-MI's purported defense as a principal under a vicarious liability theory. The relevant knowledge for that defense concerns not whether AT&T knew the billing was improper, but whether AT&T knew Westphalia was (allegedly) acting for its own interests and against LEC-MI's interests in preparing and sending bills (whether proper or improper) to AT&T for LEC-MI's end office charges. *See* LEC-MI Legal Analysis at 12 ("A third party who knows or has reason to know that the agent acts adversely to the principal ... has not dealt in good faith" (quoting Restatement (Third) of Agency, § 5.04, cmt. b)) (emphasis added). LEC-MI does not, and could not, explain how the billing information it seeks is relevant to that issue.

Interrogatory No. 6:

Identify the methodology that produced the results of your comparison of AT&T's own call detail records ("CDRs") with invoices You received from GLC or Westphalia relating to the traffic at issue, and identify and produce all documents reflecting those analyses and upon which such analyses were based.

Objection: In addition to the General Objections, AT&T objects to this interrogatory as unduly burdensome and seeking information irrelevant to this Complaint. AT&T has already provided, and LEC-MI otherwise already possesses, the information about LEC-MI's invoices that is relevant to this Complaint. Regarding damages, AT&T's damages methodology is set forth in the Joint Declaration. In particular, the amount that LEC-MI billed, and the amount that AT&T paid, for end office charges each month during the relevant period were identified, and AT&T's determination of the amount of end office charges that were associated with 8YY aggregation traffic – which equals AT&T's damages – was explained. LEC-MI has not taken issue with AT&T's damages calculation or calculation methodology,⁶ and therefore does not need any additional billing information regarding AT&T's damages.

Further, on December 2, 2017, AT&T voluntarily agreed to provide counsel for LEC-MI with all of the documents that were identified on AT&T's information designation in the *Great Lakes Comnet* case. See Ex. A. Those materials include the documents relevant to LEC-MI (*see id.*) that AT&T has in its possession and that were included in the information log. The fact that LEC-MI already has (and has had for some time) this material provides an additional reason to

⁶ LEC-MI has challenged whether all of the traffic at issue is wireless-originated or otherwise non-compensable traffic, an issue AT&T will address in its Reply, but LEC-MI does not, and could not reasonably, contend that the LEC-MI billing information it seeks bears on that issue.

deny the LEC-MI discovery requests.

Also, in the Joint Declaration, it was explained that AT&T received the monthly LEC-MI invoices electronically, and the information on those electronic invoices necessary for AT&T's billing practices was inputted into AT&T's billing management systems. AT&T therefore does not have invoices that it can produce or reference, but it does have relevant information from those invoices in its billing systems. As explained in the Joint Declaration, and as acknowledged by LEC-MI's expert, the LEC-MI invoices were sent in the SECABS industry format, and that format includes a number of categories of information. LEC-MI therefore already knows what information was contained on the LEC-MI invoices sent to AT&T.

Furthermore, information about AT&T's "constructive or actual knowledge" of LEC-MI's improper billing, which LEC-MI says it desires for a defense to vicarious liability, is irrelevant to this Complaint. As AT&T will fully explain in its Reply, AT&T pleaded its claims based upon LEC-MI's direct violations of the Communications Act (although LEC-MI is also subject to vicarious liability). What AT&T knew or should have known regarding those violations is not pertinent to the direct claims.

Moreover, if, or to the extent, AT&T's claims hinge on vicarious liability, LEC-MI is still not entitled to discovery from AT&T regarding whether, or when, AT&T "knew or should have known" that the LEC-MI billing at issue was improper.

As an initial matter, the Commission stated in the *Great Lakes Comnet Order* that "AT&T did not know that ... [Westphalia] billed on behalf of LEC-MI end office switching on wireless calls, which had the effect of disguising the nature of the Defendants' arrangements and charges." 30 FCC Rcd. 2586, ¶¶ 36-37, n.125 (2015). Therefore, the issue of what AT&T knew or could know from the LEC-MI end office charge billing has already been addressed by the

Commission, and there is no need for discovery on that issue.

Further, even if the issue were not already addressed by the Commission, AT&T's knowledge (actual or constructive) that the bills were improper is not the knowledge relevant to LEC-MI's purported defense as a principal under a vicarious liability theory. The relevant knowledge for that defense concerns not whether AT&T knew the billing was improper, but whether AT&T knew Westphalia was (allegedly) acting for its own interests and against LEC-MI's interests in preparing and sending bills (whether proper or improper) to AT&T for LEC-MI's end office charges. *See* LEC-MI Legal Analysis at 12 ("A third party who knows or has reason to know that the agent acts adversely to the principal ... has not dealt in good faith" (quoting Restatement (Third) of Agency, § 5.04, cmt. b)) (emphasis added). LEC-MI does not, and could not, explain how the billing information it seeks is relevant to that issue.

Interrogatory No. 7:

Identify all analyses you conducted to ascertain the extent to which growth in access minutes billed by Westphalia for traffic relating to LEC-MI in 2009, 2010, 2011, and 2012 relate to (1) originating minutes, (2) terminating minutes, or (3) growth in 8YY traffic, and identify and produce any documents reflecting or relating to your analyses.

Objection: In addition to the General Objections, AT&T objects to this interrogatory as unduly burdensome and seeking information irrelevant to this Complaint. AT&T has already provided, and LEC-MI otherwise already possesses, the information about LEC-MI's invoices that is relevant to this Complaint. Regarding damages, AT&T's damages methodology is set forth in the Joint Declaration. In particular, the amount that LEC-MI billed, and the amount that AT&T paid, for end office charges each month during the relevant period were identified, and AT&T's determination of the amount of end office charges that were associated with 8YY

aggregation traffic – which equals AT&T’s damages – was explained. LEC-MI has not taken issue with AT&T’s damages calculation or calculation methodology,⁷ and therefore does not need any additional billing information regarding AT&T’s damages.

Further, on December 2, 2017, AT&T voluntarily agreed to provide counsel for LEC-MI with all of the documents that were identified on AT&T’s information designation in the *Great Lakes Comnet* case. *See* Ex. A. Those materials include the documents relevant to LEC-MI (*see id.*) that AT&T has in its possession and that were included in the information log. The fact that LEC-MI already has (and has had for some time) this material provides an additional reason to deny the LEC-MI discovery requests.

Also, in the Joint Declaration, it was explained that AT&T received the monthly LEC-MI invoices electronically, and the information on those electronic invoices necessary for AT&T’s billing practices was inputted into AT&T’s billing management systems. AT&T therefore does not have invoices that it can produce or reference, but it does have relevant information from those invoices in its billing systems. As explained in the Joint Declaration, and as acknowledged by LEC-MI’s expert, the LEC-MI invoices were sent in the SECABS industry format, and that format includes a number of categories of information. LEC-MI therefore already knows what information was contained on the LEC-MI invoices sent to AT&T.

Furthermore, information about AT&T’s “constructive or actual knowledge” of LEC-MI’s improper billing, which LEC-MI says it desires for a defense to vicarious liability, is irrelevant to this Complaint. As AT&T will fully explain in its Reply, AT&T pleaded its claims

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Respectfully submitted,

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