

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)	
DALE F. WOFFORD against)	Case No. U-13062
AMERITECH MICHIGAN.)	
_____)	

At the May 1, 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

OPINION AND ORDER

On August 27, 2001, Dale F. Wofford filed a complaint alleging that Ameritech Michigan violated the Michigan Telecommunications Act (the Act), MCL 484.2101 et seq., by charging him for services that he did not authorize or request.

On October 2, 2001, Ameritech Michigan filed an answer to the complaint along with a motion to dismiss and, in the alternative, a motion for a more definite statement.

Pursuant to due notice, a prehearing conference was held on October 12, 2001 before Administrative Law Judge Lauren G. Van Steel (ALJ). In addition to Mr. Wofford and Ameritech Michigan, the Commission Staff (Staff) also appeared and participated. After hearing arguments on Ameritech Michigan's motions, the ALJ denied the motion to dismiss but granted the motion for more definite statement.

On November 7, 2001, Mr. Wofford filed an amended complaint. In that complaint, Mr. Wofford incorporated the underlying facts that were stated in the original complaint and alleged that Ameritech Michigan had violated Sections 502(1)(b) and 507(1) of the Act, MCL 484.2502(1)(b) and MCL 484.2507(1), respectively.

On January 10, 2002, an evidentiary hearing was held. The record consists of 286 pages of transcript in two volumes and 23 exhibits that were admitted into evidence.

Following the hearing, the parties submitted briefs and reply briefs. On March 14, 2002, the ALJ issued her Proposal for Decision (PFD) in which she recommended that the Commission dismiss the amended complaint with prejudice. The ALJ concluded that Section 507(1) could not have been violated because at the time of the alleged unauthorized charges, that section of the statute did not exist. After making a series of findings based on the record, the ALJ further concluded that Mr. Wofford had failed to prove by a preponderance of the evidence that Ameritech Michigan had violated Section 502(1)(b).

Ameritech Michigan, Mr. Wofford, and the Staff filed exceptions and replies to exceptions on March 22 and 29, 2002, respectively.

Legal Framework

Section 502(1) provides in relevant part:

A provider of a telecommunication service shall not do any of the following:

* * *

- (b) Charge an end-user for a subscribed service that the end-user did not make an initial affirmative order. Failure to refuse an offered or proposed subscribed service is not an affirmative order for the service.

Section 507(1) provides:

A telecommunications provider shall not include or add optional services in an end-user's telecommunications service package without the express oral or written authorization of the end-user.

Factual Background

Mr. Wofford testified that until September 1997, he received basic local exchange service from Ameritech Michigan, but he could not recall which provider he used for local toll and long distance services. Sometime in March or April 1997, Mr. Wofford and his wife noticed two charges of \$15 each on their Ameritech Michigan bill¹ for services that neither had authorized. These charges were identified as being from Integretel and Operator Assistance Network (OAN).² The billings reflected that Ameritech Michigan had no connection to either of these companies and that any questions should be directed to the identified providers. Mr. Wofford paid the bill, less the disputed charges. He sent a letter to Ameritech Michigan with his remittance stating that these charges were disputed and that his payment was to cover only undisputed charges.

Mr. Wofford and his wife attempted to contact Ameritech Michigan about the disputed charges in May or June 1997. Mr. Wofford testified about the frustration of not being able to reach a human being on Ameritech Michigan's automated answering system. After several minutes of waiting on hold, the Woffords would become frustrated and hang up.

According to Mr. Wofford, his wife unsuccessfully attempted to reach a human voice at Integretel through the number listed on the telephone bill. Mr. Wofford believed that the billing

¹ With taxes added, these charges became \$16.32 each and totaled \$32.64.

² Ameritech Michigan witness Shandrea Bell-Cox, testified that Integretel and OAN are billing clearinghouses that use Ameritech Michigan's billing and collection services. She indicated that the underlying service that may have been provided to Mr. Wofford was a pre-paid dial-around toll service.

problem was Ameritech Michigan's because it was that company's bill. Therefore, he did not attempt to contact either Integretel or OAN at that time.

According to the ALJ's findings, the Woffords sent two letters to Ameritech Michigan concerning this dispute. In addition to the letter Mr. Wofford sent with his partial payment, Mrs. Wofford sent a letter in September 1999, which the ALJ found more probable than not was sent separately from a bill payment. However, there is no evidence concerning the address to which that letter was sent, and Ameritech Michigan has no record of receiving either of the letters.

In September 1997, the Woffords decided to switch their basic local exchange service to AT&T Communications of Michigan, Inc. (AT&T). Mr. Wofford testified that, at that time, the couple decided to forget about the disputed charges with Ameritech Michigan. He testified that he believed the amount in dispute was too small for it to become a problem for them, or to warrant expending additional time and energy attempting to correct it.

Then the Woffords received a letter from a collection agency, Allied Interstate, Inc., dated December 23, 1997. That letter indicated that the Woffords owed Ameritech Michigan \$95.04. Mr. Wofford stated that he decided to ignore the letter, still believing that the amount was too small to pose any real problem.

In April 1999, Mr. Wofford received notice that Mary Roehr, an Ameritech Michigan representative, would be featured at a meeting of the local chapter of the National Association of Retired Federal Employees, to which Mr. Wofford belonged. He decided to go to the meeting to ask questions about his dispute. Ms. Roehr met with Mr. Wofford separately following the conclusion of her presentation. Mr. Wofford testified that he and Ms. Roehr had two or three phone conversations in the following few weeks.

Ms. Roehr put Mr. Wofford in touch with Chris Jones to assist him in resolving the dispute. His first contact with Ms. Jones was on May 3, 1999, when he sent a facsimile copy of certain portions of his prior Ameritech Michigan bill that showed the disputed charges. At that time, he questioned how long he had been paying the charges without realizing it. However, he testified that Ms. Roehr told him that Ameritech Michigan no longer had records for that period of time and that he should gather his records to demonstrate what charges he may have erroneously paid.

Ms. Jones testified that she worked with Mr. Wofford to resolve the problem. She stated that Mr. Wofford sent her three pages of his May 17, 1997 Ameritech Michigan bill, and explained that he disputed the charges from Integretel and OAN. At that point, Ms. Jones testified, she followed Ameritech Michigan's procedure and told Mr. Wofford to contact the two companies whose charges he disputed. According Ms. Jones, she told Mr. Wofford to call her back if he did not get the resolution that he wanted with those two companies. However, she never heard back from Mr. Wofford. She testified that she assumed that the problem had been resolved.³

Mr. Wofford testified that he received two other collection letters, the last of which was from Risk Management Alternatives, Inc., dated July 13, 1999. That letter lists Ameritech Michigan as the creditor and \$95.04 as the amount due. Mr. Wofford testified that he did not understand why Ameritech Michigan would have again referred the disputed debt to a collection agency after he had been attempting to resolve the issue with the company.

Also in July 1999, Mr. Wofford received a letter from a potential lender, declining to issue him a credit card because of negative information on his credit report. He obtained a copy of the report upon which the lender had relied, and found that the negative information related to the

³ Mr. Wofford testified that he did not recall these instructions. However, the ALJ found more probable than not that he was told to call and chose not to follow up.

disputed Ameritech Michigan charges. Mr. Wofford testified to his frustration and bewilderment as to what he could do to take care of the issue.

Finally, in April 2000, the Woffords received notice from Ameritech Michigan that the company no longer considered them to be liable for the disputed charges and that the collection agency had been contacted to delete any negative information from Mr. Wofford's credit report. Thereafter, he received a letter from Cash Flow Consultants, Inc., (a collection agency) stating that the account had been recalled by Ameritech Michigan and that necessary steps had been taken to clear Mr. Wofford's credit report.

Mr. Wofford testified that he attended a Commission public hearing in Wyandott in October 2000. At that hearing, he saw another representative of Ameritech Michigan, Robert Jones. It is unclear whether Mr. Wofford spoke with Mr. Jones at the meeting, but Mr. Wofford sent Mr. Jones a fax on October 19, 2000, which included the same partial billings that he had provided to Ms. Roehr and Ms. Jones. Mr. Wofford testified that he sought to find out through Mr. Jones when the unauthorized charges had begun to appear on his bill and when and how much he might expect as a refund. Mr. Wofford stated that he received no response from Mr. Jones.

Exceptions

A. Violation of Section 507(1)

Mr. Wofford excepts to the ALJ's conclusion that the facts presented could not establish a violation of Section 507(1) because that section of the Act had not been passed before the alleged wrongful conduct. He argues that Ameritech Michigan's wrongful conduct has continued because of its refusal to provide him with a date upon which the unauthorized charges first appeared. Further, he argues that the ALJ found that Ameritech Michigan "has a disturbing policy of not accepting correspondence or in-person complaints over bills" PFD, p. 18. Mr. Wofford states

that he was harmed by Ameritech Michigan's "willful, callous, and repetitive reporting of false credit information to three different collection agencies." Wofford exceptions, p.1.

The Commission finds that Mr. Wofford's exception on this issue must be rejected. The record reflects that Ameritech Michigan ceased collection activities with the letter dated April 4, 2000 in which Mr. Wofford was informed that he would no longer be considered responsible for the disputed debt. There is no indication that further collection efforts were made against Mr. Wofford. Section 507(1) was passed in July 2000, after Ameritech Michigan ceased attempting to collect the debt.

Ameritech Michigan does not have a duty to produce records that it no longer has due to the passage of time. There is no indication on this record that Ameritech Michigan violated any record retention requirements that were effective at the time that it purged Mr. Wofford's data from its system.

B. Violation of Section 502(1)(b)

Although Ameritech Michigan strongly agrees with the ALJ's determination that the complaint should be dismissed with prejudice, it excepts to the ALJ's conclusion that Mr. Wofford properly alleged a violation of 502(1)(b). In Ameritech Michigan's view, the ALJ erroneously concluded that the company could violate Section 502(1)(b) by merely billing for a telecommunications service provided by others, and because it pursued the charges through its collection agencies. Ameritech Michigan argues that the prohibited conduct is "charging" a customer, not "billing" a customer.

Ameritech Michigan argues that the only support the ALJ finds for her conclusion is the Staff's argument that the statute does not include words that require the one charging for the unsolicited service to also be the provider of that service. Ameritech Michigan argues that it is

equally true that the language does not say that a provider shall not charge an end-user for a service that the end-user did not order from a different provider. The company argues that it is not requesting the Commission to add qualifying language to the statute. Rather, it states, the best reading of the provision is that a provider of telecommunications service shall not charge an end-user for a subscribed service the end-user did not order from that provider.

Ameritech Michigan argues that the Commission has significant authority over the manner in which telecommunications services are provided, but has no statutory authority over the provision of billing services performed for another provider. Ameritech Michigan argues that because the Commission has authority over the actual provider of the telecommunication service, there is no need to read into the statute authority not otherwise found in the MTA to regulate the activities of another provider by attributing those activities to an entity that is merely providing a billing service. It states that if Integretel or OAN acted improperly, an action should be maintained against those parties rather than the entity providing a billing service.

Ameritech Michigan argues that the realities of the market support the correctness of its interpretation of the statute. The company states that it provides billing and collection services to many telecommunications providers at their request as a means of lowering costs. Ameritech Michigan argues that engaging in billing and collection activities is a lawful method of obtaining revenues. It asserts that a finding that a local exchange carrier (LEC) is liable for the slamming or cramming performed by another entity would place an impossible burden on the LEC, because it has no way of knowing whether or not a customer authorized the services. It further asserts that any requirement that it perform an investigation could make billing for other providers economically infeasible, and could be an anti-competitive interference with the relationship between the other provider and its customer.

Moreover, Ameritech Michigan argues, the ALJ erred in concluding that by pursuing the charges, through its collection agencies, Ameritech Michigan should not now be able to claim that it is only billing for other charging companies. Ameritech Michigan claims that attempting to collect charges that it bills as a service to other telecommunications providers is part of the service that it provides. It argues that merely attempting to collect those charges does not make Ameritech Michigan the charging party.

The Staff and Mr. Wofford except to the ALJ's conclusion that Mr. Wofford failed to provide sufficient evidence that Ameritech Michigan violated Section 502(1)(b). In the Staff's view, the ALJ erroneously focuses on the period when Mr. Wofford spoke to the Ameritech Michigan representative at the public forum, some two years after the initial dispute. The Staff argues that the relevant period for assessing whether a violation occurred is earlier, when the Woffords received bills that contained charges for services they did not order. After receiving these bills, the Staff argues, the Woffords attempted on numerous occasions to notify Ameritech Michigan of the dispute, but were unable to reach a live person. The Staff asserts that the record reflects that the Woffords wrote two letters to Ameritech Michigan to inform it of the dispute. The Staff argues that Ameritech Michigan's position that it had a right to discard the letters should not be accepted as a valid defense to the company's failure at that time to remove these charges from the customer's bill.

The Staff further takes issue with the ALJ's finding that Mr. Wofford was told to contact Integretel and OAN, but chose not to do so. In the Staff's view, the statements in Mr. Wofford's letters to Ameritech Michigan that he had unsuccessfully attempted to call these companies undermine the ALJ's finding. Moreover, the Staff asserts, the credibility of the Ameritech Michigan witnesses was doubtful.

The Commission finds that the ALJ correctly concluded that Mr. Wofford's complaint alleges a violation of Section 502(1)(b), but for a different reason. The Commission agrees with Ameritech Michigan that its mere billing for charges placed with it for that service does not open it to liability for such a violation when the company has no reason to believe that the charges are for services never authorized. Rather, the Commission finds that, when Ameritech Michigan places disputed charges into collections as its own debt, it becomes the charging party. At that point, it would appear to the customer, as well as potential creditors reviewing the customer's credit report, that Ameritech Michigan is the charging party and the only one that can remove the charge against the customer.

The Commission does not agree with Ameritech Michigan that this conclusion will lead to significant problems in the market. The company is free to bill and collect on behalf of others, but when it takes on the billing as its own, then it may be liable for charging for services not previously ordered by the end-user.

However, in the present case, the Commission agrees with the ALJ and finds that Mr. Wofford failed to produce sufficient evidence that the debt that Ameritech Michigan sought to collect from him was for services not ordered by him. Mr. Wofford had very little in the way of supporting documentation of his claims. He presented one page of the bill on which he noticed what he considered unauthorized charges and a similar page of the bill preceding that one. He testified that he paid the undisputed portion and wrote a letter to Ameritech Michigan concerning the dispute. He presented no bills in their entirety, so the treatment of his disputed amount is not certain. He did not present his final bill from Ameritech Michigan. In fact, Mr. Wofford did not know how much his wife had paid in the months after he had written the check for the undisputed amounts, but before the couple switched basic local exchange providers. His wife did not appear as a

witness. In short, there is no evidentiary basis for finding that the \$95.04 that Ameritech Michigan sought to collect from him was for unauthorized charges. The fact that Ameritech Michigan decided not to continue to collect the debt is not adequate to support a finding that the company violated Section 502(1)(b). The company may legitimately determine to relieve a consumer of a questionable debt, without admitting for purposes of a later contested case that the debt was not lawful.

Given the above finding, the Commission finds moot the arguments concerning the relative credibility of the witnesses as to whether Mr. Wofford was instructed to again call Ameritech Michigan if he could not get satisfaction from Integretel and OAN and whether he chose not to make the appropriate calls. However, the Commission notes that the ALJ was in the best position to judge the witnesses' relative credibility. The Commission sees nothing on this record that persuades it that the ALJ erred in her judgment concerning credibility.

C. Procedures for Disputes

In his second exception, Mr. Wofford argues that Ameritech Michigan's procedures for disputes are not adequate.

A review of this record, along with the ALJ's findings of fact, persuade the Commission that Ameritech Michigan had procedures in place in 1997 to address billing disputes. Although in the present case, Mr. Wofford had difficulty obtaining satisfaction, the main reason for that was his failure to read and follow instructions or requirements. For example, he mailed his first letter to the company with his bill remittance, despite a message on the bill not to do so. He further failed to call Ms. Roehr or Ms. Jones again when he was unable to obtain satisfaction from Integretel or from OAN. Ameritech Michigan could reasonably assume that the problem had been resolved.

At this time, the Commission declines to order Ameritech Michigan to alter its procedures for end-user disputes.

Moreover, the Commission notes that requirements for the manner in which providers must handle complaints is a subject addressed with some detail in the proposed rules currently pending in Case No. U-13013. That case is a better forum for determining such requirements.

D. Policy

The Staff agrees with the ALJ's concern that Ameritech Michigan had a policy that it would not discuss billing disputes in person or in writing with a customer. The Staff urges the Commission to order the company to establish an address at which customers may send written correspondence or e-mail to the company regarding billing disputes, and to provide addresses for third party companies. It asserts that the Commission has the authority to do so pursuant to MCL 484.2205 to ensure an appropriate quality of service to customers.

Ameritech Michigan responds that the issue of whether a regulated telecommunications service provider must provide an address on its bill is currently before the Commission in Case No. U-13013, and should not be prejudged in this case. Moreover, Ameritech Michigan argues, it does not have a policy of not permitting a customer to send it written information. It points out that even Mr. Wofford obtained the ability to communicate through facsimile with Ms. Roehr and Ms. Jones. Finally, Ameritech Michigan argues, the issue is not relevant to this case and should be decided in a different forum.

The Commission finds that the appropriate requirements regarding the provision of addresses for customers to dispute their bills is an issue in the ongoing rulemaking in Case No. U-13013. However, the Commission currently requires Ameritech Michigan to provide an address and telephone number where the customer may initiate an inquiry or informal complaint regarding the

bill as rendered. See, R 484.335(i). Failure to provide that information is a violation of that rule. In addition, customers should be provided an e-mail address for inquires or disputes. Therefore, Ameritech Michigan must establish an address for customers to write or e-mail concerning billing disputes. Further, the Commission finds that Ameritech Michigan should provide addresses for third-party companies for which it bills. The facts of this case warrant the Commission's action pursuant to MCL 484.2205.

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 complaint filed by Mr. Wofford should be dismissed with prejudice.
- c. Ameritech Michigan should establish an address for its customers to write and e-mail billing disputes, and should provide like addresses of third-party companies for which it bills.

THEREFORE IT IS ORDERED that:

- A. The complaint filed by Dale F. Wofford against Ameritech Michigan is dismissed with prejudice.
- B. Ameritech Michigan shall establish an address for its customers to write and e-mail billing disputes, and should provide like addresses of third-party companies for which it bills prior to May 20, 2002.

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 May 1, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of May 1, 2002.

Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated May 1, 2002 dismissing with prejudice the complaint of Dale F. Wofford against Ameritech Michigan, as set forth in the order.”