

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
LUCRE, INC., against SBC MICHIGAN.)	Case No. U-14374
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At the March 29, 2005 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER

On December 1, 2004, Lucre, Inc., filed a complaint against SBC Michigan (SBC) to resolve a dispute over payment of reciprocal compensation for both local termination and intraLATA toll termination. Pursuant to Section 203a of the Michigan Telecommunications Act, 1991 PA 179, as amended, MCL 484.2203a, the parties submitted the complaint to mediation.¹ At the conclusion of the mediation process, notices of acceptance of the mediator's recommendation were timely submitted by both Lucre and SBC.

On March 21, 2005, Lucre filed a motion seeking to invalidate two of the provisions of the mediation determination to which it had agreed. In the alternative, Lucre indicated its desire to withdraw its acceptance of the mediation determination.

On March 22, 2005, SBC filed a response to Lucre's March 21, 2005 filing. In so doing, SBC objected to Lucre's attempt to circumvent the clear requirement of MCL 484.2203a(3).

¹ The parties selected Cheryl L. Parrino to mediate their dispute.

MCL 484.2203a(3) provides that “[i]f the parties accept the recommendation, then the recommendation shall become the final order in the contested case under section 203.” [Emphasis added] Accordingly, the Commission finds that the mediator’s recommendation should be adopted as the Commission’s final order in this proceeding because Section 203a(3) makes no provision for the Commission to either invalidate portions of a mediation determination or permit one of the parties to withdraw its acceptance. Accordingly, Lucre’s reliance on MCR 2.612(C)(1)(f) is misplaced because the court rule is only applicable to a “final judgment” that may be set aside “on motion and on just terms.” MCR 2.612(C)(1). Unlike a trial court’s final judgment, a litigant in a proceeding under Section 203a(3) of the MTA has an unfettered right to accept or reject a mediation determination. Here, the parties made tactical decisions to accept the mediation determination, which the Legislature has mandated must become the Commission’s final order in this proceeding.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 *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 mediator’s recommendation should be adopted as the final order in this proceeding.

THEREFORE, IT IS ORDERED that the complaint of Lucre, Inc., against SBC Michigan is resolved through adoption of the mediator’s recommendation, which was filed under seal with the Commission’s Executive Secretary.

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/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of March 29, 2005.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of March 29, 2005.

Its Executive Secretary