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March 20, 2008

Marlene H. Dortch  
Federal Communications Commission  
The Portals  
445 12th St., S.W., TW-A325  
Washington, D.C., 20554

Re: CC Docket No. 96-128, Michigan Pay Telecommunications Association,  
Petition for Declaratory Ruling

Dear Ms. Dortch:

On March 3, 2008, Henry T. Kelly of Kelley Drye and Warren LLP and Gary Pace of the Michigan Pay Telecommunications Association met with Mr. Ian Dillner, Legal Advisor to Chairman Kevin J. Martin.

At that meeting, we discussed generally the Association's positions as reflected in documents previously submitted in this proceeding, and those outlined in the attached document that was handed out in the meeting. We are also including, for the record, a timeline that will better highlight the major pay telephone events in this and other related pay telephone dockets.

Please direct any questions to Henry Kelly at (312) 857-2350.

Sincerely,



Henry T. Kelly

Enc.

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Michigan Pay Telephone  
Association's Second Application for  
Declaratory Ruling  
FCC Docket No. 96-128

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Michigan Pay Telephone Association  
March 3, 2008

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# Outline

- Errors made by the Michigan PSC
- General Observations
  - MPTA Petition is unique and unrelated to pending refund petitions
  - Full proceeding not necessary
  - What the MPTA is seeking
  - Drastic decline in number of Michigan payphones
  - Comparison of the dramatic variances between usage rates in the former-Ameritech region
- New Services Test discussion and issues
- Review of FCC prior findings

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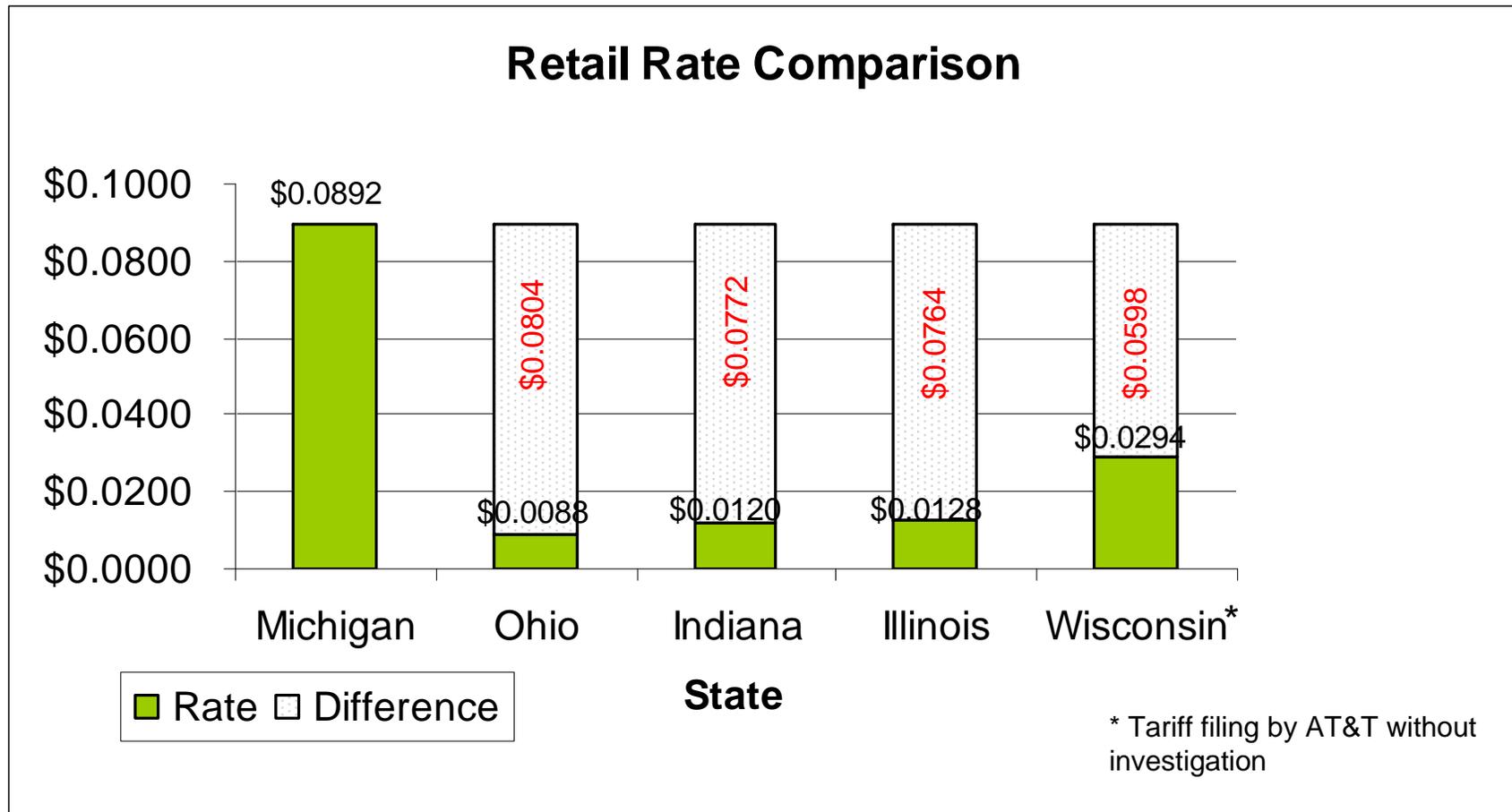
# What the Michigan PSC Did Wrong

- For local usage, it ordered a methodology not supported by any party, not even AT&T.
  
- The Michigan PSC failed to follow the NST guideline methodology for local usage, there is no justification in the record supporting the non-uniform overhead allocation for local usage:
  - no “comparable” toll usage overhead allocation;
  - no information as to the toll usage tariff rate being utilized;
  - no evidence demonstrating how toll usage actually is a “comparable” service.
  
- The Michigan PSC’s determination results in the continued application of an overhead allocation that is more than **600% over** the direct cost.\*

\*In April 2006, AT&T increased the local usage rate to PSPs to \$0.11 per message. Subsequent to the filing of the MPTA Petition, AT&T has rescinded that rate increase.

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# Rate Comparison for Local Usage – Former Ameritech States



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# MPTA's FCC Application

- Limited solely to the Michigan PSC's improper interpretation and failure to follow the NST re AT&T's local usage service overhead allocation factor
- No issues surrounding:
  - ❑ the underlying cost studies or AT&T's proposed methodology adopted by the Michigan PSC
  - ❑ the effective date of applying the cost-based rates
  - ❑ if refunds are owed for any unlawful overcharges

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# Full Proceeding is Not Necessary

- AT&T's entire cost study was submitted as an attachment to the MPTA's Application
- No factual disputes
- Michigan PSC has opted not to defend its Order before the Commission

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# Establishing Cost-Based Rates for Local Usage Service

- The MPTA is seeking an Order finding:
  1. that the MPSC fails to properly interpret and follow the Commission's New Services Test with respect to AT&T's local usage overhead allocation service and rate.
    - a. The result of this error is non-cost-based rates for local usage services being assessed to the Michigan IPPs in violation of the *Wisconsin Order*, the New Services Test regulations and Section 276.
    - b. Pursuant to the *Payphone Order* and Section 276(c), the Orders are preempted.
  2. that AT&T must modify its tariffed local usage rates to incorporate the same overhead allocation it proposed and the Michigan PSC adopted for the rest of the AT&T payphone services.

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# Commission's Historical Application of the NST – Usage Sensitive Services

- *Wisconsin Order*

- Held that “any rate for local usage billed to a payphone line, as well as the monthly payphone line rate, must be cost-based and priced in accordance with the new services test.” ¶ 64.
- **“Providing only a line, without allowing local calls over the line, does not satisfy this requirement.** We required these payphone line services to be priced at cost-based rates in accordance with the new services test. ....

“This conclusion advances our purpose in requiring cost-based payphone line rates in the first place. **A high usage rate would undermine our and the states’ efforts to set the payphone service rates in accordance with a cost-based standard.**

**A non-cost-based usage rate would also constitute an impermissible “end run” around the requirements of section 276.” ¶¶ 64-65**

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## New Services Test Allows for Non-Uniform Overhead Allocations – *if Fully Justified*

- The Commission has held that non-uniform overhead factors can still be cost-based, but only if supported and justified by the record.
- For example, the Commission reiterated that the new services test does “not mandate uniform overhead loading, **provided that the loading methodology as well as any deviation from it is justified.**” *Wisconsin Order*, ¶ 52

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# Michigan Payphone Case on Remand

- AT&T attempted to calculate the direct costs and the overhead allocation factor based upon the so-called Comparative Services Test. (AT&T Ex. R-71)
  - This is AT&T's only cost justification for its proposed uniform overhead.
  - AT&T proposed a single uniform overhead allocation for all of its payphone access services, including local usage.
  
- The Michigan PSC Orders adopt AT&T's proposed costs and overhead allocation methodology for all of AT&T's payphone services with the single exception of local usage.
  - For that service, the Michigan PSC made a unilateral decision that: "toll services are a comparable service to local toll" without applying the comparative services methodology the Commission developed in the *Physical Collocation Order*
    - Approved a tariffed local usage rate which is now \$0.0892 per message.

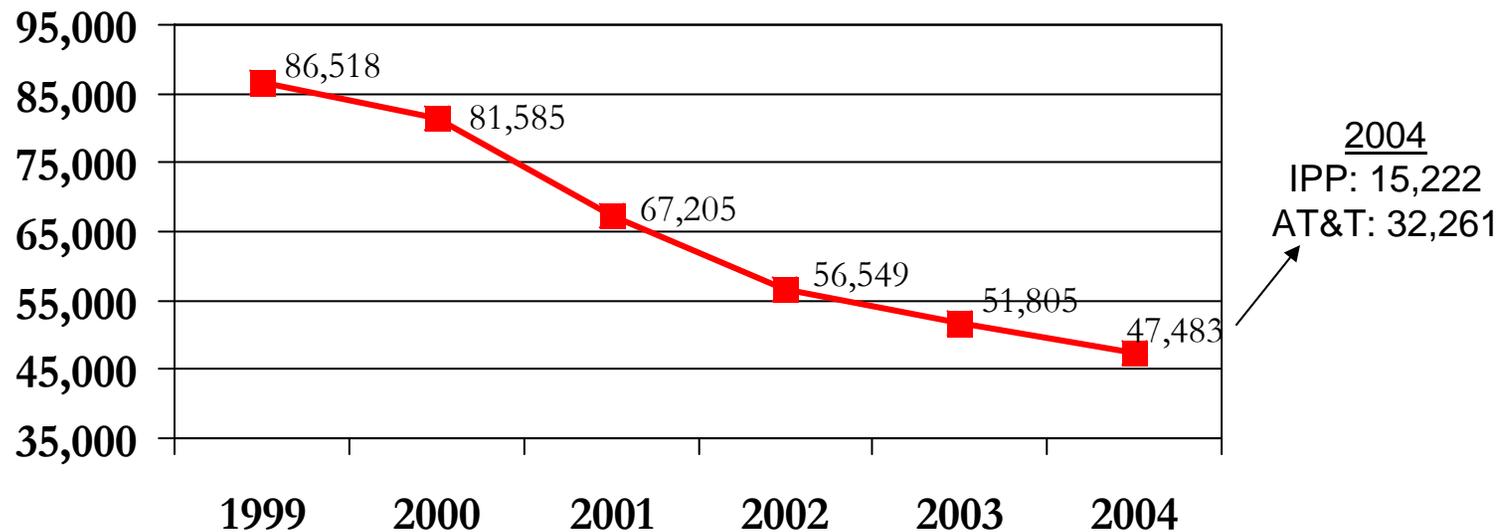
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# Without Cost-Based Usage Sensitive Rates the Number of IPP Payphone Lines Will Continue to Fall

- The Commission has already noted the direct correlation between cost-based rates and widespread deployment of payphones.
  - The Commission noted in its *Payphone Order* that implementing its determination to impose the New Services Test will satisfy the mandates of Section 276(b)(1) “to promote the widespread deployment of payphone services to the benefit of the general public.”
  - The Commission’s objective in applying the New Services Test to the RBOC’s payphone services is “to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.” *Payphone Order* ¶ 313.

# Decreasing Number of IPP Payphones in the AT&T Michigan Service Territory

# Payphones in AT&T Michigan Territory



\* Source: FCC Trends in Telephony Reports

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# Effects on IPP Payphone Profitability

- Excessive rates for underlying local usage service negatively impacts profitability of phone lines.
- The AT&T approved, non-cost-based local usage rate can be as much as **68%** of a payphone's monthly bill. (See Tab 4 of the MPTA's Application)
- However, if the cost-based local usage rate\* (using the uniform overhead allocation the Michigan PSC adopted for all of AT&T's other payphone services) is applied to the very same bill, usage would account for only **25%** of the bill, and trim more than **\$26.00** off of the monthly bill.

\* See, AT&T Ex. R-71

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation Provisions	)	
Of the Telecommunications Act of 1996	)	
	)	
The Michigan Pay Telephone Association's	)	
Petition for Declaratory Ruling Regarding	)	
The Prices Charged by AT&T Michigan	)	
for Network Access Services	)	
Made Available to Payphone Providers in	)	
Michigan.	)	

**MICHIGAN PAY TELEPHONE ASSOCIATION'S  
SECOND PETITION FOR DECLARATORY RULING**

**Timeline of Events Leading up the Pending Petition  
For Declaratory Ruling**

**1996**

Telecommunications Act of 1996 - enactment of Section 276 of the Federal Communication Act, 47 U.S.C. § 276.

*In the matter of the Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) (*Payphone Order*); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (*FCC Order on Reconsideration*), aff'd in part and remanded in part, sub nom. *Illinois Public Telecommunications Assn. v. FCC and United States*, Case No. 96-134 (D.C. Cir. July 1, 1997); Order, 12 FCC Rcd 20997 (1997) (*Payphone Clarification Order*); Order, 12 FCC Rcd 21370 (1997) (*Payphone Limited Waiver Order*).

**1997**

May 19, 1997 - SBC filed its cost studies with the Michigan Public Service Commission ("MPSC") in its attempt to satisfy the *Computer III* nonstructural safeguards from the FCC's *Payphone Reclassification Proceeding*.

May 21, 1997 - Verizon filed its cost support with the MPSC.

May 20, 1997 - Michigan Pay Telephone Association ('MPTA') filed a petition requesting that the MPSC initiate an investigation to determine whether the local exchange service tariffs filed by SBC Michigan and Verizon comply with the requirements of state and federal law.

November 7, 1997 - The MPSC denies the MPTA's Petition to initiate a proceeding. The Commission concludes that the MPTA and its members should file a complaint. The MPSC also ordered that Ameritech Michigan and GTE disclose to the MPTA the cost studies and supporting documentation that they filed in Cases Nos. U-11280 and Case No. U-11281, respectively. *In the matter of the Petition of the Michigan Pay Telephone Association to initiate an investigation to determine whether Michigan Bell Telephone Company d/b/a Ameritech Michigan, and GTE North Incorporated are in compliance with the Michigan Telecommunications Act and Section 276 of the Communications Act of 1934*, November 7, 1997 Order (Docket U-11410).

## **1998**

April 17, 1998 - Ameritech Michigan provides the MPTA with its cost studies. The MPTA engages in settlement discussions with Ameritech Michigan.

August 10, 1998 - the MPTA and 62 IPPs filed a complaint against SBC and Verizon alleging that the prices for services provided by SBC and Verizon violated the requirements of Section 276, the FCC *Payphone Orders*, and the Michigan Telecommunications Act. (Docket U-11756).

## **1999**

March 8, 1999 - MPSC issued its initial Opinion and Order in U-11756, concluding *inter alia*, that Michigan Bell Telephone Company was not required to apply the New Services Test to usage, and denying the complaint.

April 7, 1999 - MPTA filed a Request for Rehearing of U-11756.

May 11, 1999 - MPSC denied the MPTA's motion for rehearing of U-11756.

June 7, 1999 - MPTA filed an appeal of the MPSC's Order in U-11756 with the Michigan Court of Appeals.

## **2001**

October 23, 2001–Michigan Court of Appeals entered an order affirming the MPSC's orders.

November 15, 2001–MPTA subsequently filed a timely Application for leave to Appeal with the Michigan Supreme Court. *Michigan Pay Telephone Ass'n v. Michigan Public Service Commission*, unpublished opinion per curiam of the Court of Appeals, decided October 23, 2001, (Docket No. 219950).

November 10, 2001–MPTA filed a Petition for Declaratory Ruling with the FCC in FCC Docket No. 96-128 (the *Payphone Orders* proceeding).

## **2002**

January 31, 2002 - The FCC released its *Wisconsin Order*, which clarified its previous *Payphone Orders* and reiterated the manner in which the FCC intended the Commission to evaluate the May 1997 tariff filings submitted by SBC and Verizon and to apply the New Services Test.

March 4, 2002 - The FCC entered the *FCC Michigan Order*. In this Order, the FCC granted the complainants' Petition for Declaratory Ruling which had requested that the FCC find that the MPSC's *1999 Order* was not consistent with the New Services Test. The FCC held that the *1999 Order* "appear[s] to be inconsistent with the *Wisconsin Order*" and then remanded the case back to the Commission "for further state commission proceedings consistent with the [FCC] *Wisconsin Order*." *FCC Michigan Order*, ¶ 6.

March 5, 2002–FCC remands case to MPSC for further proceedings.

June 24, 2002–The Michigan Supreme Court grants the MPTA's Motion to vacated the Court of Appeals decision in No. 219950, and remands the case to the MPSC for reconsideration - *Michigan Pay Telephone Ass'n v. Michigan Public Service Commission, et al.*, (Docket No. 120386).

August 30, 2002–MPSC reopens docket U-11756.

## **2004**

March 16, 2004 - The Commission entered its Opinion and Order after remand. The Commission's Order identifies the direct cost for the flat rate portion of the monthly charge to payphone providers, and determines that appropriate overhead allocation. However, the Commission determines that it can assume that local usage complies with the New Services Test because local usage is comparable to toll usage.

April 15, 2004–MPTA filed an Application for Rehearing.

## **2005**

February 10, 2005–MPSC issued its Order denying motion for rehearing.

March 11, 2005–MPTA filed a Claim of Appeal to the Michigan Court of Appeals.

March 14, 2005–Mediator assigned by the MPSC.

## **2006**

October 3, 2006–Michigan Court of Appeals affirms MPSC Order.

November 14, 2006–MPTA files Leave to Appeal at the Michigan Supreme Court.

## **2007**

March 2, 2007–Michigan Supreme Court denies Petition for Leave to Appeal.

November 14, 2007–Joint Petition for Final Approval filed at MPSC.

December 14, 2007–Michigan Commission enters its order fixing a final amount of the refund owed to each complainant.