

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
WILLIAM AND SANDRA ROVAS against)
AMERITECH MICHIGAN.)
_____)

Case No. U-13079

At the November 13, 2008 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER AFTER REMAND

On February 25, 2002, the Commission issued an order adjudicating a complaint by William and Sandra Rovas against Ameritech Michigan, now known as AT&T Michigan, and finding AT&T Michigan in violation of the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, relating to its failure to promptly repair the Rovases' service during April 3-13, 2001. The Commission found in favor of the Rovases on certain claims, including violation of Section 502(1)(a) of the MTA.

AT&T Michigan routinely charges a \$71 service trip charge if technicians ultimately find that a service problem is caused by the complainant's inside wiring rather than by AT&T Michigan's outside equipment. AT&T Michigan is not responsible for inside wiring. In the Rovases' case, the couple was told by a service technician that the problem at their home was the fault of their inside wiring, and that they would be charged \$71 for the technician's service call. The couple

received a bill for the \$71 charge. The problem was later determined to lie with AT&T Michigan's outside equipment. The problem was resolved, and the \$71 charge was removed from the bill.

Section 502(1)(a) of the MTA, MCL 484.2502(1)(a), states that a provider of telecommunication service shall not make a statement or representation regarding the rates, terms, or conditions of providing service that is "false, misleading, or deceptive." In its February 25, 2002 order, the Commission found that AT&T Michigan made false statements, and thereby violated Section 502(1)(a), when the company told the Rovases that the problem was the fault of their inside wiring and that they owed the company \$71 for the apparently pointless service trip. Noting that this violation arose from "systemic problems requiring prompt review and revision by the company," the Commission ordered AT&T Michigan to pay a \$15,000 fine to the State of Michigan for this violation of the MTA. Order, p. 27.

On October 3, 2002, the Commission denied AT&T Michigan's petition for rehearing.

On appeal, in *Ameritech Michigan v Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, issued June 17, 2004 (Docket No. 244742), the Court affirmed the Commission's imposition of remedies against AT&T Michigan, but it found the Commission's directive to AT&T Michigan regarding entering a customer's premises to verify interior wiring problems to be ambiguous and remanded the case to the Commission for further proceedings consistent with the opinion.

On remand, the Commission, after soliciting briefs, issued an order of clarification on August 1, 2005, in which it stated:

[AT&T Michigan] 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. . . . Thus, [AT&T Michigan] may not 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.

Order, pp. 3-4 (footnote omitted).

On appeal of that order, in *SBC Michigan v Public Service Comm*, 276 Mich App 55, 60; 740 NW2d 523 (2007), the Court of Appeals reversed the Commission on this issue, holding instead that “a correct determination by [AT&T Michigan] excluding its facilities as the cause of service disruption inherently constitutes a correct determination that the disruption was caused by the customer’s inside wiring.” The Court ruled that the Commission lacks jurisdiction, under both state and federal law, to absolve customers of service charges in that situation and remanded the case “for entry of a modified order that removes any PSC regulation of costs or services attributable to a . . . customer’s nonregulated inside wiring.” *Id.* at 66.

On appeal of both the MTA violation and inside wiring issues, in *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90; 754 NW2d 259 (2008), the Michigan Supreme Court reversed the Court of Appeals’ decision upholding the Commission’s February 25, 2002 finding of a violation of Section 502 of the MTA, and upheld the Court of Appeals’ finding that the Commission had wrongly attempted to regulate inside wiring in the August 1, 2005 order.

With respect to the MTA violation, the Court found that the lower court had applied the wrong standard of review to the Commission’s interpretation of Section 502(1)(a), and that, under the correct standard of review, the Commission’s interpretation of “false” as meaning untrue does not comport with the meaning of “false” as derived from its context within the statute. The Court held that “a mere mistaken communication would be insufficient to make a ‘false’ statement penalized

under this statute. . . . Thus, we conclude that only statements that are *intentionally* false qualify as violations of the statute.” *Id.* at 115 (emphasis in original).

With respect to the issue of inside wiring, the Court agreed with the Court of Appeals that the August 1, 2005 order must be remanded to the Commission to remove any regulation of inside wiring, stating “We agree with the Court of Appeals that, to the extent the order prohibits [AT&T Michigan] from charging for services associated with a problem caused by inside wiring, it is improper.” *Id.* at 117.

The Commission begins by noting that, in her January 4, 2002 Proposal for Decision, Administrative Law Judge Barbara A. Stump made no finding that the false statements made by AT&T Michigan personnel to the Rovases were made with an intent to deceive. Thus, the Commission finds that the February 25, 2002 order should be amended to delete the finding of a violation of Section 502(1)(a) of the MTA based upon the untrue statements made by AT&T Michigan regarding the origin of the Rovases’ service problem and the applicability of the service charge, and further finds that the \$15,000 penalty should be reimbursed to AT&T Michigan. The Commission notes that customers may continue to challenge the service trip fee. The fact that AT&T Michigan asserts that it cannot find any problem with its outside equipment should not foreclose a customer from the opportunity to prove that the problem is not with the inside wiring. While the apparent lack of any problem with the outside equipment may give rise to an inference that the problem lies on the customer’s side of the network interface, that is not the same as meeting the burden of going forward with evidence to prove the inference. *See, Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976).

With respect to the August 1, 2005 order, the Commission finds that order should be amended to clarify that the Commission has no jurisdiction over nonregulated inside wiring, and that AT&T

Michigan is not prohibited by that order from charging a service fee for services associated with a problem caused solely by inside wiring.

THEREFORE, IT IS ORDERED that:

A. The Commission's February 25, 2002 and August 1, 2005 orders are amended consistent with this order.

B. AT&T Michigan shall submit a written request to the Commission's Executive Secretary to arrange for reimbursement of the \$15,000 fine imposed on February 25, 2002, for violation of MCL 484.2502(1)(a).

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, under MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

By its action of November 13, 2008.

Monica Martinez, Commissioner

Mary Jo Kunkle, Executive Secretary

Steven A. Transeth, Commissioner