

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

2012 AUG 10 AM 9:50

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

**DEBORAH STURGEON, SARA GAIL MERCER,
MICHELLE BALLARD, ANGIE NELSON,
JOHN STEWART, JR., RICKEY HAYS,
LEVI HAYNES, JASON HAMPTON,
JONATHAN JULIAN, VICTOR SPARKS, AND
TAMIKA LIEBHART, individually and on
behalf of all others similarly situated,**

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

Civil Action No.

PLAINTIFFS,

v.

**AT&T TELEHOLDINGS, INC.,
INDIANA BELL, INC.,
AMERITECH SERVICES, INC., AND
AT&T SERVICES, INC.,**

1:12-cv-1099 WTL -DKL

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

DEFENDANTS.

COLLECTIVE AND CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND

Plaintiffs, Deborah Sturgeon, Sara Gail Mercer, Michelle Ballard, Angie Nelson, John Stewart, Jr., Rickey Hays, Levi Haynes, Jason Hampton, Jonathan Julian, Victor Sparks, and Tamika Liebhart (collectively referred to as "Plaintiffs"), individually and on behalf of all others similarly situated, by counsel, file their complaint against Defendants, AT&T Teleholdings, Inc., Indiana Bell, Inc., Ameritech Services, Inc., and AT&T Services, Inc., (collectively referred to as "AT&T Midwest" or "the company") as follows:

INTRODUCTION

1. This is a class action for unpaid wages and overtime brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et. seq.* ("FLSA") and the Indiana Minimum Wage Law, Indiana Code § 22-22-2 *et. seq.*

JURISDICTION AND VENUE

2. This court has original jurisdiction of the FLSA action, pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. §§1331 and 1337.
3. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).
4. Venue is proper in this federal district pursuant to 28 U.S.C. § 1391(a) and (c) because a substantial part of the events or omissions giving rise to these claims occurred within this judicial district and the parties reside in this judicial district. The Defendants regularly conduct business within this judicial district and thus are subject to personal jurisdiction within this judicial district.

PARTIES

5. The Plaintiffs, Deborah Sturgeon, Sara Gail Mercer, Michelle Ballard, Angie Nelson, John Stewart, Jr., Rickey Hayes, Levi Haynes, Jason Hampton, Jonathan Julian, Victor Sparks, and Tamika Liebhart have been employed by the Company as technicians in this judicial district at times relevant to this action.
6. Each Plaintiff is an employee within the meaning of the FLSA, 29 U.S.C. § 203(e)(1) and Indiana Code § 22-2-2-3.
7. Each Plaintiff has consented in writing to be a party plaintiff in this action and the written consent forms are attached as Exhibit A as required by 29 U.S.C. §216(b).
8. The Defendant AT&T Teleholdings, Inc., is a corporation with its principal offices in Chicago, Illinois. The Defendant Indiana Bell, Inc., is a corporation with its principal office in Indianapolis, Indiana. The Defendants Ameritech Services, Inc., and AT&T Services, Inc., are corporations with their principal office in San Antonio, Texas.

They operate collectively as the Plaintiffs' joint employer, doing business in the Midwest states as AT&T Midwest.

9. The Defendants, collectively the largest provider of local and long distance telephone services in the United States and the Midwest, and a seller of digital subscriber line internet access and television service, are jointly engaged in interstate commerce throughout the United States and each is an "employer" within the meaning of 29 U.S.C. § 203(d), (r) and (s) and Indiana Code § 22-2-2-3.

STATE LAW CLASS ALLEGATIONS

10. The Plaintiffs seek to represent a class consisting of all current and former field technicians employed by AT&T Midwest in Indiana prior to the filing of this action. There are more than 1,000 members of this proposed class.
11. There are questions of law and fact common to the class, principally, whether AT&T Midwest's lunch break policy violates Indiana law - (1) by requiring, suffering or permitting the Plaintiffs and the class to perform work for the Company's benefit during unpaid lunch breaks, and (2) by restricting the Plaintiff's movements and activities during the unpaid time such that the Plaintiffs and the class are unable to use the time as a *bona fide* break for eating lunch and other personal business.
12. The claims of the Plaintiffs are typical of the class they seek to represent and the Plaintiffs will fairly and adequately protect the interests of the class as their interests are coincident with, and not antagonistic to, those of the class. The Plaintiffs have retained counsel experienced in both wage and hour litigation and class action litigation.

13. AT&T Midwest has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole.
14. The questions of law or fact common to the members of the class predominate over questions affecting only individual members, as all class members are current or former employees who were not paid for the time allocated to their lunch breaks. They would be entitled to claim back pay, liquidated damages, and other relief for such work based on classwide proofs.
15. Maintenance of this action will promote the efficient administration of justice by obviating the need of numerous individual members of the class, many of whom do not have resources to retain counsel independently and, thus, commence their own actions.
16. Maintenance of this action as a class action will promote the equitable administration of justice since pursuing claims on an individual basis would be disproportionately expensive.
17. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.
18. The prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudication with respect to individual members of the class, which would establish incompatible standards of conduct for the parties opposing the class.
19. The prosecution of separate actions by individual members of the class would create a risk of adjudication with respect to individual members of the class that

would, as a practical matter, substantially impair or impede their ability to protect their interests.

FACTUAL ALLEGATIONS

20. AT&T Midwest employs approximately 1300 technicians throughout Indiana who perform a variety of technical duties. These technicians include construction and engineering, installation and repair, and "U-Verse" technicians. ("U-Verse" refers to the company's packaged internet, phone, and cable service.) Some technicians in each category are assigned to do underground cable (or manhole) work, as well.
21. During the period relevant to this lawsuit, the technicians have been required by AT&T Midwest policy to work shifts ranging from eight and a half to nine hours each workday, which shift include an unpaid lunch break of either 30 or 45 minutes. The lunch break is subject to heavy restriction.
22. First, technicians assigned to underground cable (or manhole) work are subject to the specific restriction that they must remain at the site of the manhole and guard it throughout the lunch break.
23. Second, technicians not assigned to manhole work may eat their lunches at eating establishments outside of their vehicles, but under heavy restriction as to where. Specifically, they are required to break while en route from one assigned job site to another along GPS-monitored routes prescribed by the Company, and are prohibited from deviating more than one-half mile from those routes (even in rural areas).

24. Leaving the prescribed route by more than the half mile permitted during the lunch break is grounds for discipline; yet more often than not, finding a place to eat within that half mile is difficult to impossible.
25. Third, technicians may eat packed lunches in the Company vehicle rather than attempting to find an establishment within the prescribed radius from their routes, but rules designed and enforced to preserve the Company's public image prohibit them -after the few minutes that consuming the packed lunch typically requires - from using the remainder of the 30 to 60 minute unpaid lunch break for any personal activities such as reading newspapers, magazines, or books in the vehicle, napping, or using personal laptops or CD players, etc.
26. Further, and regardless of the weather, AT&T Midwest does not permit these technicians to idle their vehicles, and hence prohibits their use of heating or air conditioning in the vehicle during the course of the unpaid lunch break.
27. These restrictions on the technicians' movement and activity during the breaks substantially interferes with the technicians' ability to use the unpaid lunch break for their personal uses.
28. Engaging in these prohibited activities during the break is grounds for discipline.
29. Moreover, separate from the restrictions, the Company's productivity-based performance ranking system puts the technicians under significant pressure to work through the unpaid lunch breaks in order to complete as many jobs as possible in each work shift.
30. In combination, the Company's restrictions on movement and activities during the unpaid lunch break and its productivity measurement system put pressure on the

technicians to work through all or part of the lunch break without pay (rather than sitting in a potentially cold or overheated vehicle doing nothing).

31. AT&T Midwest suffers and permits this to occur.
32. AT&T Midwest does not keep records of how long technicians actually break for lunch; but it does use GPS systems in each vehicle to monitor the technicians' precise locations throughout the shift, including the unpaid lunch break.

COUNT I
Violation of the Fair Labor Standard Act
Hours Worked and Overtime

33. The Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.
34. For purposes of this count, "Plaintiffs" mean all Plaintiffs who consent to be party Plaintiffs.
35. By treating as "unpaid" the time allocated to the technicians' so-called meal breaks, AT&T Midwest has failed to pay the technicians' time and a half for all such hours worked in excess of forty hours in a single work week as required by 29 U.S.C. § 207(a).
36. The Company's violation of 29 U.S.C. § 207(a) is willful.

COUNT II
Violation of the Fair Labor Standards Act
Failure to Maintain Records

37. The Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.
38. For purposes of this count, "Plaintiffs" mean all Plaintiffs who consent to be party Plaintiffs.

39. AT&T Midwest has systematically, in violation of its duty to keep accurate records under 29 U.S.C. §§ 211(c) and 211(a)(5), declined to keep any records of the actual hours its technicians take out of their daily work shift to eat lunch or for other personal, non-work functions.
40. The Company's violation of 29 U.S.C. §§ 211(c) and 211(a)(5) is willful.

COUNT III
Violation of Indiana Wage Laws

41. The Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.
42. By treating as "unpaid" the time allocated to the technicians' so-called meal breaks, AT&T Midwest has failed to pay the technicians for all such hours, and/or time and a half for such hours worked in excess of forty hours in a single work week as required by Indiana Code § 22-2-2 *et. seq.*

COUNT IV
Violation of Indiana Record-Keeping Laws

43. The Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth herein.
44. AT&T has systematically, in violation of its duty to keep accurate records, declined to keep any records of the actual hours its technicians take out of their daily work shift to eat lunch or for other personal, non-work functions in violation of Indiana Code § 22-2-2-8.

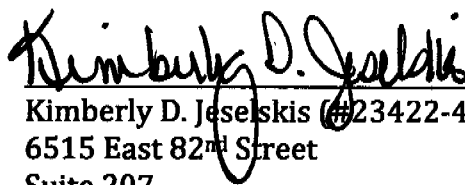
WHEREFORE, the Plaintiffs pray that this court:

- A. Issue notice to all similarly situated technicians throughout the State of Indiana informing them of their right to file consents to join the FLSA portion of this action;
- B. Certify the state law claims set forth in Counts III-IV as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- C. Declare AT&T Midwest's policy of not paying class members for purported lunch breaks illegal under the FLSA and state law;
- D. Permanently enjoin AT&T Midwest from violating the FLSA and state law by not paying class members for the time allocated to unpaid meal time where class members are required to perform work throughout the break and/or suffered or are permitted to do so;
- E. Award the Plaintiffs and class members their unpaid regular hourly rate of pay for hours of work up to forty hours per week and their unpaid overtime rate of pay for all hours worked in excess of forty hours per week;
- F. Award the Plaintiffs and all class members liquidated damages in an amount equal to the amount of their unpaid regular and overtime wages under 29 U.S.C. § 216(b) and Indiana law;
- G. Award the Plaintiff and all class members the maximum penalties available under state law;
- H. Award the Plaintiffs and all class members their costs and attorneys fees; and
- I. Award such other relief deemed just and proper.

Dated this 10th day of August 2012

Respectfully Submitted,

JESELSKIS LAW OFFICES, LLC



Kimberly D. Jeselskis (#23422-49)
6515 East 82nd Street
Suite 207
Indianapolis, IN 46250
Phone: (317) 596-1000
Fax: (317) 423-5428
Email: kjeselskis@kdilegal.com

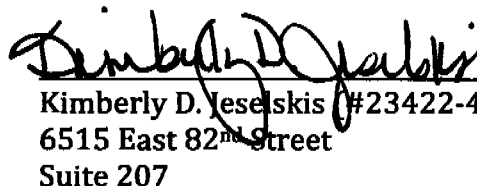
JURY TRIAL DEMAND

The Plaintiffs hereby demand a trial by jury for all issues so triable.

Dated this 10th day of August 2012

Respectfully Submitted,

JESELSKIS LAW OFFICES, LLC



Kimberly D. Jeselskis (#23422-49)
6515 East 82nd Street
Suite 207
Indianapolis, IN 46250
Phone: (317) 596-1000
Fax: (317) 423-5428
Email: kjeselskis@kdilegal.com