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March 20, 2009

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

**Re: CC Docket 96-128, Michigan Pay Telephone Association Second
Petition for Declaratory Ruling**

Dear Ms. Dortch:

On March 16, 2009, Henry T. Kelly of Kelley Drye & Warren LLP, Gary Pace, Executive Director of the Michigan Pay Telephone Association, and Greg Andrick of Great Lakes Telephone, met with Donald Stockdale, Pamela Arluk, Marcus Maher, and Lynne Hewitt Engledow of the Wireline Competition Bureau.

The MPTA's positions were generally discussed, as reflected in the attached document that was handed out in the meeting.

Please direct any questions to Julie Musselman Oost at (312) 857-2617.

Sincerely,



Henry T. Kelly

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

Michigan Pay Telephone Association
March 16, 2009

Outline

- A decade of litigation...
 - First Report and Order
 - Order on Reconsideration
 - Clarification Order
 - Bureau Waiver Order
 - Ameritech v. MCI
 - Michigan Orders
 - Wisconsin Order

- There are no new policies to be adopted

- MPTA Petition and Request

A Decade of Litigation...

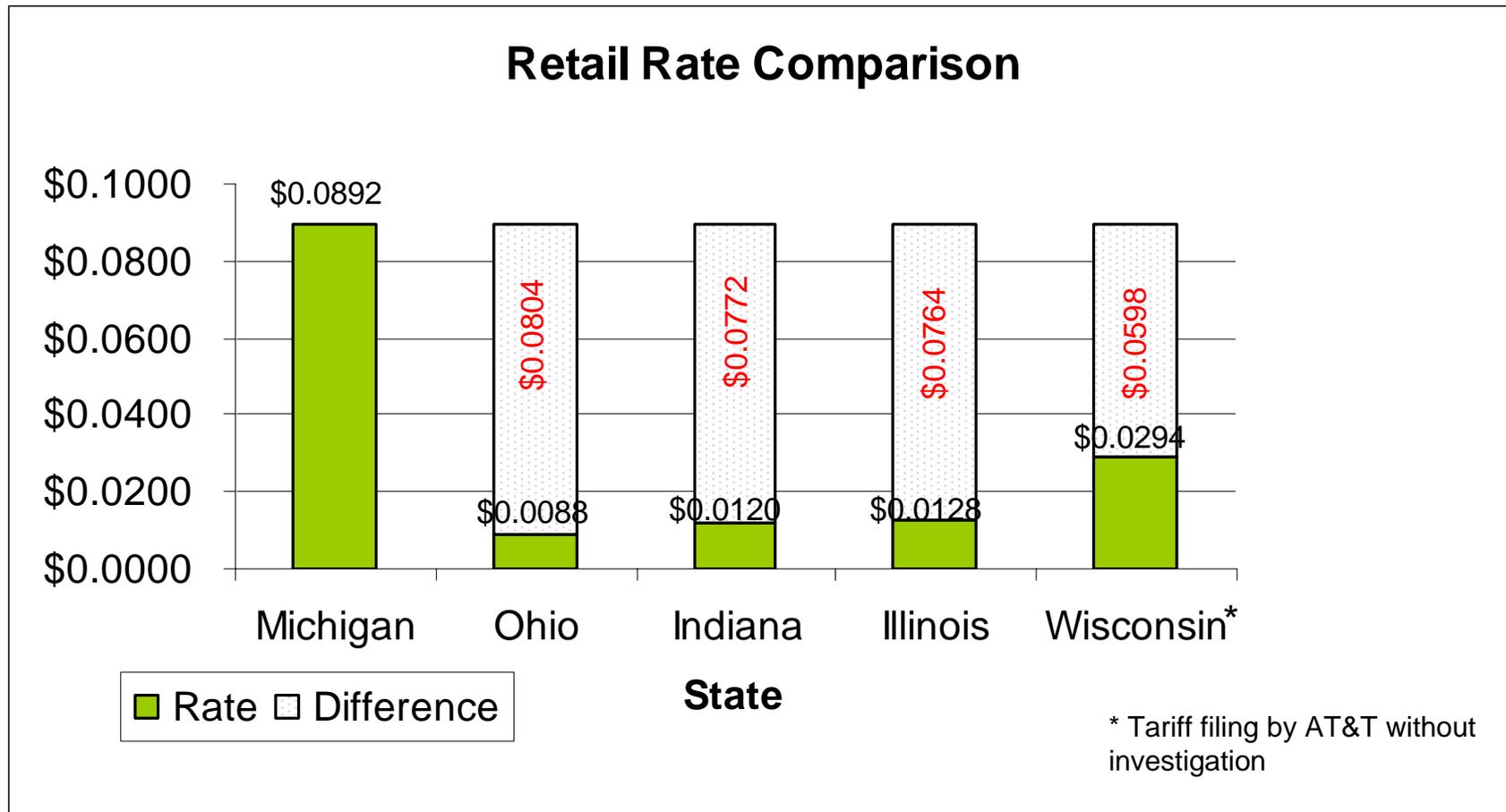
- After close to a decade of litigation and despite the declining pay telephone market, AT&T Michigan continues to charge independent payphone providers (IPPs) rates for services that are not cost-based, despite the FCC's established NST guideline methodology for local usage.

- 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 Subsequent to the filing of the MPTA Petition, AT&T has rescinded that rate increase.

Rate Comparison for Local Usage – Former Ameritech States



There Are No New Policies to be Adopted

- Rates to PSPs must be NST cost-based no later than April 15, 1997
 - *First Report & Order*, ¶¶ 146 – 147
 - *Order on Reconsideration*, ¶¶ 130 – 131, 163
 - *Bureau Waiver Order*, ¶ 30 (4/4/97)

- 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

- Any inconsistent state requirement is preempted
 - *First Report & Order*, ¶¶ 147

- BOC must be in compliance with NST rate requirement to be eligible to receive dial around compensation (DAC)
 - *Order on Reconsideration*, ¶¶ 130 – 131
 - *Bureau Waiver Order*, ¶ 30 (4/4/97)
 - *Clarification Order*, ¶ 10 (4/15/97)

There Are No New Policies to be Adopted (cont.)

- BOC certification of NST compliance does not substitute for the requirement to be in actual NST compliance to be eligible for DAC
 - *Ameritech v. MCI*, ¶ 10 (11/8/99)
- PSPs did not receive NST cost-based rates by April 15, 1997 because AT&T Michigan did not comply with the FCC's order.
 - *In the matter of the complaint of MPTA, et al. against Ameritech and GTE North, Incorporated*, Case No. U-11756
- AT&T Michigan collected \$100s millions of DAC prior to becoming eligible for DAC.
 - *In the matter of the complaint of MPTA, et al. against Ameritech and GTE North, Incorporated*, Case No. U-11756
- The FCC has already declared once that the Michigan Public Service Commission did not properly apply the NST and remanded the matter to the MPSC with directions to properly apply the NST.
 - *MPTA Petition for Declaratory Ruling*, March, CCP/CPD 99-35, March 2, 2002.

There Are No New Policies to be Adopted (cont.)

- PSPs should first raise issues about NST rates before the state commission
 - *Order on Reconsideration*, ¶ 163
 - *Wisconsin Bureau Order*, (3/2/00), aff'd 334 F.3d 69
 - *In the matter of the complaint of MPTA, et al. against Ameritech and GTE North, Incorporated*, Case No. U-11756

- FCC retained jurisdiction over NST rate compliance
 - *Clarification Order*, fn 60 (4/15/97)
 - *NC Utilities Comm'n Order*, ¶ 2 (3/20/98)
 - *Wisconsin Bureau Order*, ¶ 2, (3/2/00), aff'd 334 F.3d 69

- BOC receipt of DAC based on false certification of NST compliance will be addressed by the Commission
 - *Bell Atlantic v. Frontier Comm'ns*, ¶ 28 (9/24/99)
 - *Ameritech v. MCI*, ¶ 28 (11/8/99)

- The MPTA Petition requests that the FCC declare that a rate that is 600% over costs does not comply with the NST.
 - *MPTA Second Petition for Declaratory Ruling*, filed May 22, 2006.

Commission's Application of the NST to the Usage Rate Element

- *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

MPTA Petition: Establish Cost-Based Rates for Local Usage Service

- The MPSC's reliance on the non-cost-based overhead allocation associated with retail toll usage service as the "comparable" service is not consistent with the Commission's regulations

- There are no factual issues:
 1. the underlying cost studies or AT&T's proposed methodology adopted by the Michigan PSC;

 2. the overhead adopted by the MPSC for non-usage rates was proposed by AT&T;

 3. the effective date of applying the cost-based rates.

MPTA Petition: Establish Cost-Based Rates for Local Usage Service

- In light of the MPSC's failure to justify the variance, it was improper for the MPSC to apply non-uniform overhead allocations to the payphone services; one for the flat monthly rates charged by AT&T Michigan, and a different, non-cost based overhead allocation for local usage.
- Because local usage is one of the largest rate elements the IPPS face on a monthly basis, the MPSC's use of an overhead allocation for local usage that is more than 6 times its direct costs is not a cost-based overhead allocation factor, and violates the new services test.
- AT&T Michigan's current tariffed rate for local usage services is unlawful and in violation of the new services test regulations, the Commission's *Payphone Orders*, and Section 276;

MPTA Request

- Grant the MPTA Second Petition for a Declaratory Ruling, concluding that the MPSC failed to properly interpret and follow the Commission's New Services Test with respect to AT&T's local usage overhead allocation service and rate.
- Correct the MPSC's error which allows AT&T to impose non-cost-based rates for local usage services to Michigan IPPs in violation of the *Wisconsin Order*, the New Services Test regulations and Section 276.