

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
EAST LANSING LAUNDRY, INC., against)	
AMERICAN TELECOMMUNICATIONS)	Case No. U-12028
SYSTEMS, INC.)	
_____)	

At the August 31, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
 Hon. David A. Svanda, Commissioner
 Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On June 24, 1999, East Lansing Laundry, Inc., filed a complaint alleging that American Telecommunications Systems, Inc., had violated the prohibition against slamming in the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq. (the MTA). Administrative Law Judge Barbara Stump (ALJ) conducted a prehearing conference on August 17, 1999. Among other things, she ruled that the parties would be required to prefile their direct testimony in preparation for the evidentiary hearing. On August 26, 1999, the Commission Staff (Staff) filed an application for leave to appeal that ruling.

The Staff argues that the complaint complies with the requirement of the MTA, MCL 484.2203; MSA 22.1469(203), that it contain all of the information that the complainant intends to rely on and the provisions of the Commission's Rules of Practice and Procedure, 1992 AACCS, R 460.17505, with

respect to the contents of a complaint filed with the Commission. It argues that the MTA does not require the prefiling of testimony and Rule 331 of the Rules of Practice and Procedure, 1192 AACRS, R 460.17331, permits the Commission or the presiding officer to dispense with the usual practice of requiring prefiled testimony. The Staff says that a requirement to prefile testimony places an unnecessary burden on the Staff and the public and will serve to discourage the filing of complaints against slamming.

Rule 337 of the Commission's Rules of Practice and Procedures, 1992 AACRS, R 460.17337, establishes the standards for reviewing applications for leave to appeal. Not every application merits immediate review; an appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

The Commission concludes that it should grant the application for leave to appeal. Doing so will materially advance a timely resolution of this and other similar complaints.

With the introduction of competition into the telecommunications industry, slamming has become a major problem. The Legislature therefore amended the MTA (1998 PA 260, effective October 1998) to require the Commission "to ensure that an end user of a telecommunications provider is not switched to another provider without the end user's [consent] . . . , confirming the end user's intent to make a switch and that the end user has approved the specific details of the switch." MCL 484.2505(2);

MSA 22.1469(505)(2). It is not consistent with the intent of the amendments to make the enforcement process more burdensome than the act and due process require.

The central issue in a slamming case is whether a telecommunications provider caused the customer's service provider to be switched without authorization. Prefiled testimony is not necessary in most cases to provide the respondent an adequate opportunity to defend the case or the Commission an adequate record to decide the case. Although the MTA requires that a complaint contain "all information, testimony, exhibits, or other documents and information on which the person intend to rely," MCL 484.2203(2); MSA 22.1469(203)(2), the language and purpose of that subsection are fully satisfied when a customer files a complaint containing the information that supports the allegation of slamming. Furthermore, Subsection 203(2) does not require either the Staff or the respondent to prefile testimony in a slamming case brought by a customer. Unless a respondent can make a compelling argument that the particular circumstances of a slamming case require the prefiling of testimony, it is the Commission's intent that the parties not be required to prefile testimony but, rather, be permitted to testify orally.

It is also the Commission's intent that administrative law judges should seek to resolve slamming complaints as quickly as possible, consistent with the right of the respondents to have due process and the public to be protected against slamming. Unless required by the unique circumstances of a particular case, administrative law judges should seek to resolve each slamming complaint at the initial hearing by permitting all parties to present their evidence and arguments and issuing an oral proposal for decision.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, 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 application for leave to appeal should be granted, and the ruling of the ALJ reversed.

THEREFORE, IT IS ORDERED that the application for leave to appeal is granted and the ruling that the parties shall prefile testimony is reversed.

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

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

(S E A L)

/s/ David A. Svanda

Commissioner

/s/ Robert B. Nelson

Commissioner

By its action of August 31, 1999.

/s/ Dorothy Wideman

Its Executive Secretary

The Commission FINDS that:

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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 application for leave to appeal should be granted, and the ruling of the ALJ reversed.

THEREFORE, IT IS ORDERED that the application for leave to appeal is granted and the ruling that the parties shall prefile testimony is reversed.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

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By its action of August 31, 1999.

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Suggested Minute:

“Adopt and issue order dated August 31, 1999 granting the application for leave to appeal filed by the Commission Staff and reversing the ruling that the parties shall prefile testimony for the hearing on the slamming complaint of East Lansing Laundry, Inc., against American Telecommunications Systems, Inc., as set forth in the order.”