

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-13024
MCI WORLDCOM COMMUNICATIONS, INC.)	
_____)	

At the January 22, 2002 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 GRANTING APPLICATIONS FOR LEAVE TO APPEAL,
BUT DENYING THE RELIEF REQUESTED**

This docket began on July 3, 2001, when Seaway Painting, L.L.C., (Seaway) filed a complaint against MCI WorldCom Communications, Inc. (WorldCom).¹ On December 20, 2001, Administrative Law Judge Lauren G. Van Steel (ALJ) issued a written ruling following a prehearing conference that she conducted on December 12, 2001, on remand pursuant to the Commission's October 29, 2001 order in Cases Nos. U-12863 and U-13024. The ruling acknowledged that the amended complaint filed on December 18, 2001 complied with certain

¹ Seaway filed a previous complaint against WorldCom concerning the same events in Case No. U-12863. On June 5, 2001, the Commission issued an order dismissing that complaint without prejudice upon Seaway's request, but it further noted that Seaway need not retain a licensed attorney to represent it in a complaint under MCL 484.2505 and that Seaway could refile the complaint. Seaway subsequently filed the complaint in this docket. The order issued by the Commission on October 29, 2001 in both Cases Nos. U-12863 and U-13024 denied rehearing of the June 5, 2001 order in Case No. U-12863 and ruled on an application for leave to appeal in the current docket.

procedural requirements discussed at the prehearing conference, determined that December 18, 2001 commenced the 180-day period provided in MCL 484.2203(11) for resolving the complaint case, denied a motion to stay proceedings pending an appeal brought by WorldCom in the Michigan Court of Appeals from the Commission's earlier order, and addressed other procedural matters.

On December 18, 2001, Seaway filed an application to the Commission for leave to appeal several of the ALJ's prehearing determinations (as subsequently memorialized in her December 20, 2001 ruling). On December 21, 2001, WorldCom filed an application for leave to appeal from the ALJ's denial of a stay. Both parties filed responses to each other's applications for leave to appeal.

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 proceedings to date have been subject to unnecessary complications and delays as a result of both parties' motions and appeals. The Commission will grant leave on, and dispose of, the pending appeals in order to redirect the parties' attention to the merits of the complaint and put the proceeding on the track to an expedited final decision. The Commission expects the parties to

refrain from litigating peripheral issues and is confident that the ALJ can capably provide guidance that the parties may seek on any legitimate procedural issues that do arise, without their filing further applications for leave to appeal to the Commission. The Commission has already clearly stated its position on issues relating to the representation by counsel in two previous orders, and it expects that any further efforts to litigate those issues will occur as a matter of judicial review and will not further delay efforts to resolve the underlying dispute.

In its application for leave to appeal, Seaway argues that the ALJ erred in requiring Seaway to file an amended complaint signed by an officer, employee, or principal of Seaway to comply with Rule 107 of the Commission's Rules of Practice and Procedure,² in requiring the amended complaint to clarify that it invokes only Section 505³ (and not Section 502⁴) of the Michigan Telecommunications Act (MTA), and in restarting the 180-day period for completing a complaint case under the MTA with the filing of the amended complaint.⁵ Most of Seaway's objections are now moot in light of the amended complaint filed on December 18, 2001, which the ALJ deemed to comply with her determinations at the prehearing conference. Moreover, the ALJ correctly interpreted the Commission's October 29, 2001 order not to absolve Seaway from complying with Rule 107. The ALJ was also correct in ruling that the 180-day deadline commences on December 18, 2001.

² R 460.17107. Rule 107(3) states in part: "A party who is not represented by an attorney shall sign the pleading."

³ MCL 484.2505. This section addresses slamming.

⁴ MCL 484.2502.

⁵ Seaway states that the deadline "is approximately January 31, 2001 [*sic*, 2002]." Seaway's application for leave to appeal at 4. Measured from the July 3, 2001 filing date for the complaint, the 180-day deadline would have expired on January 2, 2002.

In its application for leave to appeal, WorldCom requests that the Commission stay the proceedings in this docket. Although WorldCom reiterates its previous arguments in support of a stay or dismissal of the complaint,⁶ it also makes a new argument—it asserts that the Commission cannot conduct proceedings in this docket while judicial review of the same allegations in Case No. U-12863 is pending. It also argues that MCR 2.116(C)(6) provides for summary disposition when “[a]nother action has been initiated between the same parties involving the same claim.”

The Commission finds that there is no basis to stay the proceedings in this docket, particularly in light of the tight deadlines that the MTA imposes for resolving complaints. The Commission issued its October 29, 2001 order in both Case No. U-12863 and this docket (Case No. U-13024) because the dispute in both cases is the same, but the ruling affected separate procedural matters in each docket. Because the order denied rehearing of the July 5, 2001 order dismissing the complaint without prejudice in Case No. U-12863, it was a final order that closed that docket. However, the order also dissolved a stay granted by the ALJ in Case No. U-13024 and remanded the complaint for hearing. Thus, it was not a final order with respect to Case No. U-13024, and appellate jurisdiction attached only in Case No. U-12863 when WorldCom filed its claim of appeal. The Commission retains jurisdiction in Case No. U-13024 and will proceed to adjudicate the complaint unless instructed otherwise by an appellate court.

The argument that MCR 2.116(C)(6) requires summary disposition in WorldCom’s favor is incorrect. In the first place, the court rules are not strictly applicable to Commission proceedings. See R 460.17103(1). Moreover, despite WorldCom’s efforts to seek appellate review, there remains nothing to be decided in Case No. U-12863, which ended with a voluntary dismissal of

⁶ Although WorldCom acknowledges that the Commission has already addressed issues related to the absence of retained counsel in prior orders, it says that those pronouncements were dicta and that it is reiterating its arguments to preserve the issue.

the complaint. According to WorldCom, its interest in seeking appellate review is to address the issue of whether it is necessary to retain counsel, an issue that it now characterizes as “dicta” for purposes of the October 29, 2001 order. WorldCom’s application for leave to appeal at 7. Thus, even if WorldCom obtains the appellate relief it seeks, it is not likely that Case No. U-12863 will be reopened.

As for WorldCom’s remaining arguments, the Commission need not reiterate its discussion in the October 29, 2001 order.

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 AACCS, R 460.17101 et seq.

b. The applications for leave to appeal should be granted, but the relief requested should be denied.

THEREFORE, IT IS ORDERED that the applications for leave to appeal filed by Seaway Painting, L.L.C., on December 18, 2001 and MCI WorldCom Communications, Inc., on December 21, 2001 are granted, but the relief requested in both applications is denied.

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

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 January 22, 2002.

/s/ Dorothy Wideman

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

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By its action of January 22, 2002.

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_____)

Case No. U-13024

Suggested Minute:

“Adopt and issue order dated January 22, 2002 granting the applications for leave to appeal filed by Seaway Painting, L.L.C., and MCI WorldCom Communications, Inc., but denying their requests for relief, as set forth in the order.”