S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the formal complaint of **Michigan Bell Telephone Company d/b/a AT&T Michigan** against **B&S Telecom, Inc., Quick Communications, Inc., and Bruce Yuille** for the breach of the Approved Interconnection Agreement between AT&T Michigan and B&S Telecom, Inc	)	Case No. U-16501

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on June 24, 2011.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before July 8, 2011 or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before July 15, 2011. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

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Richard A. Patterson
Administrative Law Judge

June 24, 2011
Lansing, Michigan

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION
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In the matter of the formal complaint of **Michigan Bell Telephone Company d/b/a AT&T Michigan** against **B&S Telecom, Inc., Quick Communications, Inc., and Bruce Yuille** for the breach of the Approved Interconnection Agreement between AT&T Michigan and B&S Telecom, Inc	)	Case No. U-16501

PROPOSAL FOR DECISION

I.

BACKGROUND AND HISTORY OF PROCEEDINGS

The complaint in this matter alleges that AT&T Michigan (AT&T) is licensed as a provider of basic local exchange service and provides regulated and unregulated telecommunication service in the State of Michigan. Specifically, it is a local exchange carrier as defined in 47 U.S.C. §153(26) and an Incumbent Local Exchange Carrier as defined in 47 U.S.C. §251(h). The complaint further alleges that B&S Telecom, Inc. (B&S) is a Michigan Corporation licensed to provide basic local exchange service that provides regulated and unregulated telecommunication services in the State. B&S does business under the assumed name of "MI Quick Connect" and "Quick Connect USA", assumed names shared with Quick Communications, Inc., and Quick Connect VOIP, Inc (Quick).

Bruce Yuille is the President, Treasurer, and a Director of Quick, as well as President, Secretary, and a Director of B&S.

Complainant AT&T and B&S are parties to an Interconnection Agreement (B&S ICA) under Sections 251 and 252 of the Telecommunications Act of 1996, executed as of February 6, 2006. The B&S ICA and four amendments thereto were approved by the Commission in Case No. U-14783 on March 14, 2006, pursuant to the Commission's authority under 47 U.S.C. §252(e).

Pursuant to 47 U.S.C. §252(i), the B&S ICA was adopted from the ICA between AT&T and Quick, and approved by the Commission on October 14, 2004, in Case. No. U-14301, together with Commission amendments. The Quick ICA was, in turn, adopted under 47 U.S.C. §252(i) from the ICA between AT&T Michigan and MCImetro Access Transmission Services, LCC, which was approved by the Commission on December 18, 2003, in Case No. U-13758, together with Commission approved amendments.

The complaint alleges that B&S and Quick are alter egos of Bruce Yuille and that those entities and Yuille, as an individual, have committed a fraud and breached the subject ICA in three respects:

1. Nonpayment of resale services from January through September 2010 in the amount of $700,500.32
2. Failure to comply with deposit requirements of the ICA.
3. Violation of MCL 484.2305(k) by transferring resale customer accounts for an amount less than fair market value, and without the consent of the end users.

Based on the above allegations, the complaint seeks damages for breach of the ICA, and asks that Quick and Yuille be held jointly liable with B&S. This latter assertion is based on AT&T's contention that the respective corporations were shams or alter egos of Yuille and controlled by him. Therefore, the Commission is asked to "pierce the corporate veil," vitiating the limited liability of shareholders and related entities. In

addition, AT&T requests that the Commission impose statutory penalties and fines, including revocation of the basic local exchange licenses of B&S and Quick, pursuant to MCL 484.2601. Lastly, it asks that the Respondents be assessed sanctions for filing frivolous motions.

Respondents answered the complaint by denying the above allegations and, in addition, contending, through the filing of a Motion for Summary Disposition, that the Commission lacks jurisdiction over the subject matter of the complaint, as well as over Bruce Yuille individually. That motion was taken under advisement at a Pre-Hearing Conference held on December 20, 2010.

Respondents also filed a Motion to Dismiss or Suspend the Case based on the fact that AT&T did not file a full copy of the B&S ICA with its complaint, but merely cited to a web site where it could be found. MCL 484.2203(7) states:

> An application or complaint under this section shall contain all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely to support the application or complaint.

The Motion was answered by AT&T in which it claimed the motion was frivolous and requested that it be awarded sanctions under MCL 484.2209(1). Respondents' Motion was denied on the record. See, 2 Tr 49. for the reason that the ICA was a document entered into between AT&T and Respondents, and that it was, therefore, equally within their possession and knowledge, and thus the general requirement of notice pleading had been fulfilled. AT&T's Motion for sanctions was taken under advisement, as were other such requests that are addressed later in the PFD.

In addition, there have been a number of motions filed relative to discovery and other preliminary non-dispositive matters. Respondents filed a Motion for Protective

Order in which it proffered a proposed order. In response, AT&T proposed that the usual form of protective order be entered and requested that Respondents be compelled to respond to its previously filed discovery requests. These motions were noticed for oral argument by this ALJ and the parties were sent an E-Mail advising them of the date and time. Unfortunately, due to an inadvertent transposition of letters in his E-Mail address, the notice to counsel for Respondents was not received by Mr. Yuille. There was, however, no indication, as usually occurs, that the E-Mail had not gone through. As a consequence, Mr. Yuille was not present and this ALJ telephoned him at his home. While he indicated he could be present within one and a half to two hours, counsel for AT&T objected to waiting and the hearing went ahead. On the record of that hearing, the Protective Order proffered by AT&T was signed as opposed to that of Respondents. There was little material difference in the respective orders themselves other than the time frame for discovery responses. However, the document submitted by Respondents contained a protocol which was found to be unwarranted and unduly cumbersome. See, 2 Tr 53-55

On January 28, 2011, Respondents filed an application for leave to appeal this ALJ's rulings. The application was, again, based on their claim that the Commission lacked jurisdiction over the complaint and sought to vacate the January 26, 2011 order on that basis. A response to the application was filed by AT&T on February 11, 2011. To this ALJ's knowledge, there has been no disposition of the appeal.

On February 4, 2011, AT&T filed a motion for sanctions against Respondents and a notice of hearing, scheduling the motion for hearing February 14, 2011. The motion asserted that Respondents had failed to respond to AT&T's discovery request within the

five business days the parties had stipulated to at the prehearing conference, and that their responses, when later filed, were inadequate.

A Motion to Disqualify this ALJ filed by Respondents ensued.

Respondents also filed an answer to the complaint on the merits on December 15, 2010. The answer admitted that AT&T and B&S were parties to the Commission-approved ICA and that AT&T provided services to B&S under the agreement. B&S denied owing any money to AT&T for the reason that "B&S has claimed in Case Nos. U-16162 and U-16444, and in dispute letters to Contract Management that AT&T is holding in excess of 1.6 million dollars of B&S's money" for overcharges. Answer, at p.2. The Commission granted AT&T's motion for summary disposition, dismissing B&S's complaint in Case No. U-16162 on August 30, 2010.

On February 11, 2011, Respondents filed an additional motion to determine the sufficiency of AT&T's discovery responses. The parties agreed that the ALJ could hear this motion and Respondents' motion to disqualify on February 14, 2011, the date set for hearing on AT&T's motion for sanctions. At that hearing, the motion to disqualify was denied and the previous rulings on the motion for protective order and motion to dismiss or suspend originally heard on January 26, 2011, were reaffirmed. Respondents were ordered to fully respond to discovery requests found to be appropriate, and AT&T's motion for sanctions was taken under advisement.

On February 16, 2011, Respondents Quick and Yuille filed another motion to dismiss based on a claimed release, which was answered by both AT&T and the Commission (Staff). Finally, on March 14, 2011, Respondent Yuille filed a motion for

summary disposition as to all allegations charging that he committed fraud. AT&T filed a response, and Yuille filed a reply to the response.

A cross-examination was originally scheduled for March 22 and 23, 2011. On March 16, 2011, this ALJ issued a scheduling memo cancelling the cross examination due to counsel for Respondents having to undergo emergency open heart surgery. On March 21, 2011, the parties stipulated to a new schedule, pursuant to which cross examination was rescheduled for May 10 and 11, 2011. On May 6, 2011, the parties stipulated to waive cross examination and further agreed that the pre-filed direct testimony and exhibits submitted by both AT&T and Respondents may be bound into the record. The parties further agreed to waive hearing on Quick and Yuille's pending motion to dismiss, as well as Yuille's motion for summary disposition, and simply have them decided on the pleadings.

II.

JURISDICTIONAL ISSUES AND FINDINGS THEREON

From the outset, Respondents have taken the position that the Commission lacks jurisdiction over this matter. The essence of the claim is that this action is merely a collection matter within the jurisdiction of the Circuit courts, and that Complainant's allegations that Respondents Quick and Bruce Yuille should be held responsible for the alleged debt constitute a request for equitable relief, which also is within the exclusive province of the Circuit courts (as opposed to the Commission). Secondarily, Respondents argue that the Commission's jurisdiction under both the Federal delegation of authority and the MTA is limited to approving ICA's, and that once that

approval has been given, the Commission is powerless except to determine and enforce violations thereof, and that non-payment does not constitute a violation.

In response, Complainant argues that the Commission clearly has jurisdiction as indicated by a decision of the Federal Trade Commission in *In Re Starpower Communications,* 15 FCCR 11277, at page 7, where it is stated:

> [I]nherent is state commissions' express authority to mediate, arbitrate, and approve interconnection agreements under 252 is the authority to interpret and enforce previously approved agreements.

It further points out that the federal courts have uniformly held that state commissions' power to approve or reject interconnection agreements necessarily carries with it the power to interpret and enforce such agreements, citing for example, *Southwestern Bell v Brooks Fiber,* 208 F 3rd 493 (10th Cir 2000)*; Southwestern Bell v Public Util Comm'n,* 208 F 3rd 475 (5th Cir 2000)*; Iowa Util Bd v FCC,* 120 F 3rd 753, 804 (8th Cir 1997), *rev'd in part on other grounds sub nom AT&T Corp v Iowa Util Bd,* 119 S. Ct 721 (1999)

Lastly, AT&T points out that the Commission has long recognized that it "does have authority to interpret and to enforce interconnection agreements that it has approved," citing its August 12, 2008 Order in *Sprint Communications L.P. v AT&T Michigan,* Case No. U-15491 at p.13.

Two provisions of the MTA also belie Respondent's argument. First, MCL 484.2201 provides:

> (1) Except as otherwise provided by this act or federal law, the Michigan public service commission shall have the jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state.

(2)The commission shall exercise its jurisdiction and authority consistent with this act and all federal telecommunications laws, rules, orders, and regulations.

Secondly, MCL 484 2203 (1) Provides:

> Upon receipt of an application or complaint filed under this act, or on its own motion, the commission may conduct an investigation, hold hearings, and issue its findings and order under the contested hearings provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

In addition, at least two other provisions contemplate actions between providers. Those are MCL 484.2204, which provides:

> If 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication service of a matter prohibited by section 305, then either telecommunication provider may file with the commission an application for resolution of the matter;

And MCL 484.2205, providing:

> The commission may investigate and resolve complaints under this act….The commission's authority includes, but is not limited to, the revocation of a license and issuing cease and desist orders.

There is no question that AT&T's complaint is based on an interconnection agreement approved by the Commission. The ICA between it and B&S was adopted from a Commission approved ICA between AT&T and Quick, in Case No. U-14783, on March 14, 2006. In its order approving the parties' ICA, the Commission expressly "reserves jurisdiction and may issue further orders as necessary." Id., at p.3. The Quick ICA was, in turn, adopted from the ICA between AT&T and MCI Metro Access Transmission Services LLC, approved by the Commission on December 18, 2003 in Case No. U-13758. The parties' ICA contains language, approved by the Commission, which expressly acknowledges the Commission's continuing jurisdiction to implement

and enforce the terms of the agreement. Paragraph 12.3.1 of the General Terms and Conditions provides that:

> The Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve by Informal Dispute Resolution, may be submitted to the Commission at any time for resolution.

There is, therefore, no question the Commission's jurisdiction and enforcement authority transcend approval of the ICA. The argument that non-payment is not a violation of the ICA is without merit. Obviously, payment as called for is one of the more basic terms of any contract or ICA.

As stated, Respondents contend that the Commission cannot "pierce the corporate veil" and impose liability for the debt on either Quick or Yuille, as that is an equitable remedy solely vested in the Constitutional courts. However, as indicated above, the Commission is clearly vested with authority to enforce an ICA sanctioned by it. To impose the alter ego or principal of piercing the corporate veil may be invoked if the elements thereof are proven as a facet of the Commission's enforcement function. In fact, there is precedent for such in administrative agencies as exemplified by *Pel-Star Energy, Inc. and John H. Harvison v United States Department of Energy,* 70 Fed 2d 1289 (1995), where the Federal Energy Regulatory Commission determined that Mr. Harvison, as the principal of the subject corporation, should be held liable under the alter ego doctrine.[1]

[1] The determination was overturned on appeal as the Court determined FERC misapplied the standards, but no determination was made that it did not have jurisdiction to do so.

Based on the above, I conclude as a matter of law that the Commission has jurisdiction to enforce the terms of the ICA, as well as the power to pierce the corporate veil, if facts supporting that doctrine prevail.

This leaves disposition of the two pending motions to which responses have been filed that the parties have stipulated to submit on the pleadings, having waived oral argument.

The first is Respondent Yuille and Quick's Motion to Dismiss Because of Release. The second is Respondent Bruce Yuille's Motion for Summary Disposition on Petitioner's claim that he committed fraud.

Regarding the issue of release, the motion is based on language in the ICA adopted between B&S and AT&T which, provides:

> 15.3 No Consequential Damages-Neither MCIm (B&S by adoption) nor SBC Michigan (AT&T by adoption) shall be liable to the other party for any indirect, incidental, consequential, reliance or special damages suffered by such other party, (including without limitation damages for harm to business, lost revenues, lost savings, or lost profits suffered by the other Party), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind whether active or passive, and regardless of whether the Parties knew of the possibility that such damages could result. Each Party herby releases the other Party (and such other Party's subsidiaries and affiliates, and their respective officers, directors, employees and agents) from any such claim.

Quick and Yuille argue that the above language releases them from liability as affiliates for "indirect lost revenue" sought from them by AT&T.

In response, both Staff and AT&T assert the motion is procedurally defective in that, as an affirmative defense which was not alleged in its first responsive pleading, it has been waived. As a consequence, the proper means to assert the defenses should be a motion to amend their pleading, which if made, should be denied. In turn, Quick

and Yuille argue that Staff's brief in opposition and arguments should not be considered as it has no standing, based on the assertion that it has nothing to gain or lose, as only AT&T is entitled to recovery, if at all. This assertion, however, if it has merit, which is dubious, is immaterial in that Staff is taking the same position as AT&T, which unquestionably has the right to respond to the motion. These procedural arguments need not be addressed, however, since the argument on the merits clearly indicates that the motion should be denied. In answer to the motion, the proponents contend the clause is not applicable as this case does not involve "consequential damages", but rather is to enforce a contractual obligation directly related to the ICA or actual damages. These are distinct from consequential damages as pointed out by council in citing Blacks Law Dictionary as defining such as "losses that do not flow directly and immediately from an injurious act, but that result indirectly from the act". As stated in *Sullivan Industries, Inc. v Double Seal Glass Co.,* 192 Mich App 333, 347:

> Examples of consequential damages include lost profits, and interest paid on loans taken out to maintain business operations.

Moreover, and as pointed out by counsel for AT&T, to consider the contested clause to release a party from non payment of its basic obligations under the contract would render that contract (in this case the ICA) totally illusory. It would make no sense to obligate a party to payment of the terms of the contract and then release them from that liability.

Although not entirely clear, the motion to dismiss seems to rely on the assertion that Quick is an affiliate of B&S and Yuille is an officer of the corporations, thereby being released under the last sentence of the release provision. However, that language is clearly intended to extend the release to those related persons and entities from liability

for any potential consequential damages, as opposed to releasing them from ancillary liability for the direct obligations under the ICA.

For all of the above reasons, the Motion to Dismiss based on Release is DENIED. This ruling does not constitute a "re-writing" of the ICA, which Quick and Yuille contend is impermissible in their reply to AT&T's response and is, in fact, a straightforward application of unambiguous language. Further, any contention articulated in the reply as to this ruling being non-compliant with the Michigan Administrative Procedures Act or constituting a position that the Commission cannot legally adopt, are issues that may be preserved and properly presented in exceptions to the Proposal for Decision or in further judicial review.

In the second motion, Respondent Yuille requests summary disposition of the claim that he committed fraud. Essentially, AT&T alleged that B&S and Quick are alter egos of Yuille, and have acted in concert to perpetrate a fraud on AT&T by, in part, transferring B&S's resale customer accounts to Quick for an amount less than fair market value in order to frustrate collection by AT&T of amounts in claims are owned under the ICA.

During the discovery process, Respondents filed requests to admit to AT&T which, under number 2, stated:

> Please admit that Bruce Yuille has not made any representations of material fact that were false when made with the intent that AT&T rely on same and upon which AT&T reasonable relied.

The supplemental response of AT&T was as follows;

> Admitted that Bruce Yuille did not personally make any representations of material fact with respect to the subject matter of the complaint in this matter that were false when made with the intent that AT&T rely on same and, upon which AT&T relied.

Therefore, Yuille contends there is no genuine issue of material fact and that he is entitled to Summary Disposition under Commission Rule 323.

In response, AT&T admits that the motion may have merit if lodged in a tort case for specific fraudulent misrepresentations made by Yuille. Elements of common law fraud are contained in M Civ JI 128.01, as cited by Yuille in his motion. That provision states:

> To establish fraud, plaintiff has the burden of proving each of the following elements by clear and convincing evidence:
> a. Defendant made a representation of [material fact/material facts].
> b. The representation was false when it was made.
> c. Defendant knew the representation was false when [he/she] made it.
> d. Defendant made the representation with the intent that plaintiff rely on it.
> e. Plaintiff relied on the representation.
> f. Plaintiff was damaged as a result of [his/her] reliance.

AT&T asserts that its claim is not based on any specific fraudulent representations made by Yuille, but upon his pattern of exercising control over B&S and Quick to the extent they were merely his alter egos as evidenced by such things as his failure to maintain required corporate records, failure to hold annual meetings of shareholder or directors, facilitating his use of his authority to manipulate assets to AT&T's detriment, and thus allegedly making him personally liable to AT&T. I find this assertion to correctly state the essence of the complaint before the Commission. Hence, the admission should be narrowly construed to be an admission that Yuille made no specific tortuous material representations, but not that he conducted himself in such a matter that he should not be protected by the corporate veil as alleged by AT&T. Therefore, that motion for summary disposition is DENIED as well.

III.

TESTIMONY AND POSITIONS OF THE PARTIES

For its part, AT&T offered testimony from three witnesses. The first, Mr. Lance McNeil indicated he is employed by AT&T as a Senior Quality Method and Procedure Manager based in Fort Worth, Texas. As such, he is responsible for addressing regulatory matters related to Competitive Local Exchange Carriers use of Operational Support Systems (OSS) of the AT&T incumbent local exchange carriers, including AT&T Michigan. He is also responsible for regulatory matters related to the AT&T local service center requests, which is the organization responsible for processing CLEC local service requests (LSR) and billing and claims adjustments on a manual basis. He has previously testified before the MPSC as well as the public utility commissions of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, and Ohio.

He stated that the purpose of his testimony is to demonstrate how B&S Telecom voluntarily migrated its resale end-user customers to Quick,, another CLEC that is owned or controlled by Bruce Yuille, president of B&S. Regarding that, AT&T received 921 LSRs from Quick on September 2 and 3, 2010, shortly before the resale lines covered by these orders were scheduled for disconnection. Those LSRs were submitted electronically by way of AT&T's Local Service Request Exchange (LEX) system. Mr. McNeil has reviewed a representative sample of 30 of the LSRs. From the coding on each, he determined that all of them were assigned to Quick. They also were entered in the activity type field as "W", indicating a request to migrate the telephone number "as is" or without any changes. In the requisition type and status field, the entry is "EB" which indicated this was an order for resale service with a firm order

confirmation requested. All of the service orders were generated by AT&T's Midwest Mechanized Order Generation system, and, therefore, flowed through without manual processing or review. In no case were any orders handled by service representatives. Mr. McNeil believes it would have been a violation of the interconnection agreement and a violation of the Commission's slamming rules if the transfer was done without authorization, but testified that such information would be in the possession of B&S, Quick, or Mr. Yuille. He did note, however, that Quick transferred all of B&S's resale lines to itself in a very short time period. Other than a sale of the company, he does not know of any other circumstances where that has occurred.

AT&T's second witness was William Eric Greenlaw, an Associate Director in the AT&T Wholesale Regulatory organization, located in Dallas, Texas. In addition to his current role, he has held management positions in wholesale organizations responsible for CLEC customer care, CLEC sales and support, local switched product management, local switched policy management, and segment marketing. He has previously provided written testimony to the public utility commissions of Texas and Wisconsin. The purpose of his testimony is to explain the provisions of the ICA between AT&T and B&S that governs B&S's payment obligations. Further, it is to explain the ICA provisions which allow AT&T to protect itself when a CLEC such as B&S fails to honor its payment obligations. Specifically, in order to protect AT&T against a CLEC that fails to pay its bills when due or otherwise improperly refuses to perform material obligations of the ICA, the ICA allows AT&T to demand additional financial security, to suspend orders, to disconnect service, and/or to terminate the ICA. Lastly, he addressed the remedy provisions of the ICA.

Beginning in January 2010, AT&T provided B&S with resale local exchange services under the terms of Appendix XX of the ICA. Under the Federal Telecommunications Act, AT&T permits CLECs to purchase AT&T's retail telecommunications services, such as local exchange service, at a Commission approved discount and resell those services to its retail customers.

Previous to January of 2010, B&S provided service to its customers through services provided by AT&T under the parties' Local Wholesale Compete (LWC) agreement. Mr. Greenlaw opined that B&S transferred its LWC lines to resale service under the parties' ICA in order to avoid disconnection of its LWC lines for non-payment. This was one of the first moves, in what he termed a "shell game", B&S and its President, Bruce Yuille, concocted to avoid payment to AT&T.

On March 19, 2010, AT&T sent an initial demand notice to B&S demanding payment of the amounts due and outstanding under B&S's February 1 through 16, 2010 resale invoices (in the amount of $122,277.78) within five business days. See, Exhibit ATT-4. B&S did not comply with the demand and further action was taken pursuant to Appendix VII of the parties' ICA, which was entered as Exhibit ATT-2, and which provides:

> 7.2.1 If the Non-Paying Party fails to (i) pay any undisputed amounts or fails to file a bona fide dispute for amounts in dispute by the dead-line provided in the first late payment notification, (ii) pay any revised deposit or (iii) make a payment in accordance with the terms of any mutually agreed upon payment arrangement, the Billing Party will, in addition to exercising any other rights or remedies it may have under Applicable Law, provide a second late payment notice/written demand to the Non-Paying Party for failing to comply with the foregoing. If the Non-Paying Party does not satisfy the second late payment notice/written demand within sixty (60) days of receipt, the Billing Party may exercise any, or all of the following options.

7.2.2 assess a late payment charge and where appropriate, a dishonored check charge;
7.2.3 require provision of a deposit or increase an exiting deposit pursuant to a revised deposit request;
7.2.4 refuse to accept new, or complete pending order; and/or discontinue service.

Under the above, on April 5, 2010, AT&T sent a second demand notice to B&S. This notice, submitted as Exhibit ATT-5, advised B&S that, unless the unpaid charges from the February 1 through 16, 2010 invoices were paid within sixty days, AT&T may suspend orders and discontinue service to B&S.

B&S did not pay and on June 29, 2010, AT&T sent B&S a notice, submitted Exhibit ATT-6, demanding that B&S post additional security in the form of a cash security deposit or irrevocable letter of credit in the amount of $252,250, in accordance with the General Terms and Conditions of the parties' ICA, submitted as Exhibit ATT-3. Paragraph 9.2.3 provides that B&S must post a deposit with AT&T if:

> The Party fails to timely pay a bill rendered to it (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which the Non-Paying Party has complied with the billing dispute requirements set forth herein).

B&S did not dispute the amount of the required deposit, but asserted that it was not required to post a deposit as a result of the claims it asserted against AT&T in Case No. U-16162. Those claims have since been dismissed by the Commission with prejudice. Because B&S failed to post the required deposit, on August 24, 2010, AT&T notified B&S that it would begin disconnection procedures. The August 24, 2010 notice is Exhibit ATT-7.

Subsequently, B&S arranged for Quick Communications to port the lines to Quick, as described in Mr. McNeil's testimony. This action effectively prevented AT&T

from disconnecting the service and hindered AT&T's ability to collect from B&S since its customers were its only significant assets. Mr. Greenlaw expressed AT&T's concern that Quick will default, as it has in the past, and will arrange to have the lines ported back to B&S or some other entity controlled by them to further evade collection.

Based on the above, AT&T requests that the Commission order B&S, Quick, and/or Bruce Yuille to pay the sums owed to AT&T for resale services under the ICA between AT&T and B&S. As of September 2010, that amount totaled $700,500.32, as shown on the Statement of Account submitted as Exhibit ATT-8. Second, AT&T requests that the Commission find that the ICA has been terminated for breach by non payment. Finally, AT&T requests that the Commission impose sanctions and penalties against B&S, Quick, and Mr. Yuille, including revocation of their licenses to provide local exchange services and bar Mr. Yuille from further participation in any licensed carrier.

The request to have the Commission find the ICA to be terminated for breach is based on Paragraph 7.2 of the General Terms and Conditions, which stated:

> Either Party may terminate this Agreement in the event that the other Party fails to perform a material obligation or materially breached a material term of this Agreement and such failure or breach materially disrupts the operation of either Party's network and/or materially interferes with either Party's end user customer's service, and the breaching Party fails to cure such material nonperformance or material breach within forty-five (45 days after written notice thereof…

Regarding sanctions, AT&T points out B&S's long history of frivolous complaints, failure to pay, and fraudulent attempts to avoid living up to its obligations under the ICA and requests that the Commission impose maximum fines and penalties permissible under section 601 of the Michigan Telecommunications Act. Specifically, AT&T requests that, in addition to appropriate monetary penalties, the Commission revoke

B&S's license to provide local exchange service, as it does not possess sufficient technical, financial, and managerial resources and abilities to provide local exchange services, and that allowing it to maintain its license, is contrary to the public interest. Mr. Greenlaw asserts that such a termination would not affect end use customers since B&S no longer has any working resale lines in service since those have been transferred to Quick.

In supplemental written testimony, Mr. Greenlaw testified in further support of AT&T's allegations that B&S and Quick are mere instrumentalities or alter egos of Bruce Yuille, making Yuille and Quick liable for B&S's breach of its obligations to AT&T.

Mr. Greenlaw sponsored a number of exhibits comprising corporate records of the various entities. He then summarized the respective corporate histories, based on those records, as reflected below:

A. QUICK COMMUNICATIONS

Quick Communications, Inc. was incorporated in Michigan in March 2001, as shown in Exhibit ATT-9. In June 2001, Douglas Quick, identified as President of Quick, filed a certificate of assumed name on behalf of Quick to do business as Quick Connect USA. See, Exhibit ATT-10. In its 2002 information update filed with the state on July 26, 2002, Quick identified Douglas Quick as its President, Secretary, and Treasurer. According to Respondent's answer to AT&T's discovery requests including AT&T-B&S-11 and Exhibit ATT-12, Saul and Lina Anuzis and Bruce and Susan Yuille purchased 1,000 shares of Quick stock and Mr. Yuille became President on December 15, 2002 and has held that position since. On December 16, 2003, Quick reported its

officers as Bruce Yuille, President and Treasurer, Saul Anuzis, Vice President, and Susan Yuille, Secretary. In its 2004 annual report filed October 1, (Exhibit ATT-14), Douglas Quick is listed as President, Secretary and Treasurer. The 2005 report indicted no changes in officers. Therefore, in Mr. Greenlaw's opinion, Quick either filed false reports with the state in 2003 and 2004, in violation of sections 931 and 932 of the Michigan Business Corporation Act, or the response to discovery request ATT-B&S-118 was false. The reports filed in 2006 and 2007 by Quick list Bruce Yuille as its President, Secretary, Treasurer, and Director. See, Exhibits ATT-16 and ATT-17, respectively. No such report was filed in 2008, and Quick was dissolved by the state of Michigan on July 15, 2010. Ultimately, an annual report was filed on October 1, 2010, indicating no changes in officers. The report filed in September 2009 (Exhibit ATT-19), lists Bruce Yuille as President, Treasurer, and Director. That document also indicates that Brittney Yuille, Bruce Yuille's daughter, is Corporate Secretary and director, and that Saul Anuzis is a director. The report filed in 2010 (Exhibit ATT-20), certifies that there were no changes.

Initially, Quick appears to have conducted annual shareholder meetings as required by Section 2.02 of its Bylaws. See, Exhibit ATT-21. On October 10, 2002, the day after Mr. Yuille acquired his stock in Quick, the corporation held a special meeting of shareholders to adopt bylaws and issue certificates to Bruce Yuille, Saul Anuzis, and Douglas Quick. Those minutes also reflect that upon sale of Mr. Quick's stock to Mr. Yuille and Mr. Anuzis, would become President, and Secretary, and Chairman, and Treasurer, respectively. On December 15, 2002, Quick held its first annual shareholder meeting, at which Mr. Yuille was elected President and his wife, Susan, was elected

Secretary and Treasurer. See, Exhibit ATT-22A. On December 17, 2003, Quick held a combined annual meeting of shareholders and directors, at which the shareholders ratified the acts of the corporate officers. No other business was conducted. See, Exhibit ATT-23. On December 21, 2004, Quick held an annual shareholders meeting, combined with a directors meeting. Once again, the only business conducted was to ratify the actions of the officers for the year. See, Exhibit ATT-24. After that meeting, Quick failed to hold any annual shareholders meetings until January 30, 2011. During that period there appear to have been no meetings of the Board of Directors.

B. B&S TELECOM

B&S Telecom was incorporated in Michigan in April of 2001. On June 1, 2001, B&S filed a certificate of assumed name to transact business as "MI Quick Connect". See, Exhibit ATT-26. In June of 2002, B&S filed its required information, listing Bruce Yuille as President and Treasurer, Susan Yuille as Secretary, and Saul Anuzis as Vice President. See, Exhibit ATT-27. It would, therefore, appear that B&S and Quick did business under the assumed name of Quick Connect.

B&S held its first annual shareholder meeting on December 15, 2002 at the same time and location as the annual shareholder meeting of Quick. As reflected in the minutes (Exhibit ATT-28), Bruce Yuille was appointed President and Susan Yuille Secretary. At that time, B&S also held its first annual shareholder meeting. Stock certificates were also issued at that time. On December 17, 2003, B&S conducted a combined annual meeting of shareholders and directors as shown on Exhibit ATT-30. The meeting was held at the same time and place as the annual meeting of Quick, as

reflected in Exhibit ATT-13. The only business transacted was ratification of the acts of the officers. No directors were elected, even though the bylaws provide for the annual election of directors. The 2003 Corporate Information Update reflects that Mr. Yuille continued to act as President and Secretary. See, Exhibit ATT-31. There is no record that the shareholders or Board of Directors met again until January 30, 2011, four days after this ALJ ordered B&S to respond to AT&T's discovery requests and the day before it filed partial answers in response to the inquiry regarding corporate meetings.

B&S did file annual reports for 2004 and 2005. See, Exhibits ATT-32 and 33, respectively. Both indicated no changes from the 2003 report. In its 2006 report, it was indicated that Mr. Yuille was now both President and Secretary, and that Mr. Anuzis was Treasurer and Vice President. This change was apparently done without a meeting in that there is no record of such. On May 2, 2007, B&S filed its 2007 report indicting no changes. See, Exhibit ATT-35. B&S failed to file its 2008 annual report timely, leading to its dissolution by the State at the same time the State dissolved Quick. Both entities were notified of their dissolution by the MPSC on August 27, 2010, as the basis for rejecting a complaint filed by B&S against AT&T in Case No. U-16444, as they could not carry on any business activities other than winding up their affairs. The 2008 report (Exhibit ATT-36) was ultimately filed on August 30, 2010, at the same time as the 2009 and 2010 reports. See, Exhibits ATT-37 and 38, respectively. All three reports indicated no changes in officers or directors.

The January 30, 2011 meeting held at the Big Boy Restaurant in Hartland, Michigan, consisted of the first shareholder meeting of Quick since 2004 and the first such for B&S since 2003. See, Exhibits ATT-39 and 40, respectively. Both

corporations took substantially similar actions. The shareholders of Quick amended its bylaws in an attempt to:

> Retroactively to November 1, 2002, eliminate the Bylaw requirement for annual meeting of shareholders.
>
> Retroactively to January 1, 2005, provide that Quick would have only one director, Bruce Yuille.
>
> Retroactively to January 1, 2005 or January 1, 2001, provide that Quick have only two officers: President and, on an as needed basis, Secretary. Yuille was appointed to each role.
>
> Retroactively to January 1, 2005 or January 1, 2001 provide:
>
> > 4.06. That under no circumstances shall the fact that the company has only one director and one officer, occupied by the same person, be evidence that such person controls the company or under any theory of law or equity or any other theory be liable for any debt of Quick.
>
> Retroactively provide that, when stock is owned jointly by a husband and wife, notice to one is notice to the other and that one spouse can vote and otherwise bind the other.
>
> Retroactively accept the resignation of Saul Anuzis, Lina Anuzis, and Susan Yuille from their offices as of January 1, 2005.
>
> Waive any violation of the Michigan Business Corporation Act pertaining to holding meetings of shareholders and directors; and ratify all acts of B&S officers and directors (namely Bruce Yuille) from the beginning of time.

Id. Identical actions were taken regarding B&S.

Mr. Greenlaw, although admitting to not knowing the precise reasons for these actions, opined that it would seem to be intended to insulate Mr. and Mrs. Anuzis and Susan Yuille from responsibility for Mr. Yuille's actions, and evinces that both B&S and Quick are mere alter egos of Mr. Yuille, who dominates and controls them both. Mr. Greenlaw took note of the fact that B&S, and Quick for that matter, refused to

produce financial records, which he assumes would have been kept in some form in the normal course of corporate operations. It should be noted that, pursuant to a motion to compel, respondents were ordered to provide what records they had, although the answers to interrogatories and statements of counsel on the record indicated that neither corporation maintained financial statements, per se, and instead relied on checking accounts and tax returns prepared by their accountants. Mr. Greenlaw commented that, if this was the case, that would be telling due to the fact that the failure to keep what he would consider routine corporate records lends credence to the fact that these entities were merely alter egos and controlled by Mr. Yuille.

Mr. Greenlaw is of the understanding that B&S claims it was reselling basic local exchange service it obtained from AT&T under the parties' interconnection agreement with Quick, which in turn provided service to end users. While reselling resale service is not uncommon, given the fact that Quick could have directly obtained resale services of its own through an identical interconnection agreement, and given the fact that such an arrangement would have violated B&S's interconnection agreement, if such an arrangement existed, he would have expected to see the transaction documented in some form. Mr. Greenlaw is at a loss to find a legitimate reason for a CLEC to obtain basic local exchange service and then resell that service to another CLEC. To do so makes no economic sense to him unless the CLEC is engaged in a scheme to defraud AT&T and the public by shifting assets to a related company or evading creditors. AT&T resells basic local exchange service at its retail price, less a discount approved by the Commission. This allows a CLEC the opportunity to competitively price a service to its retail customers and still earn a return. If a CLEC acts as some sort of intermediary

by obtaining service from AT&T, it would presumably want to be compensated for its role and any costs incurred. That would leave less of a margin for the second CLEC. He also does not understand how B&S could perform this intermediary role with no employees as disclosed in its response to discovery (Exhibit ATT-42). Mr. Greenlaw did note, however, that Vera Fuselier, whom Respondents identify as being Quick's director of revenue assurance since 2001, testified in Case No. U-16162 that she was the director of revenue assurance for B&S Telecom. Likewise, Amy Kubs, whom Respondents identify as Quick's office manager, internal bookkeeper, Director of provisioning and customer service, also testified in Case No. U-16162 that she fulfilled those duties for B&S Telecom. Mr. Greenlaw also testified that Respondents have claimed that Mr. Yuille has loaned large sums of money to both B&S and Quick that have only partially been repaid. Exhibit ATT-43. Again, he would expect some documentation reflecting those loans.

Based on the answers provided and the lack of furnishing documents that Mr. Greenlaw would expect corporations to keep, it would appear to him that Respondents would have the trier of fact believe that nobody from B&S has ever spoken to anyone from Quick. A more plausible explanation to him is that, for all practical purposes, Quick, B&S, and Bruce Yuille are one and the same. He also is at a loss to explain how Quick could write orders to AT&T to transfer the customers from B&S without getting the information from B&S since AT&T did not give it to them.

AT&T's final witness was Mr. Daniel Faustman, the collection manager in AT&T's Wholesale 22- state finance group, who functions on behalf of the AT&T incumbent local exchange carriers in the 22 state regions based in Milwaukee, Wisconsin. He is

responsible for collecting balances invoiced for CLEC charges, as well as reconciliation of bills, notifying delinquent customers, and adhering to both contractual and state regulatory demands. He has previously testified before the Commission in cases involving B&S, Quick, Planet Access, and ACD Telecom. He has also testified before commissions in Texas and Wisconsin. He testified for the purpose of demonstrating that B&S owes AT&T a balance of $700,500 for resale services provided under its interconnection agreement. In addition, he stated that B&S owes AT&T $362,064 for services provided under the parties Local Wholesale Compete Agreement. However, AT&T is not pursuing a claim for that in this proceeding, as it does not consider the Commission to have jurisdiction over the parties' LWC agreement.

Mr. Faustman sponsored the following exhibits;

Exhibit ATT-4: March 19, 2010 demand letter

Exhibit ATT-5: April 5, 2010 demand letter

Exhibit ATT-6: June 29, 2010 notice

Exhibit ATT-7: September 1, 2010 disconnection notice

Exhibit ATT-8: Statement of account

As of June 2009, Mr. Faustman asserts, B&S was generally paying its invoices for both the minimal resale services it was using and the more extensive services it obtained under the parties' LWC agreement. In the fall of that year, B&S began to become seriously delinquent on its LWC accounts and Mr. Faustman became involved. As of September 2009, collection letters were sent by AT&T to B&S with respect to an arrearage of $188,624. By October, B&S was also delinquent on its resale accounts in the amount of $14,783. On October 30, 2009, Bruce Yuille, as President of B&S,

contacted Mr. Faustman and made arrangements to pay the full amounts past due over a five month period, as well as agreeing to keep current on current and future bills. However, on December 17, 2009, B&S filed a complaint against AT&T in Case No. U-16162 seeking to avoid payment. As noted earlier, that complaint was ultimately dismissed.

On March 19, 2010, AT&T sent a resale demand letter to B&S demanding payment See, Exhibit ATT-4. On April 5, 2010, it sent a second demand and discontinuation letter to B&S regarding the then balance of $122,277.78. See, Exhibit ATT-5. These were followed by letters sent to B&S on June 29, 2010 and September 1, 2010, as shown on Exhibits ATT-6 and 7, respectively.

Mr. Faustman further testified that B&S currently has no LWC lines with AT&T in that, from October 2009 through April 2010, it migrated all of its LWC lines to resale local exchange lines under the parties' interconnection agreement. This resulted in a dramatic increase in the average monthly sales invoices from approximately $3,000 a month to more than $85,000. In addition, Mr. Faustman noted that B&S has transferred all of its customers to Quick Communication. It has made no payment since February 2010 and, as shown on the statement of account submitted as Exhibit ATT-8, B&S now owes AT&T $700,500.

Respondents submitted the direct testimony of Saulius (Saul) Anuzis, who served as Chairman of the Michigan Republican Party from 2005 to 2009, as well as serving in a number of capacities in related national organizations and campaigns. He and his wife own a 50% interest in both B&S and Quick, as do Bruce Yuille and his wife. They have been business partners since 1992. According to him, the reason for

incorporating those entities is to protect the shareholders from individual liabilities from any debt related to their business activities. He has reviewed the complaint and considers the allegation that the two corporate entities are the alter ego of Bruce Yuille as factually false. This is, he contends, because both corporations are owned by four individuals, of which Mr. Yuille is only one.

In response to AT&T's allegations, Mr. Anuzis testified, among other things that: (1) Quick does not own any stock in B&S; (2) B&S is a separate corporation and was incorporated at a different date by a different incorporator, with different initial stockholders; (3) B&S and Quick have been assigned different corporate ID numbers and Federal Tax ID numbers; (4) B&S executed a LWC agreement with Michigan Bell and Quick did not; (5) The PSC has opened separate proceedings for B&S licensing issues and engages in separate proceedings for approval of interconnection agreements; and (6) Quick currently operates under a Comcast Interconnection agreement, while B&S operates under a MCIm Interconnection agreement. He further claims that in the past when B&S and Quick have opted into the same ICA, that was done to prevent confusion from different provisions. Mr. Anuzis points out that Michigan Bell has entered into many identical ICAs for similar reasons.

Between 2006 and present, Mr. Anuzis continues, B&S's source of operating revenue has come from invoicing access fees to long distance companies and reciprocal compensation. Quick did not have any such income. At all material times, the business objectives of B&S and Quick have been different. From commencing business activities, B&S has maintained its own separate retail customer base in the 906 area code in Illinois where B&S is also licensed. Quick is not so situated. Quick's

retail customer base has been limited to the lower peninsula of Michigan. Michigan Bell has consistently issued separate billing account numbers to each company, and invoices each separately. Separate books are kept for each company, and they have paid circa $68,000 to CPAs to maintain those accounts.

Furthermore, he contends that Mr. Yuille never makes a decision on any important issue without discussion and securing Mr. Anuzis's advice and consent, and has never acted without his complete agreement. They designed both companies so that neither husband and wife team owned a majority of the stock, insuring that neither could outvote the other. This effectively gives each couple veto power over any action, as no majority vote is possible. Although Mr. Yuille oversees the day-to-day operations of the companies, as does any President or CEO, his powers are defined by the by-laws, not Mr. Yuille personally. Those by-laws state that the Board of Directors controls the President and all other officers, and the shareholders control the Board of Directors. In Mr. Anuzis's experience, it is not uncommon for one individual to act as President of more than one corporation. He has previously acted as Chairman of the Board of both companies, at which time he possessed more power than Mr. Yuille, in that the Chairman calls and chairs meetings of the board which hires, fires, and assigns duties and powers of the office of President. No one owns a majority of the stock. If they do not agree they are deadlocked and forced to compromise. Mr. Anuzis disputed that the respective meetings of the Board on January 30, 2011, constituted a "joint" meeting of both B&S and Quick. Rather, he testified there was a meeting for B&S followed by a second meeting for Quick. The purpose of those meeting was to amend the by-laws to reflect "current realities". No action taken at those meetings could have

been taken without his vote. He voted to reduce the number of directors to one, namely Mr. Yuille, to reflect the fact that since 2006 he had not been active in company affairs and there is no need for more than one due to a decline in business. Even though Mr. Yuille is now the sole director, Mr. Anuzis denies he controls both corporations, as they still communicate on a regular basis on all important matters.

Regarding the criticism of AT&T, Mr. Anuzis testifies the point of a meeting is for shareholders to be given education about the affairs of the company, and to allow them to have some say about past and future activities. Formal meetings would have no meaning in the context of their business, and he and Mr. Yuille are in contact at least monthly. There has been nothing of substance with either B&S or Quick that has occurred during the past five years that would require a formal meeting. As an example, he is aware of what he needs to know about the companies' litigation from reading the complaints and discussing them with Mr. Yuille. Nothing would be gained from a formal meeting. He is aware of the fact that B&S moved its Local Wholesale lines to B&S resale in January of 2010, and testified that was done because AT&T had sent what he considered an unlawful notice to disconnect the LWC lines. Mr. Anuzis denies that AT&T should have been surprised by the fact that B&S would not be paying any resale invoices before AT&T made the conversion from LWC invoicing to resale invoicing. Possessing this knowledge, AT&T made the conversions and thereby accepted the fact that B&S would not make payments until the credits for AT&T overcharges were exhausted. The claimed $702,000 represents an overcharge of about $100,000 in late fees that he considers invalid because B&S pre-paid for service. This amount, he considers, the product of unlawfully forcing B&S into the resale rates

and represents another overcharge of about $360,000. Regardless, he contends, AT&T still owes B&S well over one million dollars times three for violations of the Michigan Anti-Trust Reform Act. Mr. Anuzis testified he can establish such notice based on two "incontestable facts". First, on January 15, 2010, B&S sent formal notice to AT&T via UPS overnight delivery that informed AT&T that it was unlawfully holding $1.7 million dollars and that B&S was due a refund. A copy of the notice and proof of delivery is attached to his testimony as Exhibit 1. The notice was sent at a time when B&S had stopped paying LWC invoices and gave AT&T notice that it would not be paying future invoices until the claimed refund was exhausted.

Secondly, on the same date, B&S filed its first amended complaint and request for emergency relief in Case No U-16162. This document was incorporated by reference into his testimony as an exhibit to be bound into the record. He claims that Paragraphs 30, 31, and 32 fully informed AT&T that B&S viewed the rates charged under the B&S/AT&T Local Wholesale Compete Agreement as unlawful and void.

Specifically those paragraphs provide:

> 30. The plain fact is that the rates that Respondent has charged Plaintiff for the subject service do not conform to the rates established by the Commission, but are made up by the Respondent in an arbitrary fashion and were dictated to B&S in a non-negotiable "take it or leave it" fashion.
> 31. Such rates violate section 352(2) of the MTA, which renders each and every invoice sent to Plaintiff null, void, invalid and of no legal effect.
> 32. B&S has suffered an economic loss as a result of such violations equal to the difference between what B&S paid Respondent for such service and the rates that B&S should have been charged under section 352(2) of the MTA which amounts are shown on said Exhibit F-1.

Mr. Anuzis also opined that AT&T would have known all this from its own records. There are five reasons he does not believe that B&S owes AT&T anything. First, AT&T

knew at the time of conversion that B&S was going to rely upon the credits due for payment of the first $1.7 million dollars of the resale invoices, and executed the conversions without protest. That action he considers to have amounted to an acceptance of Quick's payment terms. Second, due to what he characterized as Michigan Bell's unlawful attempt to limit competition, both companies were forced into buying LWC lines under AT&T's LWC agreement. Third, to settle litigation where AT&T admitted to sending Quick some $370,000 in fraudulent invoices, AT&T accepted the contractual obligation to allow Quick to purchase cost based service that both companies would have used instead of the LWC lines. Fourth, they believed that B&S's LWC agreement was unlawful under the Michigan Anti-Trust Reform Act because it restrained trade by controlling the wholesale price of landline telephone service, and that AT&T used that agreement to limit competition and fix retail prices. Fifth, they believed that the LWC contract violated 84 words of sections 352 and 355 of the MTA.

Mr. Anuzis further notes that none of these reasons are recent. As indicated above, in addition to the formal notice of dispute (Exhibit 1), B&S filed an amended complaint on January 15, 2010. The Commission refused to accept that, as it had the original complaint filed December 17, 2009. Following filing a complaint for superintending control in the Court of Appeals, B&S filed a second amended complaint which was accepted by the Commission. Mr. Anuzis acknowledge that B&S made no further payments since they reasoned that to continue payments would merely add to the amount of refund due. He testified that Quick assumed financial responsibility for the subject lines in September of 2010, because they believed that AT&T had obtained the Commission's consent to disconnect the lines before they sent the

September 1, 2010 disconnection notice. At that point, Mr. Yuille did not want Quick involved in receiving invoices from AT&T and wanted to test their bluff. He also wanted to test the PSC's contention that the duty imposed by section 502 did not apply to provider-to-provider disputes, and that it would not enforce the mandate to prevent AT&T from disconnecting service during the pendency of Case No. U-16444. However, Mr. Anuzis was of the opinion that AT&T had likely obtained the PSC's advance permission to disconnect the lines and that it would, in fact, disconnect them. He had a conversation with Mr. Yuille and convinced him that the only option to prevent harm to the end-users was for Quick to assume financial responsibility for those lines. AT&T has since admitted in Request for Admission No. 11 (Exhibit 2) that it fully intended to disconnect those.

Mr. Anuzis is dubious that AT&T's true intention in filing its case is to collect the amounts it claims are past due because it is also asking that both B&S's and Quick's licenses be revoked. The result of that would mean that neither entity could conduct business, resulting in a loss of income stream and an inability to pay. Secondly, AT&T asks that the Commission impose maximum fines which would be payable to the State of Michigan, as opposed to AT&T.

He stated that Quick is now paying resale invoices in recognition of both its responsibility to do so and the fact it is not entitled to a refund as they contend B&S is. He also asserts that AT&T should not have a right to complain that Quick has moved the service it purchased from AT&T and vice-versa, in that no such prohibition exists in the MTA. In fact, AT&T benefits financially from those transactions because it bills order processing fees for changing a billing name and address. As an example, AT&T

charged $13,000 to move T-1 circuits from Quick to B&S when AT&T threatened Quick with disconnection of all services unless it paid $370,000.

Regarding the allegation that B&S transferred resale customer accounts to Quick for less than fair market value, Mr. Anuzis asserts that all it did was change its wholesale vendor for the subject lines that it sold to end-user retail subscribers. Further, he is convinced that AT&T knew this because B&S signed its LWC September 5, 2005, under which AT&T immediately converted some 400 B&S lines from UNE-P cost based pricing at about $15 per line per month to the LWC pricing of $25 per line per month, which increased to $26 per line per month January 1, 2006.

In November of 2005, Quick inquired about obtaining its own LWC contract. AT&T refused to negotiate the price and instead merely presented Quick with two options. One was a LWC contract with two price increases over the B&S contract. The second option was a LWC contract with a retroactive date back to September 5, 2005, which would enable AT&T to back-bill Quick some $65,000 based on a $10 per line differential. Concluding that AT&T's LWC contract violated the Michigan Anti-Trust Reform Act, B&S added some 3,000 lines to its LWC contract, which AT&T had previously been billing to Quick at UNE-P cost based rates. Mr. Anuzis opined that AT&T would have known this at the time because Quick's UNE-P invoices and line counts went to zero, concomitant with a corresponding increase in B&S's LWC invoices and line counts.

According to Mr. Anuzis, the fact that he and Bruce Yuille owned both B&S and Quick is not recent information to AT&T. He testified that AT&T executives (formerly Ameritech) knew of the business arrangement from the outset. They had a very open

and constructive relationship for years with Michigan Bell President Gail Torreano, and Regulatory Council Craig Anderson. In reviewing billing disputes and discussing regulatory and legislative changes, they often discussed their wholesale and retail operations, the fact they held two licenses and the implications of that, and the method by which they structured their business to avoid any claim of violation of the non-compete agreement they signed when they sold Coast to Coast Telecommunications, Inc. Therefore, any implication that their business structure or relationship was somehow kept secret is untrue.

Mr. Anuzis considers the claim that B&S's arrangement to port its lines to Quick was to prevent AT&T from disconnecting its resale services as factually untrue. B&S did not arrange for Quick to do anything, and the lines were not "ported" to anyone. The term "port" is an industry term that is associated with Local Number Portability. All numbers were associated in the national database with Michigan Bell before and after the event complained of. Quick merely assumed the financial responsibility for future invoices for the subject service to prevent its end-user customers from suffering harm from AT&T's threatened disconnection. B&S had no interest of any kind in Quick's end-user customers to protect. The decision did not involve B&S too any degree. B&S lost the lines whether by Michigan Bell disconnecting them or another CLEC assuming them. Quick's sole interest was preventing harm to its subscribers.

In conclusion, Mr. Anuzis commented that he disagreed with the assertion that they have filed many frivolous claims, noting instead that they have only filed two complaints and the Commission found that the complaint in Case U-16162 was not, in fact, frivolous. Lastly, he disputes the assertion that recent transactions were fraudulent

attempts to avoid obligations under the parties' ICA, since B&S has long disputed the sums alleged to be owed on a number of bases, as discussed above.

No testimony was offered by the Staff in this proceeding. Rather, the only issue directly addressed by the Staff was its opposition to the Respondents' Motion to Dismiss based on the theory of release, which was addressed earlier in this PFD.

IV.

DISCUSSION

A. THE AMOUNT DUE TO AT&T

There is no dispute that B&S has not paid AT&T for resale services from January through September of 2010. Respondent's witness, Saul Anuzis, admitted that fact. However, Respondents allege that B&S has not paid AT&T because AT&T owes B&S $1.7 million for overcharges which it has previously paid. In addition, Respondents argue that AT&T has not proven that the rates it charged B&S were authorized in the ICA, and that AT&T applied the Commission-approved resale discount to the wrong retail rate.[10] Defendants, however, raised these arguments as affirmative defenses, imposing upon themselves the burden to show that AT&T owes B&S and that AT&T's rates were too high. However, beyond mere allegations in their pleadings and statements of council, they have not offered any evidence to meet their burden. Additionally, and probably more importantly, most of these arguments have previously been considered and rejected by the Commission. Mr. Anuzis testified that B&S should not have to pay AT&T for its resale lines for five reasons, which he essentially outlined as follows:

> The fact that AT&T was aware at the time of the conversion that B&S was relying upon credits due for payment of the first $1.7 million dollars of resale invoices, and completed the conversions without protest amounting to acceptance of the payment terms.
>
> Due to Michigan Bell's alleged unlawful attempt to limit competition, both B&S and Quick were forced into buying LWC lines under AT&T's LWC agreement.
>
> To settle litigation in which AT&T allegedly admitted to sending Quick some $370,000 in what he termed fraudulent invoices, AT&T accepted the contractual obligation to allow Quick to purchase costbased service that both companies would have used instead of the LWC lines.
>
> They believed that B&S's LWC agreement was unlawful under the Michigan Anti-Trust Reform Act because it restrained trade by controlling the wholesale price of landline telephone service, and AT&T used the agreement to limit competition and fix retail prices.
>
> They believed that the LWC contract violated 84 words of sections 352 and 355 of the MTA.

See, Direct Testimony of Saul Anuzis, p. 6.

As AT&T points out in its Brief, the Commission, the Court of Appeals, and the Oakland County Circuit Court have rejected all but one of these claims. The first claim of reliance and acceptance of the alleged overcharge and credit was apparently determined adversely to B&S in Case No U-16162. As to the supposed issue of settlement, that would appear to refer to Cases No. U-15381 and U-15391, which involved Quick as opposed to B&S, and which settlements were vacated by the Court of Appeals. The anti-trust arguments were disposed of by the Oakland County Circuit Court, granting Summary Disposition to AT&T. The alleged violation of the unspecified "84 words" of the MTA appears to have been disposed of by the Commission in Case No. U-16162, where it held:

> B&S's claim that AT&T Michigan's rates violate Sections 352 and 355 of the MTA is a legal conclusion. This claim has no merit. The commission

> finds that the complaint fails to state a claim upon which relief can be granted.

August 12, 2010 order in Case No. U-16162, at p. 11.

This leaves the assertion that Michigan Bell's unlawful attempts to limit competition, and thus forcing both B&S and Quick to purchase LWC lines from it. This ALJ agrees with AT&T that the allegation is both factually and legally unsupportable. It is factually unsupportable because Quick never had an LWC agreement with AT&T, and legally unsustainable since B&S's voluntary decision to enter into a private commercial LWC agreement can not be considered an unlawful attempt to limit competition. Although some of these decisions are pending appeal, the Commission's orders have not been stayed, and are thus valid and enforceable until found otherwise. All rates, fares, charges, classification, and joint rates fixed by the Commission and all regulations, practices, and services prescribed by the Commission, shall be in force and shall be prima facie lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of Section 26, or until changed or modified by the commission as provided for in Section 24.

As discussed above, Respondents also assert that AT&T has not proven that the rates it charged B&S were authorized in the ICA. Specifically, they allege that AT&T applied the Commission-approved resale discount to the wrong retail rates, and that AT&T has the duty to prove that its rates were accurate. On the contrary, because Respondents challenged AT&T's rates as an affirmative defense in their Answer, Respondents have the burden to show that AT&T's invoices are incorrect. They have put forth no evidence in support of that proposition.

Moreover, Respondents have attempted to challenge AT&T's rates in previous

complaints against AT&T, and the Commission has either resolved those complaints in AT&T's favor or dismissed each. See, Case Nos. U-15381 and U-15391.

The Commission does not have to re-litigate an issue that was, or could have been, decided in an earlier proceeding. As the Court of Appeals said in *In re Consumers Energy Co for Rate Increase*, __Mich App__ (2010)

> Forner apparently sees it as an opportunity to revisit issues that were, *or could have been*, decided in the earlier proceedings. But the PSC, citing the earlier litigation, declined to address these issues in the instant case. We agree that the PSC's forbearance in this regard was appropriate.

Id. Quick and B&S have had ample opportunity to argue that AT&T applied the resale discount to the wrong retail rates. Because they could have raised this issue, but did not, the Commission does not have to address it at this time.

In sum, the Commission and the courts have already rejected B&S's arguments to the effect that it does not have to pay for resale services rendered. Although B&S does raise one new argument in this case, it has not met its burden of proof, and the Commission has no obligation to hear this argument since B&S surrendered its right to raise it in this case. In light of all the above, therefore, the ALJ finds that AT&T is entitled to the full $700,500.32 that it seeks.

B. THE QUESTION OF IMPOSING LIABILTY FOR THE DEBT ON QUICK AND YUILLE IN ADDITION TO B&S, OR "PIERCING THE CORPORATE VEIL

While, in the normal course of things, the law treats corporations such as B&S and Quick as entities separate from each other and their respective shareholders or officers, "courts [and, in this case, the Commission] can ignore this corporate fiction when it is invoked to subvert justice." *Lakeview Commons Ltd. Partnership v Empower*

Yourself, LLC,__Mich App__ (2010)

In Michigan, the "corporate veil" may be pierced to "protect a corporation's creditors where there is a unity of interest of the stockholders and the corporation and where the stockholders have used the corporate structure in an attempt to avoid legal obligations." *Foodland Distrib v Al-Naimi*, 220 Mich App 453, 456 (1996). The elements for piercing the corporate veil are: (1) the corporate entity is a mere instrumentality of another individual or entity; (2) the corporate entity was used to commit a wrong or fraud; and (3) there was an unjust injury or loss to the complainant. *Rymal v Baergen*, 262 Mich App 274, 293-294 (2004). In determining whether to pierce a corporate veil, Michigan courts assess the facts "in light of a corporation's economic justification to determine if the corporate form has been abused." *Rymal, supra*, p. 294.

The testimony of the AT&T witnesses, as well as the exhibits they sponsored, indicates that B&S and Quick failed in many respects to act as separate entities, or to abide by either statutory requirements or their own bylaws. They failed to keep routine financial and other corporate records. They were dissolved by the State of Michigan for their failure to file required annual reports. They failed to conduct required meetings of shareholders and the board of directors. All of these facts are recited in detail above in the summary of the testimony of AT&T's witnesses.

In addition, individuals identified by Respondents as employees of one entity swear in testimony in other proceedings that they are employed by the other. For example, Respondents submitted the affidavit of Amy Kubs in support of their motion for summary disposition to the effect that, as director of provision and customer services, she learned that AT&T planned to disconnect resale lines on or about

September 1, 2010, that she was involved in the decision to buy the underlying service directly from AT&T under the Quick/AT&T ICA, and that no employee or agent of B&S was involved in any way. However, on January 15, 2010, she submitted testimony in Case No. U-16162 in support of B&S's first amended complaint, in which she swore she was office manager, chief provisioner, and in charge of customer service for all matters related to basic local exchange services provided by AT&T to B&S. These facts were reaffirmed in her testimony in that case given in June of 2010.

As indicated, Respondents offered the testimony of Mr. Saul Anuzis. Mr. Anuzis testified that both B&S and Quick are jointly owned by Mr. and Mrs. Yuille and Mr. and Mrs. Anuzis. According Mr. Anuzis, Mr. Yuille's role as President was subservient to his own as Chairman of the Board of both Quick and B&S. Mr. Anuzis notes, for example, that the board of a corporation can hire and fire a company president. Whatever the theoretical merit of Mr. Anuzis' position, he failed to note, much less offer any explanation, as to how a Board of Directors can act when it never met after 2004. Mr. Anuzis also fails to explain how he could exercise any control over Yuille, when he was retroactively removed from any office in both B&S and Quick. He candidly admits that the actions taken at the shareholder meetings of B&S and Quick on January 30, 2011-- which retroactively vested all authority in Mr. Yuille, and retroactively stripped him of any authority, while also ratifying all of Mr. Yuille's prior acts-- was intended to "reflect current realities". As Mr. Anuzis explained, "things have changed since 2006. I am no longer active in company affairs because the circumstances in the industry changed and my services were no longer needed." Direct Testimony of Saul Anuzis, pp. 3-4. Mr. Anuzis dismisses the fact that neither B&S nor Quick held any required

shareholder or board of director meetings by proclaiming that, "[t]here is nothing of substance that has occurred with either B&S or Quick during the past five years that would require a formal meeting." Id., at p. 4.

Although he was "no longer active in company affairs" (Id., at p. 3.), Mr. Anuzis, nonetheless, claims that he was aware of B&S's decision to convert its LWC lines to resale local exchange service in January 2010. He claims that B&S converted its LWC lines to resale lines under the ICA to avoid disconnection. He then speculates that AT&T "had full knowledge that B&S would not be paying any resale invoices before AT&T made the conversion" because of claims asserted by B&S in Case No. U-16162 and antitrust claims asserted by B&S against AT&T in Oakland County Circuit Court. Id. at 6. However, both of those proceedings have since been dismissed with prejudice. While the corporate histories indicate the principals came and went often through retroactive action, the one constant who appears to have orchestrated everything was Bruce Yuille. Based on the above considerations, it is recommended that the commission impose joint and several liabilities for the $702,500.13 debt on Quick and Bruce Yuille, as well as upon B&S.

AT&T also claims that B&S is in violation of the ICA for failing to honor its demand to provide security for payment in the form of a cash deposit or unconditional letter of credit pursuant to Paragraph 9 of the General Terms and Conditions of the ICA. Clearly, the ICA allows for this and AT&T made repeated demands when payment was not forthcoming which were not honored. Therefore, in addition to awarding AT&T the amount due jointly and severally from B&S, Quick, and Yuille, provision should be made for imposing security for that payment pursuant to the ICA.

C. REVOCATION AND SANCTIONS

Pursuant to Section 302 of the MTA, the Commission may authorize a license to provide basic local exchange service to a telecommunication provider if it has the technical, financial, and managerial resources and abilities to provide that service. At this point, the Commission has the power to revoke that license under section 205(2) of the MTA. The legislature has passed a provision that will repeal that section, which is before the Governor for signature. Regardless of the status of that section, the commission may still revoke under section 601, if it finds that the licensee has violated the MTA.

It is alleged by AT&T that B&S has violated the MTA by transferring it resale customer accounts to Quick for less than fair market value contrary to section 305(k) of the MTA.

The fact that the customer accounts were moved in some manner from B&S to Quick is uncontested. However, Respondents claim first, that the accounts have no value and therefore cannot be transferred for less than zero. It is at the very least disingenuous to claim the core of a telecommunication business, namely its customers, that provide its sole income stream, have no value. This assertion should be dismissed outright. Secondly, Respondents claim that section 305 does not apply to B&S as it is not and never has been a provider of basic local exchange services. They claim B&S is a reseller instead. However, Section 305 makes no distinction or definitional limitation between facility based or resale providers. Therefore, any provider of basic local exchange service is subject to the prohibitions of the section. There is no question that B&S was providing such service, albeit through interconnection with AT&T's existing

infrastructure. Having so concluded, and having found that there was a transfer of resale customer accounts at less than fair market value, it is clear that Respondents were in violation of the MTA. Whether this, together with non-payment of monies due, and a deposit rightfully required, merit revocation is left to the discretion of the Commission.

In this ALJ's opinion, the question of sanctions or attorney fees should also be left to the discretion of the Commission. It should be noted, however, as the Commission is well aware, there has been considerable previous and continuing litigation instituted by Respondents in this case, and at least one for which they have been sanctioned. Pertinent to this case, there have been at least three motions that could be considered frivolous: (1) the motion to dismiss or suspend the case for the failure to file a full hard copy of the applicable ICA, instead of referring to it when B&S was a party to it; (2) the motion to disqualify this ALJ based on personal bias or prejudice; (3) a motion to dismiss based on a release that was clearly not applicable. In addition, and as found above, Respondents have lodged a number of spurious arguments.

Lastly, AT&T asks the Commission to terminate the ICA based on the material breaches found to exist above. It is noted, however, that the Commission need not do so since AT&T has the authority to unilaterally terminate the agreement itself under Section 7.1 of the ICA which provides:

> 7.1 The term of this Agreement shall commence upon the Effective Date of this Agreement and will remain in effect for three (3) years after the Effective Date and continue in full force and effect thereafter until (i) superseded in accordance with the requirements of this section or (ii) terminated pursuant to the requirements of this section. No earlier than one-hundred forty (140) days before the expiration of the term, either Party may request that the Parties commence

negotiations to replace this Agreement with a superseding agreement by providing the other Party with a written request to enter into negotiations.

7.2 Either Party may terminate this Agreement in the event that the other Party fails to perform a material obligation or materially breaches a material term of this Agreement and such failure or breach materially disrupts the operation of either Party's network and/or materially interferes with either Party's end user customer's service, and the breaching Party fails to cure such material nonperformance or material breach within forty-five (45) days after written notice thereof.

Finally, it should be noted that arguments or proposed findings of fact that were not specifically addressed in this Proposal for Decision were either found to be irrelevant, unsupported by the record, or unnecessary for the disposition of this case.

V.

CONCLUSION

Based upon the foregoing, this ALJ recommends that the Commission issue an order (1) holding B&S, Quick, and Bruce Yuille jointly and severally liable to AT&T in the amount of $700,500.32 for resale services provided; (2) finding that B&S failed to comply with the ICA in not providing security for non-payment and ordering that such security for payment be provided, should any such service be provided in the future, (3) finding that B&S violated MCL 484.2305(k) by transferring resale customer accounts for an amount less than fair market value, and (4) in the discretion of the Commission, revoking the basic local exchange licenses of B&S and Quick, imposing fines and sanctions, and awarding attorney fees found to be appropriate.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

_____

Richard A. Patterson
Administrative Law Judge

June 24, 2011
Lansing, Michigan

S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN	)	
	) SS.	Case No. U-16501
County of Ingham	)	
_____	)	

P R O O F O F S E R V I C E

Danielle R. Rogers being duly sworn, deposes and says that on June 24, 2011 A.D. she served a copy of the attached Proposal for Decision via E-Mail, to the persons as shown on the attached service list.

_____
Danielle R. Rogers

Subscribed and sworn to before me
this 24th day of June 2011.

_____
Lisa Felice
Notary Public, Eaton County
Acting in Ingham County, MI
My Commission Expires April 15, 2014

ATTACHMENT A

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