

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
SOUTHEAST, INC.,**

**COMPLAINANT,**

**v.**

**CASE NO. 16-2288-TP-CSS**

**MITEL CLOUD SERVICES, INC.,**

**RESPONDENT.**

**ENTRY**

Entered in the Journal on April 25, 2017

{¶ 1} Pursuant to R.C. 4927.21, the Commission has authority to consider written complaints filed against a telephone company by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the telephone company that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Mitel Cloud Services, Inc. (Mitel) is a telephone company as defined in R.C. 4905.03 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On November 30, 2016, Southeast, Inc. (Southeast or Complainant) filed a complaint against Mitel for unjust and unlawful billing.

{¶ 4} The Complainant alleges that it is a nonprofit organization that provides mental health, chemical dependency, physical healthcare, vocational, and homeless services to the public in Belmont, Carroll, Delaware, Franklin, Harrison, Monroe, and Tuscarawas counties, Ohio.

{¶ 5} The Complainant alleges that in 2008 it entered into a series of contracts with the Respondent's predecessor (Mitel Net Solutions) for the provision of local exchange telephone services, dedicated data services, Primary Rate Interface Service, and switched long distance toll telephone services. Each of the contracts had an initial term of 60 months, with an automatic renewal provision for an additional 60-month term.

{¶ 6} The Complainant alleges that in June 2014 it notified the Respondent by letter instructing it not to renew any circuit, account, or contract it had with Mitel. The Complainant asked to be put on a month-to-month contract until it terminated the current contract. The letter indicated that the Complainant did not want to terminate the circuits or contracts; it only wished that they not be renewed automatically.

{¶ 7} According to the Complainant, Mitel responded by letter, confirming the Complainant's request to discontinue automatic renewal and to be placed on a month-to-month status.

{¶ 8} The Complainant alleges that on June 7, 2016, it notified Mitel by letter that it wished to cancel certain accounts as of June 1, 2016. The letter indicated that all accounts should be out of contract. The Complainant was making arrangements to switch carriers.

{¶ 9} The Complainant alleges that Mitel sent a letter, dated June 22, 2016, in which it estimated that the Complainant owed an early termination charge of \$587,906.30.

{¶ 10} In an invoice dated August 10, 2016, Mitel showed an amount due of \$22,700.40.

{¶ 11} In a letter dated September 20, 2016, Mitel threatened to block communications services if the Complainant did not pay the August 10, 2016 invoice by September 30, 2016. Mitel also warned that the Complainant could lose its telephone numbers.

{¶ 12} In an invoice dated October 10, 2016, Mitel showed an amount due of \$68,828.51.

{¶ 13} In an invoice dated November 10, 2016, Mitel showed an amount due of \$568,827.16, consisting of the previous balance of \$68,828.51 and new non-recurring charges of \$499,260.90, finance charges of \$668.38, and taxes and surcharges of \$69.37.

{¶ 14} The Complainant rejects the notion that the contracts have been renewed, such that early termination fees apply. Referring to a minimum commitment of \$12,500 contained in the Switched Long Distance contract, the Complainant argues that Mitel has misinterpreted the provision. The Complainant argues that the \$12,500 minimum applies to all of Mitel's services, not just switched long distance service. Southeast believes that it is unjust and unreasonable for Mitel to impose a penalty of \$412,500 for switched long distance service and to also impose estimated penalties for other services amounting to \$175,406.30. Southeast regards this as being penalized twice.

{¶ 15} In Count I of the complaint, Southeast asserts that it fulfilled the terms of the 60-month contract with Mitel and that some contracts with Mitel have been automatically renewed for an additional 60-month term without Southeast's affirmative action. Southeast argues that it is unlawful to renew contracts for an additional 60-month term automatically.

{¶ 16} In Count II of the complaint, Southeast accuses Mitel of inappropriately applying a \$12,500 monthly minimum commitment contained in the Switched Long Distance contract, resulting in monetary penalties. Southeast interprets the commitment as being applicable to all of Southeast's services, not merely to switched long distance service.

{¶ 17} In Count III of the complaint, Southeast argues that Mitel should have ceased charging for circuits that it had disconnected and replaced.

{¶ 18} In Count IV of the complaint, Southeast complains that primary interexchange carrier charges (PICC) should only be applied to plain old telephone service (POTS) lines, not to inactive POTS lines or direct inward dialing (DID) lines. Southeast alleges that Mitel included PICC charges in an invoice for a POTS line that had been disconnected. Southeast wants the charges eliminated.

{¶ 19} In Count V of the complaint, Southeast alleges that a dedicated service circuit line provided by Mitel should have been deemed terminated at the end of February 2016.

Instead, Mitel regards termination as occurring in February 2019. Consistent with its interpretation, Mitel imposed estimated penalty charges in the amount of \$40,765.00. Southeast believes these charges are unlawful and should be eliminated.

{¶ 20} In Count VI of the complaint, Southeast alleges that Mitel has provided a dedicated service circuit to a property located at 700 Bryden Road in Columbus, Ohio. Southeast contends that the circuit should have been regarded as terminated in October 2011. Instead, Mitel has imposed penalties in the amount of \$18,064.63 upon Southeast on the basis that the circuit will be deemed terminated in February 2019. Southeast condemns the penalty as unjust and unlawful and should be eliminated.

{¶ 21} In Count VII of the complaint, Southeast alleges that Mitel has provided a dedicated service circuit to a property located at 829 Rhoads Avenue in Columbus, Ohio. Southeast contends that the circuit should have been regarded as terminated in July 2014. Instead, Mitel has imposed penalties in the amount of \$18,064.63 upon Southeast on the basis that the circuit will be deemed terminated in February 2019. Southeast condemns the penalty as unjust and unlawful and should be eliminated.

{¶ 22} In Count VIII of the complaint, Southeast alleges that Mitel has improperly billed Southeast for state and local sales tax. Southeast states that it is exempt from such taxes and that the imposition of sales tax by Mitel is unlawful and should be eliminated.

{¶ 23} In Count IX of the complaint, Southeast alleges that Mitel warned that Southeast could lose its telephone number in the event of disconnection. Southeast believes that this statement violates Ohio Adm.Code 4901:1-7-24(A) because customers have the ability to retain the same telephone number if they change to another telephone company while remaining at the same customer location.

{¶ 24} For relief, Southeast requests that the Commission determine that Mitel has unjustly billed Southeast \$22,700.40 in an August 10, 2016 invoice, \$68,828.51 in an October

10, 2016 invoice, and \$568,827.16 in a November 10, 2016 invoice. In addition, Southeast wants relief from all past due balances, new non-recurring charges, new finance charges, new taxes and surcharges, certain PICC charges, all sales taxes, and \$587,906.30 in early termination charges.

{¶ 25} On March 3, 2017, Mitel filed an answer to the complaint, along with a counterclaim. Overall, Mitel denied the material allegations of the complaint, defended its billings, and moved to dismiss the complaint.

{¶ 26} On March 14, 2017, Mitel filed a motion to amend its answer to make certain clarifications. In its motion, Mitel explains that new information has come to its attention concerning the agreements that are the subject of the complaint. Concurrently, Mitel filed an amended answer in which it denied the material allegations of the complaint, defended its billings, and moved to dismiss the complaint.

{¶ 27} With its answer, Mitel filed a counterclaim in which it alleges that it entered into a series of service agreements with the Complainant on November 28, 2008. Each service agreement contained a provision for an initial term of 60 months with automatic renewal for an additional 60-month term. Mitel acknowledges that Southeast requested that the agreements not be renewed. Mitel, however, alleges that the request came after the automatic renewal date. Mitel, therefore, argues that early termination fees are applicable as well as amounts due for services under the agreements.

{¶ 28} In Count I of the counterclaim, Mitel claims entitlement to amounts due on invoices dated August 10, 2016, October 10, 2016, and November 10, 2016 and that it is owed for equipment and lost revenue.

{¶ 29} The attorney examiner finds that the motion to amend answer is reasonable and should be granted. The Complainant did not oppose the motion and there appears to

be no prejudice or undue delay in allowing the amendment. The Complainant shall be granted 15 days from the date of this Entry to respond to the counterclaim.

{¶ 30} The attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution in lieu of an evidentiary hearing. In accordance with Ohio Adm.Code 4901-1-26, any statements made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference.

{¶ 31} Accordingly, a settlement conference shall be scheduled for May 25, 2017, at 10:00 a.m. at the Commission offices, 180 East Broad Street, 12th floor, Conference Room 1246, Columbus, Ohio 43215-3793. The parties should bring with them all documents relevant to this matter. If a settlement is not reached at the conference, the attorney examiner will conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.

{¶ 32} Pursuant to Ohio Adm.Code 4901-1-26(F) the representatives of the public utility shall investigate the issues raised on the complaint prior to the settlement conference, and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the authority to settle those issues.

{¶ 33} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That in accordance with paragraph (29), Mitel's motion to amend its answer is granted. It is, further,

{¶ 36} ORDERED, That in accordance with paragraph (29), Southeast be granted 15 days to respond to Mitel's counterclaim. It is, further,

{¶ 37} ORDERED, That a settlement conference be scheduled for May 25, 2017, at 10:00 a.m. at the Commission offices, 180 East Broad Street, 12th floor, Conference Room 1246, Columbus, Ohio 43215-3793. It is, further,

{¶ 38} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ L. Douglas Jennings

By: L. Douglas Jennings  
Attorney Examiner

jrj/vrm

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Attorney Examiner Entry granting motion to amend answer and scheduling settlement conference for May 25, 2017; electronically filed by Vesta R Miller on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio