

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)	
SEAWAY PAINTING, L.L.C., against)	Case No. U-12863
MCI WORLDCOM COMMUNICATIONS, INC.)	
_____)	
)	
In the matter of the complaint of)	
SEAWAY PAINTING, L.L.C., against)	Case No. U-13024
MCI WORLDCOM COMMUNICATIONS, INC.)	
_____)	

At the October 29, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER

On March 8, 2001, Seaway Painting, L.L.C., (Seaway), filed a complaint against MCI WorldCom Communications, Inc., (WorldCom) concerning a billing dispute and related slamming allegations. The complaint, docketed as Case No. U-12863, was not signed by a licensed attorney, but it designated two non-attorneys to represent Seaway's interests in the matter. At a prehearing conference on April 20, 2001, the Administrative Law Judge (ALJ) stated that she would not permit Seaway, as a corporate entity, to pursue the complaint unless it secured an attorney to represent it. Seaway then made a written request to withdraw the complaint without prejudice.

On June 5, 2001, the Commission issued an order in Case No. U-12863 dismissing the complaint without prejudice. In the order, the Commission indicated that it disagreed with the ALJ's statements regarding attorney representation. The order explained:

Subsection 506(1)(a) of the Michigan Telecommunications Act, MCL 484.2506(1)(a); MSA 22.1469(506)(1)(a), provides:

Hearings shall be conducted in a manner as to optimize expediency, convenience, and the ability of end-users to bring and prosecute, without the assistance of counsel, complaints alleging violations of section 505 [which prohibits unauthorized switches in service providers] or 507 [which prohibits adding unrequested services], while preserving the rights of the parties.

The Commission concludes that this provision authorizes, and was intended by the Legislature to authorize, customers such as Seaway to rely upon the assistance of a person other than an attorney when bringing a complaint alleging slamming or cramming. Further, the statute provides no basis for distinguishing between the ability of an officer or employee of the business and any other person to assist with the complaint. As a result, upon dismissal of this complaint without prejudice, Seaway may refile its complaint and proceed with the assistance of a person of its choice, who need not be a licensed attorney.

Order at 2 (parenthetical notations set forth in the order).

On July 5, 2001, WorldCom filed a petition for rehearing. Although WorldCom did not object to the order's dismissal of the complaint, it argued that the Commission erred in stating that Seaway could pursue a slamming or cramming complaint without counsel.

Seaway filed a new complaint relating to the same dispute on July 3, 2001, which was docketed as Case No. U-13024. The complaint again indicated that Seaway did not intend to retain an attorney to represent it. On August 14, 2001, WorldCom filed a motion to dismiss the complaint, citing the practice of law by a non-attorney, among other things, as grounds for dismissal. After conducting a prehearing conference on August 23, 2001, the assigned ALJ (who was not the ALJ presiding in Case No. U-12863) issued a ruling on August 31, 2001 that stayed

the proceeding pending the Commission's ruling on WorldCom's petition for rehearing in Case No. U-12863.¹ On September 17, 2001, Seaway filed an application for leave to appeal the ALJ's ruling. WorldCom filed a response.

In Case No. U-12863, WorldCom's petition for rehearing requests that the Commission vacate its discussion in the June 5, 2001 order, although it is not requesting that the Commission reconsider the dismissal of the complaint. In Case No. U-13024, Seaway's application for leave to appeal requests that the Commission reverse the ALJ's decision to stay the proceedings and set the complaint for hearing before the Commission. This order addresses a common issue relating to both matters: whether it is proper for a corporate entity to bring a complaint case under Sections 505, 506, and 507 of the Michigan Telecommunications Act (MTA) without the representation of a licensed attorney.

WorldCom says that MCL 600.916 prohibits the unauthorized practice of law. It further notes that case law establishes that a corporation cannot be represented by anyone other than a licensed attorney in an administrative proceeding, unless there is a statutory exception. WorldCom argues that Section 506(1)(a) of the MTA does not provide an exception for slamming or cramming cases, but that it merely recognizes that an individual person may permissibly represent himself or herself. As examples of statutory exceptions that expressly permit non-attorneys to represent others, WorldCom points to various statutes providing for parties to be represented, in certain other contexts, by "counsel or other duly authorized agent," a phrase that does not appear in Section 506(1)(a). WorldCom says that the Commission's ruling poses an ethical dilemma for attorneys who participate in Commission proceedings, in that MRPC 5.5 prohibits a lawyer from

¹The ALJ further ruled that Seaway must file an amended complaint to restate more definitely the allegations falling under Sections 505-507 and to remove all other allegations. The Commission concurs with this ruling.

“assist[ing] a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.”

Seaway argues that the ALJ in Case No. U-13024 acted in flagrant violation of the Commission’s June 5, 2001 order and is attempting to thwart its right to bring a complaint. Seaway also claims various other errors. According to Seaway, the Commission itself should hear the complaint because it is apparent that an administrative law judge will not conduct a fair and impartial hearing.

The Commission has considered the arguments presented in Cases Nos. U-12683 and U-13024 and reaffirms its statements in the June 5, 2001 order concerning the conduct of complaint proceedings subject to Section 506. The Commission is not persuaded by WorldCom’s arguments that the guidance it issued in that order was in error. Section 506(1)(a) requires the Commission to facilitate the adjudication of slamming and cramming complaints brought by retail customers by, among other things, removing objections based on the lack of counsel. The Commission rejects WorldCom’s interpretation of Section 506(1)(a) that suggests that bringing and prosecuting complaint proceedings “without the assistance of counsel” does not relieve a corporate complainant from retaining a licensed attorney. If, as WorldCom contends, that reference acknowledges nothing more than the propriety of an individual representing him or herself pro se, it would be stating what would be obviously true even if the statute did not contain that provision. It is only when a non-attorney acts in a legal capacity on behalf of someone else that he or she engages in the unauthorized practice of law. WorldCom’s interpretation of the statute would, in effect, render the reference to proceeding “without the assistance of counsel” as surplus language. See In re MCI Telecommunications Complaint, 460 Mich 396, 414; 596 NW2d 164, 175-76 (1999) (“It is a maxim of statutory construction that every word of a statute should be read in such a way as to be

given meaning, and a court should avoid a construction that would render any part of the statute surplusage or nugatory.”).

As WorldCom recognizes, the Legislature may provide by statute for exceptions to the general prohibition against the unauthorized practice of law. Because Section 506(1)(a) provides an exception, the complaint proceeding in Case No. U-13024 should go forward. Although Seaway implies that the ALJ has treated it unfairly, the Commission finds no indication of error or unfairness in the ruling on August 31, 2001 or the conduct of the proceedings generally. As for various other issues and procedural matters noted in the parties’ briefs, those matters have not been properly presented for adjudication in the proceedings below and are not pending before the Commission at this time. The ALJ may address them as they are presented.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission’s Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. WorldCom’s petition for rehearing should be denied.
- c. Seaway’s application for leave to appeal should be granted, and the complaint should be remanded for hearing and further proceedings consistent with this order.

THEREFORE, IT IS ORDERED that:

- A. The petition for rehearing in Case No. U-12863 is denied.
- B. The application for leave to appeal in Case No. U-13024 is granted, and the complaint filed in that docket is remanded for hearing and further proceedings consistent with this order.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of October 29, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of October 29, 2001.

Its Executive Secretary

In the matter of the complaint of)
SEAWAY PAINTING, L.L.C., against)
MCI WORLDCOM COMMUNICATIONS, INC.)

Case No. U-12863

_____)
In the matter of the complaint of)
SEAWAY PAINTING, L.L.C., against)
MCI WORLDCOM COMMUNICATIONS, INC.)

Case No. U-13024

Suggested Minute:

“Adopt and issue order dated October 29, 2001 denying the petition for rehearing filed by MCI WorldCom Communications, Inc., in Case No. U-12863, granting the application for leave to appeal filed by Seaway Painting, L.L.C., in Case No. U-13024, and remanding a complaint filed by Seaway Painting, L.L.C., against MCI WorldCom Communications, Inc., for hearing, as set forth in the order.”