

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of)
CENTENNIAL CELLULAR CORPORATION)
against **AMERITECH MICHIGAN.**) Case No. U-11620
_____)

In the matter of the complaint of)
CENTURY CELLUNET, INC., against)
AMERITECH CORPORATION et al. regarding) Case No. U-11630
Ameritech's unilateral termination of Type 2A)
interconnection with CMRS providers.)
_____)

At the August 5, 1998 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 January 9, 1998, Centennial Cellular Corporation (Centennial) filed a complaint in Case No. U-11620 challenging Ameritech Michigan's decision to withdraw reverse billing. On February 6, 1998, Century Cellunet, Inc., now CenturyTel Wireless, Inc., (Century) filed a similar complaint in Case No. U-11630. It also filed a motion to consolidate the two cases. Administrative Law Judge Theodora M. Mace (ALJ) consolidated the complaints, presided over the hearings, and admitted the following intervenors: Thumb Cellular, AirTouch Cellular Inc., Trillium Cellular Corporation, and

RFB Cellular, Inc.¹ Evidentiary hearings were held on May 6 through 8, 1998. The record consists of 882 pages and 46 exhibits.

The parties filed briefs and reply briefs, after which the ALJ issued a Proposal for Decision (PFD) on June 25, 1998. Ameritech Michigan filed exceptions on July 2, 1998. Century and Thumb, Centennial, Trillium, RFB, and AirTouch filed replies to exceptions on July 10, 1998.

Reverse billing is an arrangement that permits a land line telephone customer to place a call to a cellular or pager customer without paying local or toll charges. Instead, the commercial mobile radio service (CMRS) provider pays Ameritech Michigan an access-like charge. The CMRS provider selects the exchanges in which this billing arrangement will be offered. The effect is to create large local calling areas, sometimes as large as an entire LATA, within which land line customers can place calls to CMRS customers without incurring any charges. The alternative is standard billing, under which Ameritech Michigan charges the land line calling party the customary local or toll charges. Neither arrangement directly affects the charges that the CMRS providers impose on their customers.

Reverse billing was first offered as a result of a settlement in Case No. U-9269. Ameritech Michigan has continued to offer it under Tariff M..P.S.C. No. 20R. In October 1997, Ameritech Michigan filed revised tariff sheets withdrawing reverse billing for new NXX codes and phasing out reverse billing for existing codes by December 31, 1998. Subsequently, it modified its position so that reverse billing will be available until the last interconnection agreement that provides for reverse billing has expired, April 9, 1999.

¹For simplicity, this order will use the term complainants as including the intervenors.

The complainants argue that Ameritech Michigan's withdrawal of reverse billing is a violation of their interconnection agreements; the settlement agreement in Case No. U-9269; the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; and the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the federal Act), 47 USC 151 et seq.

The Interconnection Agreements

The ALJ concluded that Ameritech Michigan had violated the interconnection agreements between Ameritech Michigan and the CMRS providers. She concluded that the language in the agreements incorporating the then existing access charges did not permit Ameritech Michigan to withdraw the reverse billing tariff, but only to change the tariffed rates. She also concluded that Ameritech Michigan had conceded this point by its decision not to withdraw reverse billing until the expiration of the last agreement that provides for reverse billing.

Ameritech Michigan excepts and argues that the interconnection agreements do not require it to continue offering reverse billing.

Because Ameritech Michigan has decided to offer reverse billing until the expiration of the last interconnection agreement that provides for reverse billing, the Commission need not decide whether the withdrawal of reverse billing would violate the interconnection agreements.

Case No. U-9269 Settlement Agreement

The complainants argue that the settlement agreement in Case No. U-9269, approved on March 9, 1989, prohibits Ameritech Michigan from withdrawing reverse billing or increasing the charges without filing an application and commencing a contested case. The ALJ agreed.

Ameritech Michigan excepts and argues that the agreement cannot reasonably be interpreted as requiring continued implementation of its provisions beyond the agreed term of two years. It argues that, upon expiration of that term, it had the right to make changes by following the then existing regulatory processes. It asserts that, under current Michigan law, it need not seek Commission approval for the tariff changes that precipitated the complaints.

The Commission agrees. The complainants have not cited, and the Commission is not aware of, any provision of the MTA that supports their position that the settlement agreement continues in full force despite the passage of time and the enactment of a new statute or that a contested case is a prerequisite to a change in the tariff. In fact, given that the MTA does not rely on rate-base/rate-of-return regulation, it would be remarkable if the Legislature intended that one particular form of compensation (i.e., reverse billing) should alone be subject to traditional cost of service regulation in a contested case.

Violation of the MTA and the Federal Act

The complainants argue that the withdrawal of reverse billing is adverse to the public interest and that the Commission should therefore require Ameritech Michigan to continue to offer reverse billing. They rely on Section 205(2) of the MTA, which provides:

If the commission finds, after notice and hearing, that the quality, general availability, or conditions for the regulated service . . . is [sic] adverse to the public interest, the commission may require changes in how the telecommunications services are provided.

MCL 484.2205(2); MSA 22.1469(205)(2).

Ameritech Michigan argues that reverse billing is simply a billing option and therefore not a service, much less a regulated service. In particular, it asserts that reverse billing is not a form of interconnection within the meaning of that term in the MTA or the federal Act. It also asserts that

reverse billing is inconsistent with the Federal Communications Commission's (FCC) reciprocal compensation paradigm, which does not permit local exchange carriers (LECs) to impose charges on CMRS providers for calls that originate on the LECs' networks. It therefore concludes that it may, and probably must, withdraw reverse billing.

The ALJ concluded, under both the MTA and the federal Act, that interconnection includes both the physical link between providers and the rates, terms, and conditions of the interconnection. She concluded that a regulated service was at issue and that withdrawal of reverse billing is adverse to the public interest. She further concluded that the federal Act and the FCC's rules do not require Ameritech Michigan to withdraw reverse billing. She therefore recommended that the Commission require Ameritech Michigan to continue offering reverse billing.

Ameritech Michigan excepts and argues that neither the MTA nor the federal Act requires it to offer reverse billing because it is not a part of interconnection. It denies that a billing option such as reverse billing is interconnection within the meaning of the MTA because no particular billing option is necessary to permit the exchange of traffic. It also argues that the FCC has been clear that interconnection under the federal Act refers only to the physical linking of two networks and does not include billing arrangements. It denies that all subjects addressed by interconnection agreement, e.g., limitations of liability, are thereby transformed into interconnection.

Ameritech Michigan also argues that reverse billing is inconsistent with federal law. It does not assert that reverse billing is explicitly prohibited by any federal statute or rule, but argues only that recent FCC interpretations strongly suggest that reverse billing is fundamentally inconsistent with the reciprocal compensation policy of the federal Act. It also asserts that even if the parties can voluntarily agree to an arrangement under which a CMRS provider pays for LEC-originated traffic, it will not voluntarily agree to such arrangements.

As to the public interest effects of withdrawing reverse billing, Ameritech Michigan argues that land line customers are already subject to charges for calls to mobile telephones through standard billing and calling party pays² arrangements. Further, it says that customers have many reasons for purchasing cellular service and the withdrawal of reverse billing will not significantly alter those motivations. It also asserts that if reverse billing is required by the public interest, the Commission must address the fact that competitive local exchange carriers (CLECs) and GTE North Incorporated do not offer reverse billing. It denies that it will gain as much as \$100 million dollars per year in new toll revenues upon the withdrawal of reverse billing. It also denies that the withdrawal of reverse billing will lessen competition among CMRS providers.

The Commission concludes that reverse billing is a part of interconnection and, as such, subject to regulation. The MTA defines “interconnection” as “the technical arrangements and other elements necessary to permit the connection between the switched networks of 2 or more providers to enable a telecommunications service originating on the network of 1 provider to terminate on the network of another provider.” MCL 484.2102(k); MSA 22.1469(102)(k). Ameritech Michigan asserts that because a billing arrangement is not necessary to permit the physical exchange of traffic, reverse billing is not a part of interconnection. That argument ignores the language that defines interconnection as including “the technical arrangements and other elements necessary.” In addition, Ameritech Michigan has negotiated interconnection agreements with some of the complainants, as well as CLECs, and those agreements address more than the physical connection of the providers’ systems. Furthermore, Article 3A of the MTA, MCL 484.2351 et seq.;

²As relevant to this case, under calling party pays arrangements, the land line customer placing a call to a CMRS customer is required to pay the air time charges that would otherwise be paid by the CMRS customer.

MSA 22.1469(351) et seq., addresses interconnection, interconnection rates, joint marketing, service unbundling, resale, number portability, termination rates, directory assistance, attachment rates, imputation, and customer data bases. It is clear that the Legislature does not view interconnection as solely the physical connection of two networks. Finally, when CMRS providers have switched from reverse billing to standard billing, the transition has necessitated changes in the facilities used to carry the traffic. Under reverse billing, land-to-mobile traffic is routed over 2A trunks, and under standard billing, that traffic is routed over 2T trunks. 5 Tr. 262; Exhibit C-2, pp. 48, 49, 53. The choice of billing option has other effects on the interconnection between Ameritech Michigan and CMRS providers: network architecture, dialing requirements, and billing systems. 5 Tr. 487-488. Consequently, the Commission concludes that reverse billing, as part of interconnection, is subject to regulation.³

The Commission does not conclude that it should therefore order Ameritech Michigan to continue offering reverse billing. The complainants assert both that Ameritech Michigan must continue to offer reverse billing and that Ameritech Michigan cannot increase the rates associated with reverse billing above their current level. Section 205 addresses only one of those assertions--whether Ameritech Michigan can withdraw reverse billing as a part of its interconnection arrangements with CMRS providers. Section 205 does not address rates. Rather, it provides that the Commission may consider “the quality, general availability, and conditions for the regulated service.” MCL 484.2205(2); MSA 22.1469(205)(2). In the context of the MTA, it seems likely

³Even if Ameritech Michigan were correct that interconnection consists only of the physical arrangements necessary to connect two networks, both the MTA and the federal Act provide for the setting of rates for interconnection and provide regulation of those rates. See Article 3A of the MTA, *supra*, in particular Section 352, MCL 484.2352; MSA 22.1469(352); 47 USC 251(c)(2).

that the omission of “rates” within the listed matters was not an oversight. In Section 101 of the MTA, MCL 484.2101; MSA 22.1469(101), the Legislature stated that the purpose of the act is, among other things, to streamline the process of setting and adjusting rates and to place greater reliance on competition. Throughout the act, the Legislature provided standards and procedures for setting rates for different services. It addressed the rates for interconnection principally in Section 352 of the MTA, MCL 484.2352; MSA 22.1469(352). It is unlikely that the Legislature intended that the Commission would then have the additional power to determine that a rate for a regulated service such as interconnection is adverse to the public interest and should be altered for that reason.

Procedurally, these complaints do not provide the opportunity for the Commission to determine the appropriate rates associated with reverse billing, and the record provides no basis for the Commission to do so. Thus, even if the Commission were to agree that the withdrawal of reverse billing is adverse to the public interest, the Commission would still need to address the question of the appropriate rates. If the record in a subsequent proceeding were to support a significant increase in the rates associated with reverse billing, the effect might well be the same as withdrawal of the billing option. In light of that uncertainty, the Commission does not find it necessary to determine whether the withdrawal of reverse billing would be adverse to the public interest.

The MTA and the federal Act provide a process for resolving issues related to rates, terms, and conditions of interconnection, first by negotiation among the parties and then by arbitration if necessary. The Commission finds no readily apparent reason that the availability and pricing of

reverse billing should not be handled by that process. Consequently, the parties should be left initially to negotiate this issue.⁴

Remaining Issues

The complainants argue that the withdrawal of reverse billing creates an inferior connection, in violation of Section 305 of the MTA, and discriminates against them by failing to offer the functional equivalent of the originating access service that is offered to interexchange carriers, in violation of Section 251(c)(2) of the federal Act. The ALJ concluded that the record was insufficient to determine that the alternatives to reverse billing constitute an inferior quality of interconnection.

In its brief, Trillium argues that the withdrawal of reverse billing violates Section 304b(1)(g), which requires basic local exchange service providers to offer toll-free calling to contiguous exchanges. The ALJ concluded that the argument should be rejected because it was not raised on the record.

Finally, the ALJ denied the complainants' request for a default judgment, which was based on Ameritech Michigan's tardy responses to discovery, and their request for attorney fees to conduct three depositions, which they claimed Ameritech Michigan's conduct forced them to schedule shortly before the hearing.

There were no exceptions to these recommendations, and the Commission adopts the ALJ's conclusions as supported by the record and law.

⁴These complainants have not satisfied the procedural requirements of the federal Act or the Commission's orders with respect to arbitration and consequently, contrary to Trillium's suggestion, this case cannot serve as an arbitration proceeding.

Remedy

To the extent that the complainants seek an order that Ameritech Michigan must offer reverse billing indefinitely at no increase in rates, the complaints are denied. The complainants are entitled to an order that Ameritech Michigan may not refuse to negotiate the issue. Because the complainants have obtained little that they sought in their complaints, the Commission does not find an award of attorney fees or costs to be warranted. Finally, the parties have not proved any harm and are therefore not entitled to damages.

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 AACR, R 460.17101 et seq.
- b. The complainants are not entitled to an order requiring Ameritech Michigan to continue offering reverse billing or to do so at current rates.
- c. Reverse billing is a proper subject for negotiation in the context of interconnection agreements.

THEREFORE, IT IS ORDERED that the complaints of Centennial Cellular Corporation and CenturyTel Wireless, Inc., are 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

/s/ John G. Strand
Chairman

(S E A L)

/s/ John C. Shea
Commissioner

/s/ David A. Svanda
Commissioner

By its action of August 5, 1998.

/s/ Dorothy Wideman
Its Executive Secretary

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

Chairman

Commissioner

Commissioner

By its action of August 5, 1998.

Its Executive Secretary

In the matter of the complaint of)
CENTENNIAL CELLULAR CORPORATION)
against **AMERITECH MICHIGAN.**)

Case No. U-11620

In the matter of the complaint of)
CENTURY CELLUNET, INC., against)
AMERITECH CORPORATION et al. regarding)
Ameritech’s unilateral termination of Type 2A)
interconnection with CMRS providers.)

Case No. U-11630

Suggested Minute:

“Adopt and issue order dated August 5, 1998 dismissing with prejudice the complaints of Centennial Cellular Corporation and CenturyTel Wireless, Inc., but concluding that reverse billing is a proper subject for negotiation in the context of interconnection agreements, as set forth in the order.”