

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of	)	
<b>BARBARA MCCORMICK</b> against	)	
<b>AMERITECH MICHIGAN.</b>	)	Case No. U-11303
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At the September 30, 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

**OPINION AND ORDER**

On June 25, 1997, the Commission issued an order dismissing with prejudice the complaint of Barbara McCormick against Ameritech Michigan. On July 25, 1997, Ms. McCormick filed a petition for rehearing. On August 1, 1997, Ameritech Michigan filed a response.

The petition for rehearing alleges a variety of errors: (1) The Commission failed to consider the transcript before rendering its decision. (2) The Commission failed to rule on all of the issues raised by the complaint. (3) The Commission should not have adopted the Administrative Law Judge's (ALJ) grant of summary disposition. (4) The record is not complete and contains errors. (5) The mediation required by the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq.; MSA 22.1469(101) et seq., did not occur before the hearing. (6) The Commission should have granted the motion to reopen the record. (7) The Commission should have granted the relief requested in the complainant's exceptions. (8) The Commission should not have affirmed the ALJ's denial of the complainant's request for an adjournment.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

Neither the complainant nor her representatives appeared at the hearing. The offered reason for the complainant's failure to appear is not supported by any documentation and, in light of her condition, the complainant had more than adequate time to anticipate the need and to have a representative appear on her behalf. Having failed to appear at the properly noticed hearing or to arrange for a representative to appear, the complainant may not now be heard to complain that the Commission made its decision based on the record created at the hearing nor may she request that the Commission reopen the record.

The record created at the hearing fully supports the conclusions that the complainant was given proper notice of the proposed shutoff of service, that the complainant was delinquent on her current charges, and that the complainant failed to make timely payment on a prior arrearage as required by the settlement agreement in Case No. U-11140 (a complaint that also involved her nonpayment of bills). Tr. 9-10; Exhibits R-5 and R-8.<sup>1</sup> Based on those facts, Ameritech Michigan had the right to terminate her service, and the complainant had no right to enforce selected provisions of the settlement agreement that she breached. Consequently, the

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<sup>1</sup>As a condition to restoring her service, Ameritech Michigan required the complainant to pay the arrearage in full. 1996 MR 7, R 484.373, permitting payment of 50% of the amount in dispute, does not apply to reinstatement of service, contrary to her argument. After having paid her bill in full and having service restored, the record shows that the complainant was again delinquent on her account. Tr. 15; Exhibit R-8.

complainant was not entitled to a remedy, and the complaint was properly dismissed. The other arguments raised in the petition for rehearing and the new evidence offered in the motion to reopen the record do not change those conclusions. The petition for rehearing is therefore denied.

Ameritech Michigan asks the Commission to rule that the complainant and her representatives have taken a position in this case that is frivolous and that Ameritech Michigan is therefore entitled to recover \$1,000 for costs, including reasonable attorney fees, under Section 209 of the MTA, MCL 484.2209; MSA 22.1469(209). Under the circumstances at this time, the Commission does not find the complainant's position to be frivolous.

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 complainant's petition for rehearing should be denied.
- c. Ameritech Michigan's request to recover costs should not be granted.

THEREFORE, IT IS ORDERED that:

- A. The petition for rehearing filed by Barbara McCormick is denied.
- B. Ameritech Michigan's request to recover costs is not granted.

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

( S E A L )

John C. Shea  
Commissioner

David A. Svanda  
Commissioner

By its action of September 30, 1997.

Dorothy Wideman  
Executive Secretary

THEREFORE, IT IS ORDERED that:

A. The petition for rehearing filed by Barbara McCormick is denied.

B. Ameritech Michigan's request to recover costs is not granted.

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

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Chairman

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Commissioner

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Commissioner

By its action of September 30, 1997.

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Executive Secretary

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**BARBARA MCCORMICK** against  
**AMERITECH MICHIGAN.**

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Case No. U-11303

Suggested Minute:

“Adopt and issue order dated September 30, 1997 denying the petition for rehearing with regard to Barbara McCormick’s complaint against Ameritech Michigan, as set forth in the order.”