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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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MICHAEL CREECH,)	
Complainant)	
)	Case No. 96-1128-TP-CSS
vs.)	
)	
AMERITECH OHIO)	
Respondent.)	

MEMORANDUM CONTRA COMPLAINANT'S
APPLICATION FOR REHEARING OF AMERITECH OHIO

Now comes Respondent Ameritech Ohio pursuant to Ohio Admin. Code §4901-1-35(B) and for its Memorandum Contra to Complainant's Application for Rehearing states as follows:

Complainant raises three assignments of error in his Rehearing Application ("Reh. Appl.") of the Commission's *Opinion and Order* of May 22, 1997 ("Order"). The first alleges that the Commission improperly included "consideration of damages and an offer by Ameritech to settle the dispute," in deciding the allegations of Complainant's service connection complaint did not amount to legally inadequate telephone service. Reh. App. at 2. Secondly, Complainant claims that the Commission improperly sustained Ameritech's disconnection of Complainant's Dayton RCF line for non-payment because the "service was delivered in the name of Creech's competitor." *Id.* Lastly, Mr. Creech contends that because Ameritech "failed to correct both Centrex and RCF line billing problems" the Commission should have found that Creech's omission from the 1996 Yellow Pages was inadequate telephone service. *Id.* In each assignment Complainant claims that the Commission

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abused its discretion and its decision was contrary to the manifest weight of the evidence. Each of Complainant's assignments of error are without merit and should be overruled for the reasons which follow.

I. THE COMMISSION CORRECTLY CONCLUDED THAT ALLEGATIONS OF COMPLAINANT'S SERVICE CONNECTION COMPLAINT DID NOT AMOUNT TO LEGALLY INADEQUATE TELEPHONE SERVICE.

The rationale which requires the rejection of Complainant's First Assignment of Error (and his remaining assignments as well) may be found on the second page of the Commission's Order:

In complaint proceedings such as this one, the burden of proof lies with the Complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St. 2d 189.

Order at 2. With regard to the First Assignment, the record clearly demonstrates that Mr. Creech's service was installed two or three days later than Mr. Creech has requested. (Tr. 18, 164). It is also evident that Mr. Creech's account was credited due to this delay. (Tr.24, 156-158). Because the Commission observed, "(i)t is clear that Ameritech was attempting to make amends for the two or three days in which Mr. Creech's service was not operational" (Order at 10); Complainant now alleges that the Commission has improperly considered a "settlement offer" which Ameritech now "advertises . . .to demonstrate its reasonable practices." Reh. Mem. at 4. While Ameritech does believe that it is a reasonable practice to refund charges in appropriate cases, Complainant totally misconstrues the Commission's comment and the basis for its finding with regard to this claim. This is not an instance of an unreasonable act becoming reasonable because the regulated utility made a

“good enough settlement offer” (Reh. Mem. at 5).¹ The threshold issue, and the conclusion reached by the Commission, is that the two to three day delay in providing Mr. Creech service was not inadequate service in the first place. The Commission did not say crediting Mr. Creech’s account for the installation charges converted unjust and unreasonable service into just and reasonable. Mr. Creech simply did not carry his burden to prove that Ameritech’s conduct, with regard to the service connection or in refunding service connection charges, was unjust or unreasonable.

**II. THE COMMISSION CORRECTLY FOUND THAT RESPONDENT’S
DISCONNECTION FOR NON-PAYMENT OF COMPLAINANT’S DAYTON
RCF LINE WAS JUSTIFIED AND NOT INADEQUATE SERVICE.**

Complainant’s Second Assignment of Error slides over one determinative fact and ignores another. First, service on Complainant’s Dayton RCF line was, in fact, received. (Tr. 115). It is equally uncontroverted that Mr. Creech did not pay for the service. (*Id.* at 41, 72-73). Disconnection for nonpayment is not only just and reasonable, it is an expressly recognized remedy in the Commission’s Minimum Telephone Service Standards. Ohio Admin. Code § 4901:1-5-31(A). Thus, that the RCF service was received and unpaid determines the issue.

Secondly, the Rehearing Application repeatedly ignores Mr. Creech’s material participation in the making of his problems. Complainant attempts to bootstrap justification for his nonpayment of his bills by contending that paying a bill in the name of one of his competitors would be an “admission.” While it is unclear as to what context Mr. Creech was referring, it is hard to understand

¹ Obviously Ameritech’s credit to Mr. Creech’s account was not a “settlement” in the sense suggested in Complainant’s Application for Rehearing. If this claim had been settled it would not have been included in complaint and hearing of this matter.

how writing a check for telephone service received is an admission of anything. The Commission reasonably came to the same conclusion with regard to the Transfer of Account Authority cards. (Order at 11-12). The record does not specify how the name of Mr. Creech's competitor, American Carpet Cleaning, became the billed name on the account. However, it is difficult to imagine how a service representative in Toledo, Ohio would know the competitors of a carpet cleaning company in Dayton AND be able to supply Mr. Creech's name, telephone number, business address and corporate charter number. (Order at 11). It is simply unbelievable that Mr. Creech did not contribute to this error, if it was an error at all. Equally incredible is Mr. Creech's version of his initial Centrex order. The Commission expressly found Mr. Creech's testimony that he had signed a blank Centrex sales agreement not to be credible. (*Id.*). On this point, Mr. Creech did not sustain his burden because his testimony was not reasonably to be believed. Mr. Creech further exacerbated the confusion by signing a second Centrex agreement on December 14, 1994 with Mr. Stoyanoff after committing to a different arrangement with Ms. Joyce and after the service had been installed in November! (Tr. 84-85, 113, 122-123). It is plain that Mr. Creech's claim was rejected because he did not sustain his burden.

**III. THE COMMISSION DID NOT ERR IN FAILING TO FIND THAT
COMPLAINANT'S EXCLUSION FROM THE YELLOW PAGES WAS NOT
UNJUST OR UNREASONABLE.**

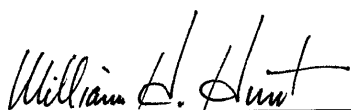
This assignment should be rejected because it is unsupported in the Application for Rehearing except by reference to the first two assignments. As the first and second assignments fall, so goes the third. The Commission appropriately found that no conduct of Ameritech in this case rose to the

level of legally inadequate telephone service. Unquestionably the same conduct cannot become the basis for a finding in favor of Complainant on his Yellow Pages claim.

There is an old adage among trial lawyers that says, "When the law is on your side, pound the law. When the facts are on your side, pound the facts. When neither the law nor the facts are on your side, pound the table!" In his Application for Rehearing, Complainant attempts to portray draconian conduct by an uncaring, bureaucratic monopoly out to line its pockets to the terminal detriment of the small businessman. However, this characterization is not supported on the record. Complainant pounds neither the law nor the facts. The barrage of name calling and convoluted logic is simply pounding the table. The record before the Commission well supports its finding that Complainant failed to sustain his burden and that this matter should be dismissed.

Respectfully submitted,

AMERITECH OHIO


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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum Contra Complainant's Application for Rehearing of Ameritech Ohio, has been served upon Gerald E. Gunnoe, Esquire; counsel for Complainant herein, 2525 Miamisburg-Centerville Road, Centerville, Ohio 45459, by regular U.S. mail, postage prepaid, this 30th day of June, 1997.


William H. Hunt