

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.)
_____)

Case No. U-13195

At the July 23, 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 Section 502 of the Michigan Telecommunications Act (the MTA), MCL 484.2502, by Ameritech Advanced Data Services of Michigan, Inc. (AADS), SBC Global Services, Inc. (SBC Global), Ameritech Communications International, Inc. (ACII), Intermedia Communications, Inc. (Intermedia), and Interactive Services, Inc. (ISI), (collectively, the respondents). The respondents had agreed to provide frame relay service to Rucker Regional, which it intended to use to transmit data to and from its clients. The complaint alleged 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.

On January 14, 2002, Administrative Law Judge James N. Rigas (ALJ) heard oral argument on various motions to dismiss the case. He issued a Proposal for Decision on January 25, 2002 recommending that the complaint be dismissed. Following the filing of exceptions and replies to exceptions, the Commission issued an order on March 29, 2002 dismissing the complaint as to ACII and ISI and remanding the case against Intermedia and AADS for further proceedings. Subsequently, Rucker Regional stipulated to dismiss the complaint against Intermedia.

The ALJ conducted an evidentiary hearing on May 16, 2002. The record consists of 627 pages of transcript and 59 exhibits. Rucker Regional, AADS, and the Staff filed briefs and reply briefs. On June 25, 2002, the ALJ issued a Proposal for Decision (PFD) recommending that the complaint be dismissed for lack of jurisdiction. On July 2 and 10, 2002, Rucker Regional, AADS, and the Staff filed exceptions and replies to exceptions, respectively.

Discussion

Section 401(1) of the MTA provides in part: “Except as otherwise provided by law . . . , the commission shall not have authority over enhanced services, . . . private networks, . . . and the reselling of an unlicensed telecommunication service.” MCL 484.2401. Section 102(i) of the MTA defines “enhanced services” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, . . . that is conveyed by telecommunications.” MCL 484.2102(i).

The ALJ found that frame relay service is an unregulated service pursuant Section 401 because it is an enhanced service as defined by Section 102(i). He noted Mrs. Rucker’s testimony

that she uses the frame relay system “to gather data and compile it in the proper form.” Tr. 290. He concluded that “the frame relay service provides Rucker Regional the capability to gather (generate, acquire) data (information) and compile it (store, transform, process, retrieve) in the proper form.” PFD, p. 9. He also noted that, in the January 25, 2002 Proposal for Decision, he had determined that Section 502 does not permit the Commission to hear a complaint against a provider of an unregulated service concerning the provision of that unregulated service. He therefore recommended that the complaint be dismissed.

Rucker Regional and the Staff except to the ALJ’s conclusion that the Commission lacks jurisdiction.

The Commission finds, based on the further development of this issue on the record, that the ALJ correctly concluded that frame relay service is an enhanced service as defined by Section 102(i) and thus, pursuant to Section 401, is not subject to the jurisdiction of the Commission. As the ALJ concluded from the record, “the frame relay service provides Rucker Regional the capability to gather (generate, acquire) data (information) and compile it (store, transform, process, retrieve) in the proper form.” PFD, p. 9.

Having concluded that frame relay service is an unregulated service pursuant to Section 401, the Commission must resolve an issue that the parties addressed fully in their exceptions and replies to the ALJ’s January 25, 2002 Proposal for Decision, although the Commission did not need to reach the issue in its March 29, 2002 order: the relationship between sections 401 and 502.

Section 502 prohibits certain conduct by a “provider of a telecommunication service,” including making false, misleading, or deceptive statements, charging for a canceled service, or representing that a service will be provided promptly or at a specified time or within a reasonable

time if it knows that it will not be so provided. 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 communication and associated usage.”

Rucker Regional and the Staff argue that the Commission has jurisdiction to enforce the provisions of Section 502 against all providers of telecommunication services, regardless of whether the services are regulated or unregulated. The respondents argue, on the other hand, that Section 401 deprives the Commission of authority to enforce Section 502 against providers of the unregulated services listed in Section 401. They acknowledge that Section 401 provides that the services are unregulated “[e]xcept as otherwise provided by law,” MCL 484.2401, but argue that Section 502 does not “otherwise” provide.

The parties offer a variety of competing arguments based on traditional approaches to discerning legislative intent. Those approaches do not lead to any consistent conclusion, and the Commission concludes that the MTA is not clear and unambiguous on the interaction between the two sections. Although the question is not free from doubt, the Commission concludes, as did the ALJ, that the Legislature did not intend that the provisions of Section 502 were to extend to services that are unregulated under Section 401. The Commission finds that Section 401, which specifically lists enhanced services as unregulated, is more specific than Section 502, which applies generally to providers of telecommunication services. Cellular, cable, and payphone services, which are all listed in Section 401 as unregulated services, are subject to other provisions of the MTA that specifically impose limited regulation on those services. See, MCL 484.2305(2),

MCL 484.2309a, and MCL 484.2318-.2320. Enhanced services, on the other hand, are not specifically mentioned in Section 502.

Further, a reading of Sections 401(2) and 502(2) supports the view that the Legislature intended that specific references to the services listed in Section 401 were required to subject those services to some limited form of regulation under other provisions of the MTA. Section 401(2) provides: “Except as otherwise provided by this act, the commission shall not have the authority over a telecommunication service not specifically provided for in this act.” MCL 484.2401(2). The Commission’s authority must be “specifically provided for,” which is not the case with frame relay service. Section 502(2) provides: “When the commission has authority to bring a proceeding for violation of this section, . . .” MCL 484.2502(2). That language seems unnecessary unless the Legislature envisioned that there were telecommunication services for which the Commission lacks jurisdiction to enforce the prohibitions of Section 502.

Thus, the Commission concludes that the Legislature did not intend that customers of unregulated two-way high-speed data transmission services were to have remedies in complaint proceedings before the Commission for violations of Section 502, although customers of those services may have remedies elsewhere. The Commission therefore concludes that the complaint should be dismissed with prejudice as to all of the respondents. The recent broadband legislation, 2002 PA 48, 49, and 50, has added much needed clarity to the area of advanced services, and the state is incenting broadband deployment through other non-regulatory means.

AADS excepts to the ALJ’s failure to find that frame relay service is also a private network over which the Commission has no jurisdiction pursuant to Section 401.

Having concluded that it lacks jurisdiction because frame relay service is an enhanced service, it is not necessary for the Commission to reconsider its conclusion in the March 29, 2002 order

that frame relay service was not a private network. Likewise, the Commission need not address any of the other issues raised by the parties in their exceptions.

AADS's Leave to Appeal

On April 10, 2002, AADS filed an application for leave to appeal with regard to the schedule. It argued the schedule did not afford it adequate time to prepare and present its case.

In light of the Commission's determination that it lacks jurisdiction in this case, AADS's application for leave to appeal is moot.

SBC Global's Petition for Rehearing

On April 9, 2002, SBC Global filed a petition for rehearing of the March 29, 2002 order. It argued that the order had dismissed the complaint as to ACII and ISI on grounds that apply equally to it—that it is not a provider of telecommunication services, although the order did not explicitly dismiss the complaint as to it. It asked that the Commission clarify its intention by dismissing the complaint as it pertains to it.

On April 30, 2002, Rucker Regional and the Staff filed responses. On May 9, 2002, SBC Global filed a response.

The Commission denies the petition for rehearing. In light of the Commission's determination that it lacks jurisdiction, SBC Global's petition for rehearing is moot, as is Rucker Regional's argument that SBC Global provides telecommunication services in Michigan.

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. Frame relay service is not subject to the Commission's jurisdiction.
- c. AADS's application for leave to appeal should be denied.
- d. SBC Global's petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that:

A. The complaint filed by Rucker Regional Physician Billing, L.L.C., against Ameritech Advanced Data Services of Michigan, Inc., SBC Global Services, Inc., Ameritech Communications International, Inc., Intermedia Communications, Inc., and Interactive Services Inc., is dismissed with prejudice.

B. The application for leave to appeal filed by Ameritech Advanced Data Services of Michigan, Inc., is denied.

C. The petition for rehearing filed by SBC Global Services, Inc., is denied.

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 July 23, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated July 23, 2002 dismissing with prejudice the complaint filed by Rucker Regional Physician Billing, L.L.C., against Ameritech Advanced Data Services of Michigan, Inc., and others, as set forth in the order.”