

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of RUCKER )  
REGIONAL PHYSICIAN BILLING, L.L.C., against )  
AMERITECH ADVANCED DATA SERVICES OF )  
MICHIGAN, INC., AMERITECH COMMUNICA- )  
TIONS INTERNATIONAL, INC., SBC GLOBAL )  
SERVICES, INC., INTERACTIVE SERVICES, INC., )  
and INTERMEDIA COMMUNICATIONS, INC. )  
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Case No. U-13195

At the March 29, 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 November 13, 2001, Rucker Regional Physician Billing, L.L.C., (Rucker Regional) filed a complaint alleging violations of the Michigan Telecommunications Act (the MTA), MCL 484.2101 et seq., by Ameritech Advanced Data Services of Michigan, Inc. (AADS), Ameritech Communications International, Inc. (ACII), SBC Global Services, Inc. (SBC Global), Interactive Services, Inc. (ISI), and Intermedia Communications, Inc. (Intermedia). The respondents agreed to provide frame relay service to Rucker Regional, which it intended to use to transmit data to and from its clients. The complaint alleges that the date of the agreement was changed, that there were false and misleading statements about the source of problems with the service, that there were false assurances regarding prompt installation and repair, and that there

were charges for canceled service. The complaint seeks compensation for economic losses, costs and attorney fees, fines, and an order requiring the respondents to fix the service and provide reliable service.

On December 18, 2001, ISI filed a motion to dismiss. On December 19, 2001, Intermedia filed a motion to dismiss and, in the alternative, for partial summary disposition and a more definite statement of the complaint. On January 7, 2002, ACII filed a motion to dismiss, as did AADS and SBC Global. Administrative Law Judge James N. Rigas (ALJ) heard oral argument on January 14, 2002. He issued a Proposal for Decision on January 25, 2002 recommending that the complaint be dismissed.

On February 1, 2002, Rucker Regional, the Staff, Intermedia, and AADS, SBC Global, and ACII filed exceptions. On February 8, 2002, Rucker Regional, the Staff, Intermedia, ISI, and AADS, SBC Global, and ACII filed replies to exceptions.

### Jurisdiction

Rucker Regional and the Staff argue that the Commission has jurisdiction because Section 502 of the MTA, MCL 484.2502, prohibits certain conduct by providers of telecommunication services regardless of whether a service is regulated or unregulated. The respondents argue that the Commission lacks jurisdiction because, pursuant to Section 401 of the MTA, MCL 484.2401, frame relay service is not regulated. The ALJ concluded that frame relay service is unregulated and that the Commission thus lacks jurisdiction.

a. Section 401

Section 401 provides, in part, that “[e]xcept as otherwise provided by law or preempted by federal law, the commission shall not have authority over enhanced services, . . . [and] private networks . . .” MCL 484.2401.

The ALJ concluded that frame relay service is both an enhanced service and a private network within the meaning of Section 401 and thus not subject to regulation by the Commission. He concluded that it is an enhanced service or information service as defined by Section 102(i) of the MTA because it offers “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information . . . that is conveyed by telecommunications.” MCL 484.2102(i). He concluded that frame relay service is also a private network because it is a dedicated point-to-point service that is accessible only to designated users. In addition, the ALJ noted that frame relay service is a digital service and that the Commission’s December 22, 1992 order in Case No. U-10062 had classified as unregulated every digital service that it addressed.

Rucker Regional excepts to the ALJ’s conclusion. It says that frame relay service transmits data between end-points but does not acquire, generate, store, process, or make that information available, and thus does not satisfy the definition of Section 102(i). It says that the frame relay service is not a private network because it is neither private nor a network. It says that it does not own or lease any of the equipment, has not obtained any rights-of-way, does not control the routing of data, and obtains a service that uses the same public circuits that carry data for others.

The Staff also excepts. It argues that the contract provides for only a transmission service, not an enhanced service, and that the service uses public interfaces, public interconnection circuits, and shared bandwidth, rather than a privately owned and operated network.

The Commission concludes that the service that the respondents agreed to provide is not an enhanced service within the meaning of the MTA. The service at issue in this case merely requires the providers to transport data created by Rucker Regional or its customers, but the service does not require the providers to generate, acquire, store, transform, process, retrieve, utilize, or make available information. Thus, the service does not satisfy the definition of Section 102(i). The respondents argue that their service has the capability to make information available and is therefore within the definition of an enhanced service. The Commission rejects that argument because it would result in classifying all basic local exchange service as an enhanced service because that service has the capability to make information available. It is more reasonable to conclude that the Legislature intended an enhanced service or information service to be one in which the provider enhances the service or makes information available to the customer, not one in which the provider merely transmits the customer's information from one point to another.

The Commission also concludes that the service is not a private network within the meaning of the MTA because it is neither private nor a network. There is no reason to believe that the Legislature intended those words to be given other than their commonly understood meaning—a network that is privately owned and operated. Further, while Section 401 provides that the Commission lacks authority over enhanced services, it provides that the Commission lacks authority over private networks, not private network services. There is no dispute that Rucker Regional does not own or operate the network used to transmit its data.

For these reasons, the Commission concludes that the service offered by the respondents is not within the scope of Section 401. The affidavits filed by the respondents do not persuade the Commission otherwise because they offer little more than conclusions. To say that a network is “analogous to” a private network or is a “virtual” private network is not the same as saying that it

is a private network as defined by the MTA. Quoting or paraphrasing the statutory definition of an enhanced service is not the same as showing how a service meets that definition.

b. Section 502

Section 502 prohibits certain conduct by a “provider of a telecommunication service.” MCL 484.2502. Section 102(cc) of the MTA, MCL 484.2102(cc), defines a “telecommunication provider” as “a person or an affiliate of the person each of which for compensation provides 1 or more telecommunication services.” Section 102(dd) of the MTA, MCL 484.2102(dd), defines “telecommunication services” to include “regulated and unregulated services offered to customers for the transmission of 2-way interactive communications and associated usage.”

The ALJ concluded that although Section 502 appears to apply generally to any provider of telecommunication services, a more specific section of the MTA, Section 401, makes it clear that the Commission’s authority under Section 502 does not extend to unregulated services.

Rucker Regional and the Staff except.

The Commission concludes that the prohibitions of Section 502 apply to the frame relay service at issue in this case. The parties have argued extensively about the interaction of sections 401 and 502. As discussed above, the Commission has concluded that Section 401 does not apply to the service offered by the respondents. Consequently, only Section 502 is relevant, and the plain language of the MTA requires the application of Section 502 in this case. There is no apparent dispute that frame relay service is a telecommunication service within the meaning of Section 102(dd), and thus a provider of that service is a telecommunication provider within the meaning of Section 102(cc) and subject to the restrictions of Section 502.

## Remaining Issues

Although the ALJ's conclusions discussed above fully resolved the complaint, the ALJ believed that it would serve the interests of the parties to address other issues raised by the motions to dismiss.

### a. Forum Selection, Choice of Law, and Limitation of Liability

The respondents argued that the Commission lacks jurisdiction because of provisions in the contract related to forum selection, choice of law, and limitation of liability.

The ALJ found no merit in those arguments because the complaint was brought pursuant to the MTA and the MTA specifically authorizes the Commission to hear complaints alleging violations of Section 502.

Intermedia excepts, and argues that the complaint is based on the contract and makes repeated references to the contract. Thus, it says, Rucker Regional should not be permitted to choose which portions of the contract will be enforced. Intermedia says that there is no basis in Michigan law to release Rucker Regional from the terms of a contract it signed.

AADS et al. acknowledge that the MTA authorizes the Commission to hear complaints, but argue that Rucker Regional agreed that disputes under the contract should be brought in another forum and that only certain remedies should be available. They say that such provisions, when agreed upon by the parties, as they were here, are enforceable.

Rucker Regional and the Staff respond that Rucker Regional is not suing for breach of contract but rather for violations of the MTA. Thus, they say that it makes no sense to argue that the case should be decided by a court in Illinois rather than the administrative agency with express statutory authority to enforce the MTA or to argue that the contract can prevent Rucker Regional from filing a complaint with the Commission. They also argue that the contract was not the result

of negotiation between parties of equal bargaining power. They say that Ameritech is essentially the only source of frame relay service and Rucker Regional therefore had little choice but to accept the contract terms. They conclude that it would be contrary to public policy to permit the respondents to require that this complaint be heard in a court in another state.

The Commission does not agree with the respondents to the extent they are trying to argue that the disputed contract provisions are enforceable under all circumstances. Rather, the enforceability of those provisions depends upon the particular circumstances of the case, which are not fully developed at this time. The Commission therefore directs the parties to address fully and particularly the alternative providers that were available to Rucker Regional at the time it signed the contract, the extent of the negotiation that occurred about the disputed contract provisions, and the extent to which the complaint rests upon enforcement of the contract rather than enforcement of the MTA. The parties may address any other issues that they believe are relevant under Michigan law to a determination of whether contract provisions governing forum selection, choice of law, and limitation of liability are enforceable in a particular case.

b. ACII's Motion to Dismiss

ACII said that it was to provide interLATA services outside of Michigan, that no such services were requested, and that it had no role in Michigan relating to the frame relay service provided to Rucker Regional. It therefore asked that the complaint be dismissed as to it.

The ALJ noted that the affidavit of ACII's vice president stated that Rucker Regional never received any service from ACII because the frame relay service never expanded to locations outside of Michigan. The ALJ therefore concluded that the complaint should be dismissed as to it.

Rucker Regional excepts and argues that ACII agreed to jointly provide frame relay service and should be liable for the actions of its agents.

The Commission affirms the ruling of the ALJ. Section 502 applies to providers of telecommunication services in Michigan. The ALJ correctly found that ACII does not fall within the scope of that section. The Commission does not find persuasive Rucker Regional's argument for liability under the MTA based on agency law or joint action.

c. ISI's Motion to Dismiss

ISI stated that it does not provide telecommunication services but rather acts as an independent sales representative for Ameritech. Because it is not a telecommunication service provider, it argued that it is not subject to the Commission's jurisdiction. It therefore asked that the complaint be dismissed as to it.

The ALJ noted that the affidavit of ISI's branch manager stated that ISI does not offer, design, install, repair, or maintain frame relay service but merely processes paperwork for Ameritech. The ALJ therefore concluded that the complaint should be dismissed as to it.

Rucker Regional excepts and argues that ISI played an essential and integral role in the joint provisioning of the service and should be considered a telecommunication service provider for purposes of this case.

ISI responds that it is not a party to the contract under which Rucker Regional was to obtain frame relay service.

The Commission affirms the ruling of the ALJ. Section 502 applies to providers of telecommunication services. The ALJ correctly found that ISI does not fall within the scope of that section. The Commission does not find persuasive Rucker Regional's argument for liability under the MTA based on agency law or joint action.

d. Intermedia's Motion to Dismiss

Intermedia argued that the complaint does not allege any wrongdoing on its part. It said that it was requested to provide two interLATA circuits and did so. If the complaint is not dismissed, it requested that Rucker Regional be required to make a more definite statement of the basis for its complaint against Intermedia.

Rucker Regional countered that there is a disputed issue of fact as to whether Intermedia should be held responsible for violations of the MTA. It noted that Intermedia provided two circuits, and asserted that the service suffered countless outages along those circuits. It also argued that Intermedia is liable for the actions of its agents.

The ALJ noted that the pleadings demonstrated that Intermedia provided a portion of the service, although he also found that the complaint did not provide sufficient notice of what conduct by Intermedia was alleged to have violated the MTA. He therefore concluded that the complaint must be amended to be more definite and certain as to Intermedia.

Rucker Regional excepts and argues that the complaint defines Intermedia to be within the term "Ameritech," and therefore the allegations of the complaint apply to it.

The Commission affirms the ruling of the ALJ. Contrary to the assumption of the complaint, Intermedia is not part of the Ameritech corporate family, but rather is a part of WorldCom. It was within the ALJ's discretion, if not required by the MTA, to require Rucker Regional to provide a statement of its complaint against Intermedia sufficiently definite and certain to permit it to prepare a defense.

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. The frame relay service offered to Rucker Regional does not fall within the scope of Section 401, and providers of that service are subject to the provisions of Section 502.
- c. The complaint against Intermedia and AADS should be remanded to the ALJ for further proceedings.
- d. The complaint, as it pertains to ACII and ISI, should be dismissed.

THEREFORE, IT IS ORDERED that the complaint as it pertains to Intermedia Communications, Inc., and Ameritech Advanced Data Services of Michigan, Inc., is remanded to the Administrative Law Judge for further proceedings consistent with this order.

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 March 29, 2002.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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Commissioner

By its action of March 29, 2002.

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Suggested Minute:

“Adopt and issue order dated March 29, 2002 remanding the complaint of Rucker Regional Physician Billing, L.L.C., for further proceedings, as set forth in the order.”