

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

In the Matter of

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

*Complainants,*

v.

123.Net, Inc. d/b/a Local Exchange Carriers of  
Michigan,

*Defendants.*

File No. EB-19-MD-003

Proceeding No. 19-222

**JOINT STATEMENT OF STIPULATED FACTS,  
DISPUTED FACTS, KEY LEGAL ISSUES, AND  
DISCOVERY AND SCHEDULING**

AT&T Services Inc. and AT&T Corp. (collectively, “AT&T”) and 123.Net d/b/a Local Exchange Carriers of Michigan (“LEC-MI”) (collectively, the “Parties”), in accordance with the Commission's August 7, 2019 Notice of Formal Complaint, and its October 2, 2019 Order, and Sections 1.732(h), 1.733(b)(1)(v), and 1.733(b)(2) of the Commission’s Rules, 47 C.F.R. §§ 1.732(h), 1.733(b)(1)(v), and 1.733(b)(2), respectfully submit the following Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues. In addition, in Section IV below, the Parties provide their Joint Statement on Discovery and Scheduling in accordance with the Notice and Section 1.733(b)(1)(i)-(iv) of the Commission’s Rules, 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).

The Parties have defined stipulated facts to be facts upon which both Parties agree and disputed facts to be facts upon which both Parties do not agree, but the inclusion of any fact as a stipulated fact or disputed fact does not constitute an admission by any Party that the fact is relevant or material to the legal issues in dispute.

The stipulated facts and disputed facts listed below are not meant to address comprehensively every fact that has been raised by either Party in this case, but rather are meant to identify central facts upon which the parties agree or disagree. Where the parties agree, the stipulated facts are presented as organized below within fact clusters that are relevant to key issues in this case. The absence of a particular fact in the lists below should thus not be construed as an admission that any such fact is irrelevant or insignificant. Neither Party waives the right to rely or assert a fact that is not included in this stipulation. The Parties stipulate to these facts for purposes of this proceeding only.

## **I. STIPULATED FACTS**

### **A. Parties**

#### **1. AT&T**

1. AT&T Services, Inc. performs centralized administrative support services including information technology and billing support services, real estate support services, procurement support services, human resources support services, training services and finance support services. AT&T Services, Inc. is not a carrier and it was not involved in the routing of any traffic in dispute in this case.

2. For purposes of this case, AT&T Corp. is an interexchange carrier (“IXC”) and provides end users the ability to make long distances calls (*i.e.*, calls between exchanges).

3. As relevant to this case, AT&T Corp. offers and provides 8YY (or “toll-free”) service to end-user customers around the country. 8YY or toll-free service is a service in which the customer receiving the call (rather than the customer making the call) pays its toll-free provider for the call. AT&T’s 8YY customers here are the businesses that receive the 8YY calls. For purposes of any traffic in dispute, AT&T Corp. (not AT&T Services, Inc.) is the AT&T entity that was and is involved with the routing of the traffic.

## **2. LEC-MI**

4. LEC-MI is a common carrier and competitive local exchange carrier (“CLEC”) that, among various other internet and communications services, operates an end office switch in Southfield, Michigan, a suburb of Detroit. Prior to September 19, 2014, LEC-MI’s end office switch in Southfield, Michigan had been homing on a tandem switch owned by Great Lakes Comnet (“GLC”) since October 21, 2003. LEC-MI’s telephone numbering resources are limited to certain NPA-NXXs associated with its Southfield exchange. LEC-MI’s OCN is 2550.

## **3. Westphalia and GLC**

5. Pursuant to an Operating Agreement with GLC entered in 2003, GLC was responsible for, *inter alia*, billing local switching and other switched access services to long distance carriers for the jointly provided access services on toll and toll-free calls for which LEC-MI was a participating carrier in the call flow.

6. Later, GLC assigned its responsibility to bill switched access services for such calls to Westphalia Telephone Company (“Westphalia”), which is an incumbent local exchange carrier (“ILEC”) and affiliate of GLC, that provides telephone exchange services to business and residential customers and switched access services to long distance carriers in Michigan.

7. As a result of GLC’s assignment of its responsibility to bill for jointly provided access services in which LEC-MI participated, Westphalia assumed responsibility for billing AT&T and other long distance carriers for LEC-MI’s switched access services during the time period from January 1, 2012 through September 19, 2014.

8. GLC has filed an interstate access service tariff with the Commission designated as Great Lakes Comnet, Inc. Tariff F.C.C. No. 20 (“GLC Tariff”) that governs the rates and terms of its interstate switched and special access services. The original version of the GLC

Tariff was filed April 1, 2002 and became effective April 2, 2002. GLC revised this tariff on various occasions, including, among other revisions, the revision made on November 7, 2014. Copies of various pages of the GLC Tariff appear at Exhibits 7 and 15 of the AT&T Formal Complaint. GLC's OCN is 5164.

**B. Procedural History and Related Proceedings**

9. AT&T Services, Inc. (on behalf of itself and its operating affiliates) filed an informal complaint against GLC, Westphalia, and LEC-MI on April 4, 2014 ("Informal Complaint") that was associated with Commission File No. EB-14-MDIC-0003.

10. LEC-MI filed a response to AT&T's Informal Complaint on May 12, 2014 ("LEC-MI Response").

11. In the LEC-MI Response, LEC-MI stated "Even though LEC-MI intends to satisfy AT&T's remaining concerns about end office switching charges that were erroneously billed [to the extent they fall within the statute of limitations], LEC-MI is unable to do so because it does not have the data necessary to calculate the amount of funds, if any, it has received from AT&T related to those charges."

12. In the LEC-MI Response, LEC-MI stated that LEC-MI and GLC "entered into a Network Operating Agreement in 2003 ... under which GLC had billing responsibility for LEC-MI's interexchange traffic, which had been reflected in the parties' tariff since 2003."

13. In the LEC-MI Response, LEC-MI stated that, at some point after 2003, "GLC assigned the billing responsibilities to Westphalia."

14. In the LEC-MI Response, LEC-MI stated that, between 2003 and 2013, "GLC (or [Westphalia]) billed the applicable [interexchange carriers] for LEC MI's access charges and remitted payments to LEC MI (although LEC MI has not received its access charges since January 2013 ...)."

15. In the LEC-MI Response, LEC-MI stated “LEC MI agrees with AT&T that the [wireless-originated] traffic in dispute did not originate from LEC MI’s end users and, because GLC and [Westphalia] have now acknowledged that it is wireless-originated traffic, end office charges should not have been assessed on the traffic.”

16. In the LEC-MI Response, LEC-MI stated “[Westphalia] has represented to LEC MI that it assessed end office charges for local switching and common trunk port in connection with the 8YY traffic on the February 2012 through February 2014 CABS invoices issues to AT&T,” “[Westphalia] has also represented that the charges were assessed using LEC MI’s rates and LEC MI’s OCN of 2550,” and “LEC MI has also learned that [Westphalia] has issued another carrier, Verizon, a credit for these same charges, but has not done so for AT&T.”

17. In the LEC-MI Response, LEC-MI stated “because [Westphalia] has also decided to issue credits to Verizon for these charges, it is clear that credits should be issued to AT&T.”

18. In the LEC-MI Response, LEC-MI stated “LEC MI is coordinating with [Westphalia] so that [Westphalia] can credit to AT&T end office charges it billed under LEC MI’s OCN in connection with the 8YY traffic [that AT&T had not paid].”

19. In the LEC-MI Response, LEC-MI stated that the records it received from GLC after AT&T filed its Informal Complaint were redacted, such that “LEC MI is unable to connect partial payments by IXC’s to particular charges on [Westphalia’s] invoices.”

20. In the LEC-MI Response, LEC-MI stated it had “direct[ed] Respondents [GLC] and [Westphalia] to credit AT&T’s account for any outstanding end office switching charges related to the disputed toll-free traffic that have not yet been paid by AT&T.”

21. In the LEC-MI Response, LEC-MI stated that the “actions that led to these charges being assessed on AT&T were taken by [Westphalia] and/or GLC.”

22. In the LEC-MI response, LEC-MI noted that “[i]nsofar as AT&T is entitled to a refund, and LEC MI has received a portion of the funds, LEC MI is willing to return those funds over to AT&T, without prejudice to its rights to seek contribution and/or indemnity from GLC and [Westphalia]” in connection with any refunds paid to AT&T.

23. LEC-MI never asserted, in a civil action or GLC’s bankruptcy proceeding, any contribution or indemnity claims against GLC and Westphalia with respect to LEC-MI’s potential liability to AT&T.

24. In 2014, AT&T converted its Informal Complaint against Westphalia and GLC into a formal complaint, but did not at that time convert its Informal Complaint as to LEC-MI.

25. The public record from AT&T’s proceedings against Westphalia and GLC, which culminated in the FCC’s Order styled *AT&T Servs. Inc. et al. v. Great Lakes Comnet, Inc. et al.*, 30 FCC Rcd. 2586 (2015) (“*Great Lakes Comnet Order*”), is a matter of public record. In addition, on December 8, 2017, AT&T, through counsel, sent counsel for LEC-MI certain confidential documents that AT&T described as “non-privileged documents that were identified on the log that AT&T supplied in connection with its Formal Complaint in the Great Lakes Comnet matter....” Those documents bear Bates numbers ATTProd\_000001 through ATTProd\_0002042.

26. The initial deadline to convert AT&T’s Informal Complaint into a formal complaint and have the formal complaint “relate back” to the Informal Complaint was November 12, 2014, but that deadline was extended by a number of Commission-granted consent motions.

27. The last such Commission-granted consent motion, dated January 29, 2018, extended the conversion deadline to the “date that is 60 days the conclusion of the planned Mediation Session” in which the parties engaged with Commission Staff.

28. In a September 13, 2018 Letter Order, FCC Staff stated that the mediation would continue “until the parties either settle their dispute or either party sends a letter to the other party and MDRD Staff stating that further discussions would not be productive.”

29. On June, 6, 2019, counsel for AT&T sent a letter to counsel for LEC-MI and MDRD Staff stating that further mediation discussions would not be productive. This set the deadline for AT&T to convert its informal complaint to a formal complaint at August 5, 2019.

30. AT&T filed a Formal Complaint against LEC-MI on August 5, 2019 (“Formal Complaint”).

**C. Routing of the 8YY Aggregated Traffic.**

31. The 8YY long distance traffic was originated by customers of wireless services, and those callers can be located anywhere in the country.

32. Once one of the calls at issue was dialed by an end user customer, the call was handed off to one or more traffic aggregators, which had contracts or other arrangements with the wireless carrier.

33. After the traffic aggregator (or aggregators) handled the traffic, it was handed off to intermediate service providers and delivered to LEC-MI’s end office switch in Southfield, Michigan.

34. As described below, on these 8YY aggregated calls, AT&T received invoices from Westphalia for end office switching and related access charges that were billed under LEC-MI’s OCN.

35. LEC-MI established an IP point of interconnection for this traffic, and carried the traffic to GLC.

36. GLC and Westphalia then carried the traffic, and ultimately handed it off to AT&T, which routed the calls to its 8YY customers.

**E. Tariffing and Billing of 8YY Traffic at Issue.**

37. Until 2014, LEC-MI participated as an issuing carrier in a tariff filed by GLC. LEC-MI's tariffed rate for local switching (or end office) access service as of January, 2012, was \$0.012 per minute.

38. In 2013, LEC-MI filed tariff revisions that reduced its tariffed rate for local switching access service to \$0.003594 per minute.

39. The GLC tariff provided that the local switching rate includes "information surcharge, common trunk port, and tandem switched termination charges for the portion of those services directly provided by LEC[-MI]."

40. LEC-MI's end office charges, including as to the aggregated 8YY traffic, were billed to AT&T by Westphalia.

41. AT&T reports having receiving the invoices at issue in this proceeding from Westphalia via email and in SECABS format.

42. As noted above, under LEC-MI's Operating Agreement with GLC, GLC assigned its responsibility to bill LEC-MI's switched access charges to Westphalia.

43. Westphalia also billed AT&T access charges for access services that were provided by itself, by GLC, and other LECs in Michigan.

44. The bills issued by Westphalia indicated, via the use of an operating company number, or "OCN," the carrier that the invoice associated with the specific rate elements that were being billed.

45. In or around 2010, the total amount of access charges Westphalia billed AT&T for jointly provided access services by LEC-MI, Westphalia, and GLC began to increase.



46. Prior to November, 2009, the volume of traffic to and from AT&T through LEC-MI's switch in Southfield, Michigan was about 1 million minutes per month, and then began to rise steadily, reaching a peak of about 25 million minutes in May, 2013.

47. Based on the record in that case, in which LEC-MI was not a party, the Commission stated in its *Great Lakes Comnet Order* that "AT&T did not know that (1) [GLC and Westphalia] billed for CLEC access services in a manner that reflected incorrectly that an ILEC was providing them, and (2) [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." *Great Lakes Comnet Order*, ¶ 36 n.125.

48. During the period in dispute, AT&T corresponded only twice with LEC-MI concerning Westphalia's access bills to AT&T. It sent a March 20, 2013 letter from Mr. Habiak to LEC-MI and Westphalia, and a June 6, 2013 letter from M. D'Amico to LEC-MI, Westphalia, and GLC.

49. AT&T began withholding a portion of the end office and port charges billed under the LEC-MI OCN on the invoices sent from Westphalia from the payments made on such invoices in July, 2013.

50. At all relevant times, Westphalia issued invoices for access charges that were billed under LEC-MI's OCN, and, through the vendor, sent, and accepted payment on, access bills to AT&T for traffic associated with LEC-MI.

51. During the period in dispute, AT&T made each of its payments of the Westphalia invoices directly to Westphalia or its agent.

52. In Section 6.1 of the GLC tariff in which LEC-MI concurred during the relevant time-period, switched access service was described as providing the ability to originate calls from, and terminate calls to, end users “of LEC[s] whose end office(s) subtend the company’s tandem.”

53. Section 6.1.3 of the tariff also states that the “switched access services” described therein can be used for connecting the “premises” of long distance carriers to an “end user premises.”

54. In Section 2.6 of the GLC tariff, “premises” is defined as a “building or buildings on contiguous property.” Wireless phones, which were used for the 8YY aggregated traffic at issue, are not “premises” as described in the tariff.

55. Section 17-LECMII of the tariff filed by GLC, and in which LEC-MI concurred and that contained the LEC-MI rates, states that those rates are “for interstate access services whose terms and conditions are specified on sections 1 through 16 of this tariff.”

56. In Section 6.1.3, the tariff only describes the rates and services associated with the “local transport” and “chargeable optional features” rate categories.

57. Section 6.1.3 of the tariff states that GLC, as an intermediate carrier, did “not currently provide services associated with the end office switch or functionality.”

**E. Amount of AT&T’s Alleged Overcharges.**

58. AT&T developed an analysis to ascertain the amount of those overcharges, which is described fully in a Joint Declaration submitted by Geri Lancaster and Kurt Giedinghagen and included as Exhibit 1 to AT&T’s Formal Complaint (“Joint Declaration”).

59. AT&T’s overcharge analysis relied in part on the analysis AT&T developed in August 2013 to determine the proper amount it should pay after it began withholding on account of the 8YY aggregation traffic.

60. AT&T based its withholding analysis on the average LEC-MI interstate originating volumes during the 6 months (August 2011 through January 2012) before the 8YY aggregation activities at issue in this proceeding began in earnest.

61. The average volume of originating interstate minutes billed on the LEC-MI invoices during the 6-month span from August 2011 through January 2012 was 1,874,862 minutes per month.

62. For its withholding analysis, AT&T used that average as a proxy for the amount of interstate traffic LEC-MI's end users originated, with all minutes above that average assumed to be 8YY aggregation traffic.

63. Using that method, AT&T developed its analysis of the 8YY aggregation traffic for the period from February 2012, which was a month that contained a large increase in aggregation traffic, through July 2013, which was the date of the last invoice issued before AT&T began withholding.

64. The local switching and shared port rates (as determined through AT&T's re-rating process) for each month were then applied to the minutes at issue here to determine the amount that AT&T was overcharged for that month.

65. Using that method, the total amount that AT&T was overcharged for interstate, originating, end office access charges billed under LEC-MI's OCN during the February 2012 through July 2013 period was \$1,054,897.

66. In addition to the principal amount owed, the current LEC-MI tariff provides for the payment of interest, at the rate of 0.0005% per day, compounded daily, on overcharges that are refunded. AT&T claims that it is entitled to interest from February 2012, when its asserted claim for overcharges began, until May 2015. The amount of interest on such overcharges, at the

0.0005% daily compounded rate, for the February 2012 to May 2015 time period is \$628,467.00. AT&T also claims it is entitled to interest, at the 0.0005% per day rate, after June 2019, but cannot calculate the amount at this time.

**D. Other Facts**

67. In the settlement agreement reached among AT&T, GLC and Westphalia in connection with GLC's bankruptcy proceedings ("Settlement Agreement"), it states that AT&T released GLC and Westphalia "from any and all manner of claims . . . that the AT&T Releasor Parties might have . . .".

68. In the Settlement Agreement, it states that: "[n]othing herein releases ... (c) any claims by AT&T against parties other than the Debtor Release Parties, including, without limitation, 123.Net, Inc. d/b/a Local Exchange Carriers of Michigan, notwithstanding GLC, WTC, WBI or any other party billing AT&T on behalf of or as agent for such parties."

69. The Settlement Agreement states: "This Agreement shall be construed in accordance with and be governed by the law of the State of New York not including its choice of law principles."

70. In effectuation of that settlement, the Bankruptcy Court issued an Order Approving Terms of Compromise Among Debtors, Everstream GLC Holding Company, LLC, and AT&T Corp.

71. The Bankruptcy Court then entered an Order confirming the Debtor's Chapter 11 Plan. AT&T voted to accept the Plan.

## **DISPUTED FACTS**

### **A. AT&T Disputed Facts**

1. AT&T discovered – but not until around mid-2013 – that the increase in traffic in February 2012 billed by LEC-MI, through its agent Westphalia, was primarily because of 8YY aggregated traffic. The bills AT&T received up until 2013 showed (1) charges on behalf of an incumbent LEC (Westphalia), which were actually provided by competitive LECs; and (2) end office charges by LEC-MI.

2. Nothing on the bills indicated that the access serviced billed by LEC-MI, Westphalia, and GLC were associated with 8YY aggregation – the correspondence and bills made it appear as though all of the billed charges were associated with legitimate end users of LEC-MI's services.

3. Because the manner in which the access services were billed “disguis[ed]” the nature of the traffic, *Great Lakes Comnet Order*, ¶ 36 n.125, AT&T did not know about the 8YY aggregation issue, and its initial dispute letter did not raise any claims about overcharges on that traffic.

4. Nothing on the bills, or any other information available to AT&T during the relevant time, indicated that Westphalia was not remitting to LEC-MI all amounts billed under the LEC-MI OCN, or otherwise was acting against LEC-MI's interests.

5. AT&T only learned about the 8YY aggregation traffic after it received certain call records for the traffic.

6. Because neither LEC-MI nor anyone else disclosed the 8YY aggregation traffic, and because the bills disguised the nature of the arrangements, AT&T mistakenly paid LEC-MI substantial amounts for end office switching charges on the 8YY aggregation traffic.

7. The “terms and conditions” of LEC-MI’s end office switching are not described in Sections 1 through 16 of the GLC tariff.

8. In testimony before the Michigan Public Service Commission (“MPSC”) in a dispute among AT&T, GLC and Westphalia concerning the same traffic at issue here, Dan Irvin, CEO of LEC-MI, testified that: (i) LEC-MI “did not provide local switching services to AT&T Corp. on the aggregated 8YY traffic” at issue here; (ii) he was aware that LEC-MI paid Westphalia and GLC to perform the billing of access charges on behalf of LEC-MI and that LEC-MI received at least some of the access charges AT&T paid; and (iii) AT&T was entitled to a refund for any end office charges AT&T paid.

9. Westphalia was LEC-MI’s agent for billing AT&T for LEC-MI switched access charges at issue.

10. The routing of the 8YY aggregated traffic at issue in this Complaint is the same as the routing of the traffic at issue in the *Great Lakes Comnet Order*.

11. In or around June 2013, AT&T received call detail records and other information that showed AT&T was being improperly billed, including being billed LEC-MI end office charges on 8YY aggregated traffic.

12. AT&T lacks access to the call records and other materials necessary to identify the extent to which it was overcharged on the subject invoices for LEC-MI’s end office and port charges with absolute precision, *i.e.*, it cannot identify each specific call for which it was overcharged.

13. From at least January 2012 until September 2014, LEC-MI did not complain or otherwise indicate to AT&T that it had not received any of the access charges AT&T paid,

including end office charges that AT&T paid to Westphalia based on the bills Westphalia issued to AT&T containing charges billed under LEC-MI's OCN.

14. At no time did LEC-MI represent to AT&T that Westphalia was not LEC-MI's agent, or was not responsible, for the billing of LEC-MI's access charges.

## **B. LEC-MI Disputed Facts**

1. Under the meet-point billing arrangement established between LEC-MI and GLC under the Operating Agreement, GLC (or Westphalia) used their CDRs to prepare and bill long distance carriers, including AT&T, for the jointly provided access services that LEC-MI, GLC, Westphalia, and any other GLC-subsiding LEC provided to long distance carriers in a given billing period.

2. AT&T should have recognized by at least May of 2010 that it was being improperly billed by Westphalia for local switching charges on toll free (8YY) traffic originating from LEC-MI's switch.

3. AT&T's own access charge bill payment and dispute summaries show that it was analyzing rapid growth in local switching charges and minutes of use by May of 2010.

4. AT&T knew (or should have known) that 8YY aggregation likely explained the significant growth in end office charges, significant growth in query charges, and LEC-MI's shift toward predominantly originating long distance traffic that began in March of 2010, grew steadily through May 2012, and peaked in about May of 2013.

5. AT&T's own documentation shows that access billing from Westphalia doubled between the middle of 2010 and 2011, and that charges increased four-fold between the beginning of 2010 and September 2011.

6. AT&T was analyzing and disputing 8YY query charges specific to LEC-MI's OCN that grew at notable rates beginning in early 2010.

7. A review of Westphalia's or LEC-MI's call detail records ("CDRs") would have made clear that 8YY calls specific to LEC-MI's OCN were originating from myriad locations well outside of LEC-MI's local exchange footprint.

8. Based on the doubling of usage at the LEC-MI Southfield, MI switch between November 2009 and May 2010 alone, AT&T should have conducted a thorough investigation and should have known the extent of the 8YY traffic and 8YY aggregation flowing through LEC-MI's end office.

9. A decade before this dispute arose, AT&T demonstrated through its comments to the FCC that AT&T was capable of identifying particular CLECs that participate in the "8YY aggregation" and analyzing those CLECs' traffic patterns. AT&T also demonstrated that it was capable of identifying 8YY aggregation down to the individual telephone number level.

10. Beginning in or around 2010, the volume of traffic billed by Westphalia to AT&T began to increase significantly. For example, according to AT&T's records, the volume of traffic to and from AT&T through LEC-MI's switch in Southfield in November, 2009 was about 999,000 minutes of use. By May, 2010, it increased to 1.98 million minutes; in May, 2011, it increased to 7.46 million minutes, in May, 2012, it increased to 20.13 million minutes, and in May, 2013, to 24.91million minutes.

11. In September 2009, the 8YY query count was approximately 90,000, compared to roughly 5.6 million in May 2012 – an increase of more than 6,100%.

12. Despite LEC-MI's requests for them, neither AT&T, GLC, nor Westphalia have produced to LEC-MI unredacted copies of the Westphalia invoices at issue in this proceeding.



13. During the period in dispute, LEC-MI never itself issued an invoice to AT&T for its access services to AT&T or communicated with AT&T regarding Westphalia's authority to bill certain access charges to AT&T.

14. During the period in dispute, LEC-MI never reviewed or approved any of the invoices that Westphalia rendered to AT&T.

15. During the period in dispute, AT&T corresponded only twice with LEC-MI concerning Westphalia's access bills to AT&T. It sent a March 20, 2013 letter from Mr. Habiak to LEC-MI and Westphalia, and a June 6, 2013 letter from M. D'Amico to LEC-MI, Westphalia, and GLC. Both letters complained of the amount of mileage between LEC-MI's end office switch in Southfield and GLC's tandem switch; neither letter addressed Westphalia's assessment of end office charges under LEC-MI's OCN.

16. Before those two letters that AT&T sent jointly to LEC-MI, GLC and Westphalia, AT&T had, on numerous occasions from at least 2010 forward, reviewed and disputed various categories and amounts of charges on Westphalia's access charge bills to AT&T, including, without limitation, charges related to AT&T's 8YY traffic.

17. AT&T never communicated to LEC-MI that it was paying, or not paying, any or all of the charges that Westphalia billed AT&T and ascribed to LEC-MI's OCN.

18. AT&T acknowledges that some of the traffic at issue was or could have been VoIP-originated, but assumes, without foundation, for damages purposes, that all of the traffic was wireless-originated.

19. AT&T's records relating to the traffic at issue reflect (or should ordinarily reflect) the calling party's telephone number.

## **II. KEY LEGAL ISSUES**

### **C. AT&T's KEY LEGAL ISSUES**

1. Whether AT&T is entitled to damages in the form of a refund \$1,054,897, plus interest, on account of LEC-MI's violation of Sections 201(b) and 203 of the Communications Act for billing end office and port charges on wireless 8YY aggregation calls.

2. Whether any of LEC-MI's defenses to AT&T's claims have merit.

### **D. LEC-MI'S KEY LEGAL ISSUES**

1. Whether AT&T released its claims against LEC-MI via the release it granted in the Settlement Agreement.

2. Whether LEC-MI is liable for the actions taken by Westphalia and/or GLC.

3. Whether, and the extent to which, AT&T's claims are barred by the statute of limitations.

4. Whether AT&T has proven its damages with a reasonable degree of certainty.

## **III. JOINT STATEMENT PURSUANT TO 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).**

Along with their Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, the Parties hereby provide the following Joint Statement in accordance with 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).

Counsel for the Parties met and conferred by telephone on [October 23, 2019] to discuss the Joint Statement. Counsel for AT&T provided a proposed Joint Statement in draft form on October 28, 2019. On October 29, 2019, counsel for the Parties discussed the draft form. Also on October 29, 2019, counsel for LEC-MI provided a response to the AT&T draft. The parties exchanged subsequent drafts on October 30, 2019.

**A. Settlement Prospects**

The Parties previously engaged in substantial settlement discussions, including participating in Staff-supervised mediation, which immediately preceded AT&T's filing of the Formal Complaint. There have been no settlement discussions since the conclusion of the Staff-supervised mediation efforts.

**B. Issues In Dispute**

*AT&T's Position.* AT&T's position on its Key Legal Issue No. 1 is that AT&T is entitled to refunds in the amount of \$1,054,897, plus interest, for the reasons set forth in Section I of the Legal Analysis portion of AT&T's Formal Complaint.

AT&T's position on its Key Legal Issue No. 2 is that none of LEC-MI's defenses have merit, for the reasons set forth in Section II of the Legal Analysis portion of AT&T's Formal Complaint and in the Reply Legal Analysis of AT&T.

AT&T's position on LEC-MI's Key Legal Issue No. 1 is that AT&T did not release its claims against LEC-MI, for the reasons set forth in Section I of AT&T's Reply Legal Analysis.

AT&T's position on LEC-MI's Key Legal Issue No. 2 is that AT&T did not release its claims against LEC-MI, for the reasons set forth in Section II of the Legal Analysis portion of AT&T's Formal Complaint and in Sections II and III of AT&T's Reply Legal Analysis.

AT&T's position on LEC-MI's Key Legal Issue No. 3 is that the statute of limitations does not bar any portion of AT&T's claims, for the reasons set forth in Section V of AT&T's Reply Legal Analysis.

AT&T's position on LEC-MI's Key Legal Issue No. 4 is that AT&T has properly established its damages, for the reasons set forth in Section IV of AT&T's Reply Legal Analysis.

*LEC-MI's Position.* As discussed more fully in its Answer and accompanying Legal Analysis, LEC-MI's positions are that:

- (i) AT&T's claims are barred by the doctrines of release and/or res judicata by virtue of the release AT&T granted GLC and Westphalia and the Bankruptcy Court's approval thereof (*see* Legal Analysis Sec. II);
- (ii) AT&T cannot hold LEC-MI directly or vicariously liable for Westphalia's and GLC's actions (*see* Legal Analysis Sec. II-IV);
- (iii) AT&T cannot recover end office charges associated with VoIP-originated traffic (*see* Legal Analysis Sec. V); and
- (iv) AT&T's claim for damages is barred in part by the statute of limitations (*see* Legal Analysis Sec. VI).

**a. Discovery**

**i. Depositions and Document Requests**

AT&T believes that discovery in the form of depositions and document production is not necessary in this case. LEC-MI believes that the Parties should first conclude the Interrogatory-related discovery before assessing the extent to which any additional discovery is needed.

**ii. Interrogatories**

Counsel for the Parties have had a number of discussions regarding LEC-MI's Request for Interrogatories. AT&T is also currently investigating the availability and burden associated with providing certain information in response to LEC-MI's interrogatories. However, at the present time, AT&T is still conducting that investigation and therefore the Parties have not yet reached any agreements. Accordingly, at this juncture, each Party stands by its Request for Interrogatories and its Objections to the other Party's Request for Interrogatories. The Parties will continue to discuss potential agreements on narrowing the scope of any Request for

Interrogatories, and intend to report to the Commission Staff no later than November 5, 2019, as to whether any such agreements have been reached.

**b. Schedule for Pleadings and Discovery**

LEC-MI believes that it should be entitled to file a sur-reply addressing the new arguments that AT&T made in its Reply that were not already briefed in its original Legal Analysis. Further, to the extent AT&T produces the requested discovery (voluntarily or via Commission ruling), LEC-MI should have an opportunity to brief the significance of those materials too. (LEC-MI is mindful that its sur-reply would be confined to addressing new arguments raised in AT&T's Reply papers, together with the significance of any additional discovery materials it receives in this matter.)

In the interest of efficiency, LEC-MI believes both categories of new material should be addressed in one sur-reply brief, the filing date for which will depend on the resolution of the outstanding discovery issues, and the time in which AT&T can produce and LEC-MI (and its expert, as necessary) can review those materials. LEC-MI is committed to proceeding expeditiously.

Regarding LEC-MI's request for a sur-reply, AT&T states that its Reply was fully proper under, and compliant with, the Commission's rules. That said, AT&T takes no position on LEC-MI's request, other than to note, as LEC-MI acknowledges, that a sur-reply is only proper to address new issues that could not have been addressed in LEC-MI's initial pleadings. Also, in the event that the Commission allows LEC-MI to file a sur-reply, AT&T reserves all rights to contest and/or respond to that sur-reply if it raises new issues or is otherwise improper.

Regarding discovery, AT&T is investigating whether certain information can be provided in response to LEC-MI's Interrogatories with minimal burden, as an accommodation. However, for the reasons explained in AT&T's Objections to LEC-MI's interrogatories and its pleadings,

AT&T believes that there is no need for additional discovery and that the discovery LEC-MI seeks concerns irrelevant issues. In the event that discovery were to be granted, AT&T asserts that the Commission's rules contemplate that both parties would file briefs.

Respectfully submitted,

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