

**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

**SUPPLEMENT TO JOINT STATEMENT REGARDING  
DISCOVERY AND STATUS CONFERENCE**

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), and pursuant to Staff’s November 4, 2019 and November 5, 2019 e-mail requests, respectfully submit this Supplement to the Joint Statement on Discovery and Scheduling the Parties submitted on October 30, 2019 (“Joint Statement”).

**Interrogatories**

**Compromises**

Since the Parties submitted the Joint Statement, AT&T provided LEC-MI (on November 4, 2019) certain billing information, and is continuing to work on providing certain payment information. Counsel for the Parties also met and conferred regarding LEC-MI’s Interrogatories on the morning of November 5, 2019. AT&T believes that the billing information it provided

resolves any disputes over Interrogatory No. 1. LEC-MI acknowledges that the billing information may resolve any disputes regarding Interrogatory No. 1, but is awaiting confirmation from its expert. AT&T also believes that the payment information will resolve at least a portion of any disputes over Interrogatory No. 2, and LEC-MI is reserving judgment on that issue until it sees what AT&T provides.

### Remaining Disputes

*AT&T's Position.* For the reasons stated in its Objections to LEC-MI's Interrogatories and its Reply Legal Analysis, AT&T does not believe any additional information need be provided in response to any of LEC-MI's Interrogatories. AT&T is willing to provide, and has provided, certain information in response to LEC-MI's Interrogatories that imposed only a minimal burden in order to eliminate or to reduce the scope of the discovery disputes. The remaining information (to the extent it has not already been provided) would impose a material burden, which is unwarranted because that information is irrelevant to the salient issues. The additional information LEC-MI seeks is directed towards LEC-MI's defenses to liability for the actions of its agent, Westphalia, that are based on assertions regarding what AT&T "knew or should have known" about the improper billing. Among other things, the requested information, at best, concerns only whether the billed charges were proper, and not the relevant issue, which is whether Westphalia was acting against LEC-MI's interests.

*LEC-MI's Position.* With respect to the billing information requested in Interrogatory No. 1, LEC-MI and its expert are still reviewing the data set that AT&T produced on the afternoon of November 4, 2019. It would appear to contain LEC-MI specific charges for the requested time period (but not any of the other participating carriers' charges associated with the traffic reflected in this recently produced spreadsheet). But it is not clear whether this data is the

basis for AT&T's claim that Westphalia's charges "disguise[ed] the nature of the Defendants' arrangements and charges." If it is not, LEC-MI would ask AT&T to clarify and produce that information.

With respect to Interrogatory No. 2 (and the related bill-dispute-and-payment information sought in Nos. 3 and 4), as AT&T notes, LEC-MI awaits the production of materials AT&T will produce in response to this request. As LEC-MI has maintained, with the exception of the two letters AT&T sent it in March and June 2013, which did not address the end office charges at issue in this proceeding, LEC-MI was not privy to the billing dispute or payment correspondence between AT&T and Westphalia. LEC-MI therefore has no basis on which to evaluate AT&T's claim for a refund, or to ascertain the extent to which AT&T's correspondence indicates AT&T's reliance, if any, on Westphalia's billing-agent status.

With respect to the remaining interrogatories, AT&T should be capable of identifying the analyses it undertook to evaluate the Westphalia charges on the traffic at issue. If those analyses do not exist, AT&T should be required to state that without any undue burden; if they do exist and are overly burdensome to produce, as AT&T appears to claim, AT&T should have to clearly articulate why it is so burdensome to produce the various analyses it undertook about these charges that it now claims to have paid in reliance on Westphalia's alleged status as LEC-MI's agent. In all events, AT&T claims that its claim for damages was timely brought, which LEC-MI contests, and the requested discovery will also bear directly on the extent to which AT&T's claims are barred by the statute of limitations.

#### **Attendees at Status Conference**

The persons identified below will attend the Status Conference on behalf of each Party:

### AT&T

Kim Meola – AVP, National Access Management

Matt Nodine – AVP, Federal Regulatory

Christi Shewman – AVP, Senior Legal Counsel

Brian McAleenan – outside counsel for AT&T

### LEC-MI

Dan Irvin – CEO

Elina Shipper – General Counsel

Roger Meyers – outside counsel for LEC-MI

Joseph Bowser – outside counsel for LEC-MI

Respectfully submitted,

/s/ Brian A. McAleenan

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November 5, 2019

/s/ Joseph Bowser

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