

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)
BARBARA MCCORMICK against) Case No. U-11303
AMERITECH MICHIGAN.)
_____)

At the June 25, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

ORDER DISMISSING COMPLAINT

On November 26, 1996, the Commission issued an order in Case No. U-11140 approving a settlement agreement entered into between Barbara McCormick and Ameritech Michigan. Among other things, that settlement required Ameritech Michigan to immediately reduce the amount of Ms. McCormick's past due telephone charges by \$486.25 and to provide her with a new unlisted phone number at no charge. The settlement also required Ms. McCormick to enter into a payment plan designed to eliminate her remaining past due balance. As a result, the parties agreed that Ms. McCormick would begin paying to Ameritech Michigan each month all of her current telephone charges plus \$50.23 toward satisfaction of the past due balance.

On January 21, 1997, Ms. McCormick filed a complaint in the present proceeding (Case No. U-11303) alleging that Ameritech Michigan breached the settlement approved in Case No. U-11140 by temporarily disconnecting her service for nonpayment. On January 27, 1997, the Commission served a copy of the

complaint on Ameritech Michigan. Ameritech Michigan filed its answer on February 18, 1997, in which it asserted that the temporary discontinuance of service was justified by Ms. McCormick's failure to pay the current portion of her November and December 1996 bills as required by the settlement.

Pursuant to due notice, an evidentiary hearing was scheduled for April 17, 1997 before Administrative Law Judge James N. Rigas (ALJ). Ameritech Michigan appeared, presented testimony from one witness, and offered eight exhibits into evidence. The Commission Staff also participated in the proceedings. Ms. McCormick failed to appear.

Following the close of the evidentiary hearing, the ALJ issued an oral Proposal for Decision (PFD) in which he recommended dismissing the complaint with prejudice. As noted in his PFD, this was based on the ALJ's conclusion that the relief specifically requested in the complaint had already been provided. It also appears to be based, as was his decision not to entertain several purported motions submitted by Ms. McCormick and her family¹, on the complainant's failure to appear at the hearing.

Exceptions were filed by Ms. McCormick on May 15, 1997 and replies were filed by Ameritech Michigan on May 27, 1997.²

The Commission agrees with the ALJ that the complaint should be dismissed with prejudice. Although notice was provided to Ms. McCormick on March 24, 1997, neither she nor any legal representative appointed by her appeared at the evidentiary hearing on April 17, 1997. The record further indicates that

¹On April 9 and 11, 1997, Jeffrey M. McCormick submitted to the Commission a document entitled "Motion for Addition of a Co-Complainant" and Ms. McCormick submitted a document entitled "Motion to Set Aside [Staff's] Recommended Settlement Agreement . . .," respectively. Neither of these filings included the requisite proof of service. Moreover, no one appeared to argue in favor of their adoption at any point in the proceedings.

²Ms. McCormick submitted an additional filing on June 4, 1997. Although captioned "Motion for Reopening," it appears that the document's sole purpose is to present yet another round of responses to Ameritech Michigan's arguments. Because the Commission's Rules of Practice and Procedure do not provide for such a filing, the arguments contained therein have not been considered.

when Ms. McCormick inquired about the possibility of an adjournment, she was correctly advised to either obtain the consent of all participants or to file a motion to adjourn (with copies served on all parties). She elected to do neither. The Commission therefore concludes that because no reasonable justification was provided for Ms. McCormick's failure to appear at the evidentiary hearing in this case, the ALJ's recommendation should be adopted and her complaint should be dismissed with prejudice.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The ALJ's recommendation to dismiss Ms. McCormick's complaint with prejudice should be adopted.

THEREFORE, IT IS ORDERED that the complaint filed on January 21, 1997 by Barbara McCormick against Ameritech Michigan should be dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

John G. Strand
Chairman

(SEAL)

John C. Shea

Commissioner

David A. Svanda

Commissioner

By its action of June 25, 1997.

Dorothy Wideman

Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

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By its action of June 25, 1997.

Executive Secretary

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Case No. U-11303

Suggested Minute:

“Adopt and issue order dated June 25, 1997 dismissing with prejudice the complaint filed on January 21, 1997 by Barbara McCormick against Ameritech Michigan, as set forth in the order.”