

[Handwritten mark]

RECEIVED-DOCKETING DIV
97 JUN 20 PM 3:44
PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT * Case No. 96-1128-TP-CSS
OF MICHAEL CREECH, *
Complainant, *
v. *
AMERITECH OHIO, *
Respondent. *

APPLICATION FOR REHEARING SUBMITTED
ON BEHALF OF MICHAEL CREECH

Michael Creech (hereinafter, "Creech") hereby submits this Application for Rehearing pursuant to O.A.C. 4901-1-35 concerning the May 22, 1997 Opinion and Order (hereinafter, "Order") of the Public Utilities commission of Ohio (hereinafter, "Commission") in the above captioned case. The Order denied Creech's complaints against Ameritech Ohio ("Ameritech"), stating that Ameritech's failure to establish service to Creech as promised due to Ameritech technical problems was not unreasonable, that Ameritech properly disconnected Creech's Dayton RCF service, and that Ameritech properly excluded Creech's business from the 1996 Yellow pages directory. The

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Joan Schepfler Date Processed 6-23-97

Creech
Page 2


Commission should grant rehearing based on the following errors:

1. The denial of Creech's service connection complaint based on consideration of damages and an offer by Ameritech to settle the dispute, matters that are not properly before the Commission, is unlawful and an abuse of the Commission's discretion as well as against the manifest weight of the evidence in this case.

2. The denial of Creech's complaint concerning the termination of service on a Dayton RCF line serving Creech due to non-payment for service that was delivered in the name of Creech's competitor—a situation that Creech was unwilling to change by an improper execution of a transfer of account authority ("TAA") form on behalf of his competitor—all while Ameritech refused to process the change in account information desired by Creech is against the manifest weight of the evidence, is unlawful, and is an abuse of the Commission's discretion.

3. The denial of Creech's complaint concerning his exclusion from the 1996 Yellow Pages, a listing that was essential to Creech's business, due to non-payment of Ameritech charges while Ameritech failed to correct both Centrex and RCF line billing problems, is against the manifest weight of the evidence, is unlawful, and is an abuse of the Commission's discretion.

Respectfully Submitted,
GUNNOE AND ASSOCIATES



GERALD E. GUNNOE
Attorney for Michael Creech
2525 Miamisburg-Center-
ville Road
Centerville, Ohio 45459
937-435-4554
O.B. 0003460

MEMORANDUM IN SUPPORT

Michael Creech's basic position in this case is that Ameritech, a monopolistic supplier of telephone service to Creech, placed its bureaucratic, monopolistic methods and inflexibility in his path such that he did not receive adequate service. While Ameritech's technical problems play a role in this case, the larger problem involves the ability of a bureaucratic supplier to adopt and maintain unreasonable business practices that prevented a small businessman from receiving the services that he sought and to which he was entitled. This commission should not have endorsed Ameritech's treatment of this customer.

This case starts with Ameritech's problems with its supply of basic Centrex service to Creech. The technical problems were followed by months of Ameritech bungling, including improperly filled out paperwork and misleading Ameritech communications. That bungling rendered Creech unable to sort out his expenses between different businesses that he conducted because of improper account information. The Ameritech attitude during its "paper war" with Creech is reflected in the testimony of Mr. Wolf, the Ameritech employee who dealt with Creech complaints for months: "The lines were working. They were in and working, so there was no real rush to have...(the Centrex work) done immediately." Tr. 195 (under questioning by the Attorney Examiner). In these few comments, Mr. Wolf stated the essence of Creech's problem in dealing with Ameritech. This

attitude and the resulting Ameritech service fall far short of what should be required of a regulated monopoly provider of services.

Uncontroverted evidence was presented at the hearing in this case that telephone service to Creech was not operational on November 26, 1994 as promised by Ameritech. The timing of service was critical to the start up of Creech's business since he wanted to be able to begin service under a new contract with Federated Department stores before the holiday season. Ameritech experienced technical problems in its delivery of basic Centrex service. The issue of damages is not properly before the Commission in this case. However, the Commission improperly considered Ameritech's attempts to "make amends" for its troubled service in forming its decision that Ameritech service was not inadequate. See Order at 10. The Commission's Order is therefore unlawful and an abuse of the Commission's discretion.

Ameritech's attempts to "make amends" following its failure to timely initiate service to Creech supports other evidence of inadequacy of service in this case. The policy favoring settlement of disputes supports the rule that offers of settlement may not normally be used in legal proceedings by an opposing party as evidence of wrong-doing by the offeror. Far from concealing its offers, Ameritech in this case advertises its offer of settlement to demonstrate its reasonable practices. However reasonable its attempts to settle the service commencement issue in this case, it is the reasonableness of establishing the telephone service and the actions that followed that is at issue. It cannot be the law that

service is inadequate or practices are unreasonable only if the regulated utility does not make a good enough settlement offer which is a matter of damages that are outside the Commission's jurisdiction and expertise. The Commission's finding to the contrary—that the billing adjustment should be considered in Ameritech's favor concerning the adequacy of service connection issue in this case has resulted in a denial of Creech's complaint that is against the manifest weight of the evidence and is therefore unlawful and an abuse of the Commission's discretion.

Uncontroverted evidence was presented at the hearing in this case that remote call forwarding ("RCF") service for Creech's business was placed in the name of Creech's Dayton area competitor in January of 1995 (tr.24-25).¹ Ameritech requires the execution of a transfer of account authority ("TAA") form to correct such an error. TR. 181. A TAA asks the former customer to give the telephone number up. Tr. 167. Ameritech rejects a TAA that is corrected or "doctored" by the customer. Tr. 174. Confusion occurred when Ameritech would not alter its procedures to recognize that Creech had no authority, and could never have authority, to sign a release on behalf of his competitor who had never been served on the line at issue. Tr. 203. Mr. Wolf, the Ameritech employee dealing with the correction, stated that he should handle Ameritech billing contracts (tr. 42 and 185), and contracts concerning overdue bills occurred in March of 1995 (tr. 41). Yet, Mr. Wolf did not correct the customer

¹ The Order refers to Ameritech's use of the competitor's name as "clearly a mistake by Ameritech." Order at 12.

Creech
Page 6

account trouble for many months (tr. 195-196, under questioning by the Attorney Examiner) despite Mr. Wolf's admission that the correction should have been made in two to four weeks (tr. 196). Another portion of the Ameritech bureaucracy took action to disconnect Creech service for non-payment on September 15, 1995. The result is that denial of Creech's complaint concerning the termination of service on a Dayton RCF line is based on his unwillingness to make payments for service that was delivered in his competitor's name and is also based on Creech's unwillingness to improperly execute a TAA, at Ameritech's insistence, on behalf of Creech's competitor. Ameritech's business practices, which create the inability of a customer to correct an error committed by Ameritech except by making questionable or fraudulent representations, are unreasonable. Denial of Creech's complaint concerning the service disconnection is against the manifest weight of the evidence, is unlawful and is an abuse of the Commission's discretion.

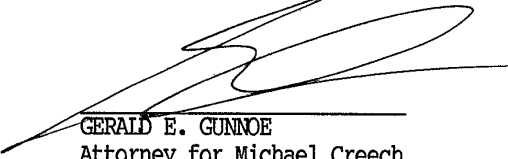
Ameritech also used the plodding nature of its work to justify the exclusion of Creech from the 1996 Yellow Pages which were essential to his business. Mr. Wolf told the Hearing Examiner, quoted above, that Ameritech business offices are in "no real rush" to satisfy customer account needs as long as physical service has been established. If the Order stands, Ameritech will not be prompted to correct the problem with this business practice that has been revealed in this case. The denial of Creech's complaint concerning his excusion from the 1996 Yellow Pages in the face of

Creech
Page 7

this evidence is against the manifest weight of the evidence, is unlawful, and is an abuse of the Commission's discretion.

Ameritech's actions were unjust, unreasonable, and constitute inadequate service. Creech requests that the commission issue an order on rehearing that corrects the errors identified above.

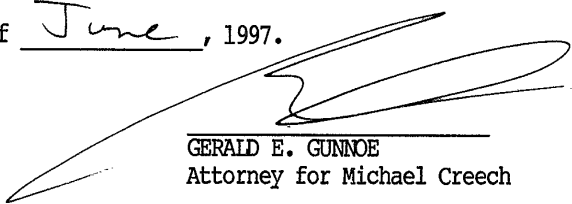
Respectfully Submitted,
GUNNOE AND ASSOCIATES



GERALD E. GUNNOE
Attorney for Michael Creech
2525 Miamisburg-Center-
ville Road
Centerville, OH 45459
937-435-4554
O.B. 0003460

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing of Creech has been served upon William Hunt, 800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114-2655, via regular U.S. mail, postage prepaid, this 20th day of June, 1997.



GERALD E. GUNNOE
Attorney for Michael Creech