

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of	)	
<b>WILLIAM AND SANDRA ROVAS</b> against	)	
<b>AMERITECH MICHIGAN.</b>	)	Case No. U-13079
<hr/>	)	

At the August 1, 2005 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman  
Hon. Laura Chappelle, Commissioner  
Hon. Monica Martinez, Commissioner

**ORDER AFTER REMAND**

On September 5, 2001, William and Sandra Rovas filed a formal complaint against Ameritech Michigan, the predecessor in interest to SBC Michigan (SBC), alleging numerous violations of the Michigan Telecommunications Act (MTA), 1991 PA 179, as amended, MCL 484.2101 *et seq.*, relating to SBC's failure to promptly repair a service problem during April 3-13, 2001. An evidentiary hearing was held on November 26, 2001. On January 4, 2002, Administrative Law Judge Barbara A. Stump issued a Proposal for Decision dismissing the complaint. The Commission, however, found in favor of the Rovases on certain claims, including violation of Section 502(1)(a) of the MTA,<sup>1</sup> and, on February 25, 2002, issued an order directing SBC to pay

---

<sup>1</sup>The Court of Appeals recently upheld the Commission's finding of a violation of Section 502(1)(a) of the MTA, MCL 484.2502(1)(a), under similar facts, in *SBC Michigan v Public Service Comm*, unpublished opinion *per curiam* of the Court of Appeals, decided June 12, 2005 (Docket No. 251991).

finest totaling \$30,000 to the State of Michigan, to award the Rovases \$90.60 in additional out-of-service credits, and to pay the couple restitution in the amount of \$1,782.

SBC routinely charges a \$71 service trip charge if service technicians ultimately find that a service problem was caused by the complainant's inside wiring rather than by SBC's outside equipment. In the discussion section of the order, the Commission directed SBC to implement a policy requiring company technicians to enter customers' homes to verify that a reported problem is with interior wiring, prior to charging the complainant the \$71 service trip charge. SBC filed a petition for rehearing with the Commission, which was denied in an order dated October 3, 2002. SBC then appealed the decision to the Michigan Court of Appeals.

In *Ameritech Michigan v Public Service Comm*, an unpublished opinion *per curiam* of the Court of Appeals, decided June 17, 2004 (Docket No. 244742), the Court affirmed and remanded. The Court upheld the Commission's decision, but found the directive regarding entering a customer's premises to verify interior wiring problems to be ambiguous. The Court stated:

In the "discussion" portion of the decision, the PSC does direct Ameritech to refrain from charging the \$71.00 fee until it confirms, by entering the customer's home, the location of the line problem. However, in the "remedies" portion of the decision, there is no similar specific order or directive. It is therefore unclear to us that the PSC actually ordered such a wide ranging process. Moreover, given the complete testimony of Tom Dunning, Ameritech's dispatch control manager, it is questionable whether substantial, competent evidence existed in this record to support such a process or conclusion that this is a systematic problem. Accordingly, we remand this remedy issue to the PSC for further proceedings consistent with this opinion. We do not retain jurisdiction.

*Id.* at 3.

On July 22, 2004, the Commission requested that the parties file briefs addressing the issue remanded by the Court of Appeals within 30 days. Subsequently, the Commission learned that SBC had appealed the Court of Appeals' determination to the Michigan Supreme Court. On

August 18, 2004, in light of the pendency of the appellate proceedings, the Commission ordered that the parties' briefs should be submitted to the Commission 30 days after issuance of the Michigan Supreme Court's final order. The Supreme Court denied SBC's application for leave to appeal on April 8, 2005, preferring not to address the questions presented until after the Court of Appeals has completed its proceedings.

By the May 9, 2005 deadline, the Commission received briefs from SBC and the Commission Staff (Staff); the Rovases did not file a brief. The Staff argues that SBC has seriously misconstrued the Commission's February 25, 2002 order during the appeal process. The Staff argues that the order requires that SBC not impose the \$71 service trip charge unless SBC has determined that the problem is with the inside wiring and is therefore not covered by SBC's tariff obligations, which require SBC to perform repairs, free of charge, up to the customer interface.

In its brief, SBC detailed improvements to its diagnostic technology and recent extensive training of its technicians. SBC argues that this case represents one customer and one incident. SBC argues that the Commission should prohibit the service trip charge only when SBC determines its network was the source of trouble.

Upon careful reconsideration of the record, the Commission perceives some ambiguity as well, and clarifies its previous order to provide that SBC need not enter a customer's premises *every* time that SBC is called upon to make a service trip. However, SBC has an obligation, as set forth in its tariff, to maintain and repair its own network facilities, up to the point of the customer interface (the Network Interface Device), at no additional charge to a customer.<sup>2</sup> Company witnesses confirmed this responsibility in their testimony. Tr. at 156, 170. Thus, SBC may not

---

<sup>2</sup>See, Michigan Bell Telephone Company Tariff MPSC No. 20R, pt. 2, sec. 2, original sheet No. 6. See, also, R 460.551, which is being promulgated in an order issued today in Case No. U-14435.

charge its customers for the cost of services it provides to inspect, diagnose, and repair malfunctions covered by its tariff obligation, including routine physical checks of its own facilities, in response to complaints or inquiries, when reasonably necessary to diagnose and pinpoint problems attributable to its own network or exclude its facilities as a possible cause of disruptions to customer service. The Commission further finds that, since the ordering section of the order simply directs SBC to cease and desist from further violations of the MTA, the order itself does not require amendment.

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, 1999 AC, R 460.17101 *et seq.*

b. The Commission should clarify the discussion section of its February 25, 2002 order to indicate that SBC need not enter a customer's premises *every* time that SBC is called upon to make a service trip, but that it may not impose charges to recover the cost of services it provides to inspect, diagnose, and repair malfunctions covered by its tariff obligation, including the cost of conducting routine physical checks of its own facilities, in response to complaints or inquiries, if those services are reasonably necessary to diagnose problems attributable to its own facilities or exclude those facilities as a possible cause of service disruptions.

THEREFORE, IT IS ORDERED that the February 25, 2002 order should be clarified as set forth in 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/ J. Peter Lark  
Chairman

( S E A L )

/s/ Laura Chappelle  
Commissioner

/s/ Monica Martinez  
Commissioner

By its action of August 1, 2005.

/s/ Mary Jo Kunkle  
Its Executive Secretary

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 August 1, 2005.

---

Its Executive Secretary