

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)	
FARRAND AND RUTH PAGE against)	Case No. U-15173
AT&T MICHIGAN.)	
_____)	

At the March 21, 2007 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

On January 4, 2007, Farrand and Ruth Page filed a complaint against AT&T Michigan alleging that in November 2003 their local, local toll, and long distance telephone services were improperly switched without authority. The Pages also alleged that AT&T Michigan made false, misleading, and deceptive statements to them at this time.

On February 1, 2007, AT&T Michigan filed a motion to dismiss the complaint. On February 2, 2007, AT&T Michigan filed an answer to the complaint.

On February 8, 2007, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) conducted a hearing on AT&T Michigan's motion to dismiss that was attended by Mr. and Mrs. Page, AT&T Michigan, and the Commission Staff (Staff). At the conclusion of the motion hearing, the ALJ issued an oral Proposal for Decision (PFD) recommending that the complaint be dismissed. The

PFD was served on the parties together with notice that exceptions to the PFD needed to be filed by March 1, 2007. No exceptions were filed.

The Commission has reviewed the pleading filed by the parties and the transcript of the motion hearing, including the oral PFD. After consideration of these materials, the Commission finds that one of the bases cited by the ALJ for recommending dismissal of the complaint is flawed.

One of the arguments raised by AT&T Michigan in its motion to dismiss is that Section 205(1) of the Michigan Telecommunications Act (MTA), MCL 484.2205(1), constitutes a legal bar to the complainants' complaint because the allegations relate to an incident that occurred more than two years before the complaint was filed. AT&T Michigan's motion, p. 2. The ALJ agreed with this position as follows:

Judge Nickerson: All right. Thank you, Mr. Page.

Well, it appears to me as though Mr. Page has a different complaint against AT&T, different than what is filed in the complaint, the formal written complaint that I have before me.

The formal written complaint that I have before me is alleging a slamming on November of 2003.

AT&T correctly points out that the MTA provides a two-year period in these sort of cases. Mr. Page is indicating that he has issues with something that happened in April 2005, and my ruling is limited to today's complaint, which contains the November 2003 alleged slamming.

Based upon this complaint and based upon the provisions in the MTA, it's clearly a case that this complaint is barred due to the passage of time. We can only go back two years based on the provisions in the MTA.

Transcript, pp. 15-16 (emphasis added).

The Commission finds that AT&T Michigan and the ALJ have misread MCL 484.2205(1). Section 205(1) of the MTA provides:

The commission may investigate and resolve complaints under this act. The *penalties* under this act shall not be imposed for a violation that occurred more than 2 years before the date the complaint was filed.

The Commission finds that MCL 484.2205(1) is unambiguous and that it does not bar the Commission from investigating and resolving complaints that pre-date the filing of a complaint by more than two years. Rather, the sole prohibition on the Commission's authority set forth in MCL 484.2205(1) to investigate and resolve a complaint filed under the MTA appears in the second sentence, which limits the Commission's authority to impose the *penalties* set forth in Section 601 of the MTA, MCL 484.2601. An examination of MCL 484.2601 confirms this interpretation. MCL 484.2601 provides, in part:

If after notice and hearing the commission finds a person has violated this act, the commission shall order remedies and *penalties* to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following.....

MCL 484.2601 (emphasis added).

Together, MCL 484.2205(1) and MCL 484.2601 establish that the Commission may investigate and resolve any complaint, whether it is more or less than two years old. While the party filing a complaint more than two years after the occurrence of the event that gave rise to the complaint has, pursuant to the second sentence of MCL 484.2205(1), forfeited the right to seek penalties, the Commission still has authority, pursuant to the first sentence of MCL 484.2205(1) and MCL 484.2601, to “investigate and resolve complaints” and to “order remedies ... to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation.”

Having clarified that point of law, the Commission nevertheless finds that the transcript of the motion hearing does support an alternative basis for dismissal of the complaint. In making his ruling, the ALJ also noted that:

Judge Nickerson: Mr. Page is indicating that he has issues with something that happened in April 2005, and my ruling is limited to today's complaint, which contains the November 2003 alleged slamming.

Transcript, p. 15.

Previously in the hearing, Mr. Page quite clearly stated:

Mr. Page: My complaint is not about 2003. My complaint is concerning since 2005 and up to date.

Transcript, p. 14.

Undeniably, the complaint references an alleged slamming incident in November 2003, and related false statements. But, in the middle of the motion hearing, Mr. Page disavowed the November 2003 cause of action and instead insisted that his complaint involves an unpleaded and unexplained incident, which is alleged to have occurred in 2005. Under these circumstances, and in the absence of the filing of exceptions to the PFD, the Commission finds that the complaint should be dismissed.

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 January 4, 2007 complaint filed by Mr. and Mrs. Page against AT&T Michigan should be dismissed.

THEREFORE, IT IS ORDERED that the January 4, 2007 complaint filed by Farrand and Ruth Page against AT&T Michigan is dismissed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

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 March 21, 2007.

/s/ Mary Jo Kunkle

Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of March 21, 2007.

Its Executive Secretary