UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MICHIGAN BELL TELEPHONE COMPANY and AT&T SERVICES, INC., **and** **LOCAL 4034, COMMUNICATIONS WORKERS OF AMERICA (CWA), AFL-CIO**	**CASE NO. 07-CA-182505**

RESPONDENTS' BRIEF IN OPPOSITION TO GENERAL COUNSEL'S AMENDED MOTION TO REMAND

Respondents, Michigan Bell Telephone Company and AT&T Services, Inc. (collectively "AT&T" or "Company"), through counsel and pursuant to §102.24 of the Rules and Regulations of the National Labor Relations Board, files this Brief in Opposition to General Counsel's amended Motion to Remand Proceedings to Region 7.

Pursuant to its legal and ethical obligations to protect the privacy of confidential and sensitive customer information, AT&T maintains various work rules, including its "Privacy in the Workplace" policy at issue in this case.[1] In a decision issued September 27, 2017, Administrative Law Judge Muhl held the Company violated Section 8(a)(1) of the Act by "maintaining its overly broad privacy of communications rule prohibiting employees from recording conversations with coworkers, managers, or third parties." On January 31, 2018, the Company filed Exceptions to the Decision of the Administrative Law Judge and a Brief in Support of Exceptions.[2]

[1] The rule is also referred as "Privacy of Communications" policy, which specifically refers to one section of the Privacy in the Workplace policy.

[2] The Company and Counsel for the General Counsel ("General Counsel") have tentatively agreed to file a

In a surprise and confusing motion filed January 18, 2018, the General Counsel moved to remand this case *in its entirety to Region 7*. The General Counsel's request was not separately communicated to the Company and is confusing at best, and at worst is an abuse of Board processes. If granted, it would leave the Company in the untenable position of presumably being bound by an adverse ALJ decision on a critically important policy issue with no recourse for Board review of that decision. The General Counsel's due process end run is particularly indefensible given the Board's decision in *Boeing Co.*, 365 NLRB No. 154, slip op. 9 (Dec. 14, 2017), which materially changed the governing legal standard.

AT&T has litigated this dispute earnestly for over 14 months, to protect the privacy of its customers' information and comply with its legal obligations. The ALJ has issued his decision, and the Company has filed Exceptions in reliance on the Board's now governing case law. AT&T is entitled to the certainty of knowing whether or not its Privacy in the Workplace policy is lawful under extant Board law. The General Counsel cannot be permitted to avoid a final determination of the policy's propriety through the artifice of seeking dismissal of the entire case under the guise of a partial non-Board settlement. For these reasons, the Company opposes General Counsel's amended Motion to Remand.

I. BACKGROUND FACTS

On November 28, 2016, General Counsel filed the Complaint in this matter. A hearing was held before Administrative Law Judge Charles Muhl ("ALJ") in Detroit, Michigan on March 22 and 23, 2017. On September 27, 2017, the ALJ issued his decision, finding the Company violated Section 8(a)(1) of the Act by maintaining the Privacy of Communications policy and then suspending and discharging Scott Stewart, a member of CWA Local 4034 ("Charging

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Joint Motion to Remand, which also would vacate the ALJ's decision, subject to reaching agreement on a mutually acceptable joint motion. The Company files this Brief in Opposition to protect its interests, pending filing of the joint motion and a decision on such motion.

Party" or "Local 4034") under that policy. The ALJ also found the Company violated Section 8(a)(1) of the Act by including certain language at the bottom of certain disciplinary letters, which the ALJ referred to as a "no distribution" rule.

On December 15, 2017, the Charging Party, the Company and alleged discriminatee Stewart reached agreement for a non-Board settlement dealing with the allegations of Stewart's suspension and discharge. On December 20, 2017, the General Counsel filed a Motion to Remand Proceedings in Part to Region 7, moving to remand to the Region only the allegations in the Complaint relating to the suspension and termination of Mr. Stewart (i.e., Complaint paragraphs 8, 9 and 11, and Complaint paragraph 10 with regard to the suspension and discharge of Mr. Stewart only), so that the Regional Director could take appropriate action regarding Charging Party's request to withdraw the Complaint allegations relating to the suspension and termination of Mr. Stewart only.

On January 17, 2018, without notice to or discussion with the Company, the Charging Party submitted to Region 7 a request to withdraw all of the operative Complaint allegations, including those which relate to the Respondent's Privacy in the Workplace policy and the footer on the bottom of the disciplinary forms at issue prohibiting general distribution of the forms. On January 18, 2018, the General Counsel filed a modified Motion to Remand Proceedings, moving to remand this case in its entirety to Region 7, ostensibly so that the Regional Director "can take appropriate action regarding Charging Party's request to withdraw all of the Complaint allegations."

III. DISCUSSION

The Company opposes General Counsel's Motion to Remand with respect to the allegations relating to the Privacy in the Workplace policy.[3] Without a ruling by the Board, the ALJ's finding that the Privacy in the Workplace policy is unlawful creates uncertainty for the Company, confusion for its employees, and will likely result in re-litigating the very same issue in the future.

One of the Board's primary responsibilities is "to promote certainty, predictability, and stability." *Boeing Co.*, 365 NLRB No. 154, slip op. 9 (Dec. 14, 2017). Remanding this issue to Region 7 to be withdrawn by General Counsel robs the Company and its employees of a final resolution and clarity on the important policy issues in this case. Without a clear resolution, there will be significant uncertainty as to the propriety of the Privacy in the Workplace policy. Employees will not know if they are permitted to make audio recordings at work, and the Company will be uncertain if it may lawfully enforce its restrictions on workplace recordings.

The ability to protect sensitive and confidential customer information is of paramount importance to AT&T, its millions of customers, and the Federal Communications Commission. In litigating the Privacy in the Workplace policy, witnesses travelled many hours to testify about the Company's obligations to prevent identity theft and data breaches, and about a $25 million fine the FCC imposed under a Consent Decree resulting from a data breach. AT&T has litigated this issue for more than 14 months; the ALJ has issued his decision; and the Company has a right to have its exceptions determined under governing Board law. The General Counsel cannot be permitted to avoid a final determination of whether the Privacy in the Workplace policy is lawful

[3] AT&T does not object to the General Counsel's original Motion to Remand, filed December 20, 2017, requesting to remand only the allegations relating to the suspension and termination of alleged discriminate Scott Stewart (i.e., Complaint paragraphs 8, 9 and 11, and Complaint paragraph 10 with regard to the suspension and discharge of Mr. Stewart only).

simply by saying "never mind" and having the case dismissed. The important policy issues implicated by the ALJ's decision deserve to be resolved, and must be resolved by the Board.

Accordingly, and for all of the above reasons, the Company strenuously opposes General Counsel's amended Motion to Remand Proceedings to Region 7, with respect to the allegations relating to the Privacy in the Workplace policy only.

Respectfully submitted,

/s/ Stephen J. Sferra

Stephen J. Sferra
Jeffrey A. Seidle
LITTLER MENDELSON, P.C.
1100 Superior Avenue, 20th Floor
Cleveland, OH 44114
Telephone: 216.696.7600
Facsimile: 216.696.2038
ssferra@littler.com
jseidle@littler.com

Attorneys for Respondents,
Michigan Bell Telephone Company and AT&T Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2018, a copy of the foregoing was electronically filed and served via email upon the following:

Ryan Letts, President
Local 4034, CWA
3281 Kentland Court, S.E.
Wyoming, MI 49508
ryanrletts@gmail.com

Robert Drzyzga
Counsel for the General Counsel
National Labor Relations Board, Region 7
477 Michigan Avenue
Room 300
Detroit, MI 48226-2569
Robert.Drzyzga@nlrb.gov

/s/ Stephen J. Sferra
One of the Attorneys for Respondents,
Michigan Bell Telephone Company and AT&T Services, Inc.

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