

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Howard                    ) Application No. FC-1365  
County Medical Center, St. Paul,            )  
Nebraska, v. BCN Telecom, Inc.,            )  
Morristown, New Jersey, alleging        ) ORDER  
erroneous charges.                         )  
  )  
  ) Entered: March 29, 2016

BY THE COMMISSION:

B A C K G R O U N D

On August 3, 2015, the Nebraska Public Service Commission ("Commission") received a Formal Complaint from Howard County Medical Center ("Med Center" or "Complainant") of St. Paul, Nebraska, against BCN Telecom, Inc., ("BCN" or "Respondent") of Morristown, New Jersey, alleging erroneous charges and seeking relief from those charges. Respondent timely filed an Answer to the Formal Complaint.

A planning conference was held in the above-captioned docket on September 28, 2015, with representatives of the parties and the Commission. During the planning conference the parties agreed to a procedural schedule including a hearing date. The Hearing Officer issued an order on October 26, 2015, memorializing the agreements and establishing the procedural schedule for the docket.

A Hearing in this matter was held on February 24, 2016, in St. Paul, Nebraska.

E V I D E N C E

At the hearing, the Med Center offered the testimony of three witnesses, Mr. Arlan Johnson, Mr. Corby Shulte, and Ms. Janet Busse. BCN presented testimony from one witness, Mr. Paul Resende.

Mr. Arlan Johnson, the Chief Executive Officer of the Med Center, prefiled direct testimony and testified in this matter. Mr. Johnson offered five exhibits which were accepted into the record as Exhibits 4 through 8. Mr. Johnson testified to the billing dispute between the Med Center and BCN, the Med Center's former long distance carrier, stating the dispute had been ongoing for over five years.<sup>1</sup> Mr. Johnson testified the disputed charges were contained on four bill statements received by the Med Center from BCN on December 2011, March 2012, July 2012, and June 2013. Mr. Johnson explained each bill statement contained charges for two outgoing calls under the heading Account Code: 111, Lab Modem, and showed almost simultaneous calls on the same line lasting for thousands of minutes each.<sup>2</sup> All eight of the disputed calls were to the same phone number.

<sup>1</sup> Docket FC-1365, Transcript, 12:13 - 15 (Hereinafter "Tr page number:line number").

<sup>2</sup> Tr 16:9 - 17:8.

Mr. Johnson testified that the Med Center has two echocardiogram (EKG) machines that use a phone line to fax EKG results to various medical specialists. The Med Center designates account codes to different telephone lines to assist in internal record keeping. The EKG fax line is identified as Account Code: 111, Lab Modem on the Med Center's bill statement. Mr. Johnson stated the EKG machines are on mobile carts and are rolled to a location when needed, where the EKG test is taken and then the fax machine plugged into a phone line to fax the test results to the appropriate specialist. Once the fax is sent, the machines are unplugged from the phone line. Mr. Johnson stated the EKG machines are only enabled to send faxes, they have no capability to receive any incoming calls or faxes.<sup>3</sup> He also testified the EKG machines use the same single telephone line and it is not possible for the machines to send more than one fax at a time.<sup>4</sup> Mr. Johnson further testified that the average call to send a fax from the EKG machine ranges from less than one minute to around 3.2 minutes.<sup>5</sup>

Mr. Johnson next testified regarding the specific disputed charges that appeared on the four statements. He discussed the two charges on the December 2011 bill, showing two calls were made on October 5, 2011, on the Lab Modem account, the first call was initiated at 11:12 a.m., the other at 11:14 a.m., and each call was billed as lasting 11,229 minutes. The Med Center was charged \$1,325 for those two calls.<sup>6</sup>

He discussed the disputed charges on the March 2012 bill, showing two calls made on December 21, 2011, on the Lab Modem account. One call initiated at 2:00 p.m. billed as lasting 33,674 minutes, the other at 2:02 p.m. was billed as lasting 74,125 minutes. The Med Center was billed \$6,360.19 for those two calls.<sup>7</sup>

Mr. Johnson testified regarding the July 2012 bill statement that again showed two calls made on May 16, 2012, on the Lab Modem account. One call was initiated at 11:50 a.m. and billed as lasting 29,717 minutes, the second at 11:52 a.m. billed as lasting 29,715 minutes. The Med Center was billed \$3,506.56 for those two calls.<sup>8</sup>

Mr. Johnson next discussed the disputed charges contained on the June 2013 statement the Med Center received from BCN. The statement showed two calls made on May 1, 2013, on the Lab Modem account, one initiated at 4:23 p.m. that was billed as lasting 12,575 minutes and the second call initiated on the same line at 4:26 p.m. billed as lasting 12,572 minutes. The Med Center was billed \$1,483.72 for those two calls.<sup>9</sup>

Mr. Johnson testified that the Med Center disputed the bills for the eight calls at issue with BCN, but paid the remaining outstanding

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<sup>3</sup> TR 17:11 - 18:24.

<sup>4</sup> TR 25:19-21.

<sup>5</sup> TR 24:13-21.

<sup>6</sup> Docket FC-1365, Hearing Exhibit No. 4, P. 7 and TR 16:9-13.

<sup>7</sup> Docket FC-1365, Hearing Exhibit No. 5, P. 7 and TR 21:25 - 22:18.

<sup>8</sup> Docket FC-1365, Hearing Exhibit No. 6, P. 7 and TR 25:4-18.

<sup>9</sup> Docket FC-1365, Hearing Exhibit No. 7, P. 5 and TR 25:25 - 26:12.

balance on the bill statements.<sup>10</sup> He further stated that the disputed portion of the bills, the portion constituting the eight calls, plus interest and finance charges, constitutes the almost \$20,000 BCN is attempting to collect from the Med Center. Mr. Johnson stated the Med Center disputes the entire amount.<sup>11</sup> Mr. Johnson testified they had previously had similar charges as the disputed charges, but when the Med Center disputed the charges the first time, BCN removed the charges from the Med Center's bill.<sup>12</sup>

Mr. Johnson testified he investigated internally when he received the bills containing the disputed calls. He determined it was impossible for the EKG fax line to place two calls at the same time as detailed on the bill statement.<sup>13</sup> Mr. Johnson stated he contacted BCN and asked for an explanation of how the calls as contained on the bill statement were even possible. He testified BCN never provided any explanation and instead turned the disputed amounts over to collections.<sup>14</sup>

Mr. Johnson further stated he received an email from BCN's Collections Department on January 28, 2015, informing him if the disputed amount was not paid the Med Center's long distance service would be terminated on January 29, 2015.<sup>15</sup> Mr. Johnson stated as a critical access hospital it was imperative to its licensure and operation to have long distance service, so his controller, Ms. Busse, contacted the Commission to assist in getting an extension to February 2, 2015, for termination of BCN's service, and contracted with another long distance carrier to serve the Med Center.<sup>16</sup>

The Med Center next called Mr. Corby Schulte, an IT Generalist with the Med Center. Mr. Schulte testified in this matter and offered one exhibit which was accepted into the record as Exhibit No. 9. Mr. Schulte testified regarding the EKG machines used by the Med Center and confirmed the EKG machines only use one telephone line to transmit faxes. Mr. Schulte stated it is not possible for the two EKG machines to be sending information at the same time on the same line.<sup>17</sup> Mr. Schulte testified that the account code designation of Lab Modem was carried over from when the EKG machine used to be in the Lab, but now the term "Lab Modem" is used to designate the mobile EKG machines.<sup>18</sup>

Mr. Schulte testified the number dialed by each disputed call is assigned to Dr. Joseph L. Kummer, a physician located in Lincoln, Nebraska. Mr. Schulte further testified he contacted a Mr. Donovan Lempka, an IT specialist in Dr. Kummer's office. Mr. Schulte testified Mr. Lempka reported that Dr. Kummer's office had experienced no problems with its fax machines or telephone lines and he told Mr. Schulte there

<sup>10</sup> TR 15:20 - 16:6; 25:22-24;

<sup>11</sup> TR 27:3-8.

<sup>12</sup> TR 20:21-24.

<sup>13</sup> TR 20:21 - 21:2.

<sup>14</sup> TR 21:3-18.

<sup>15</sup> Docket FC-1365, Hearing Exhibit No. 8.

<sup>16</sup> TR 28:8 - 31:21.

<sup>17</sup> TR 57:9-12.

<sup>18</sup> TR 55:11-16.

was no way the office phone line could be in use that long, the office would be unable to keep doing business.<sup>19</sup>

Mr. Schulte also testified regarding the internal investigation he conducted in response to the disputed charges. He checked with CenturyLink, the local telecommunications carrier for the Med Center about possible problems with the phone lines and was told there were no problems. Mr. Schulte also talked with the nursing staff that uses the EKG machines, and they reported they had encountered no issues sending faxes or any other problems with the EKG fax machine.<sup>20</sup>

Upon cross examination, Mr. Schulte testified that in the event the main phone line for the EKG machine is busy, the other EKG machine can be plugged into another line at the nursing station. He estimated about ten percent of faxes were sent this way, and any such faxes would be shown on a different account number on the next bill statement.<sup>21</sup> Mr. Schulte further testified on cross that he conducted no test of the EKG machines and did not have the Med Center's local provider come to the Med Center and conduct any tests of the Med Center's telecommunications facilities.<sup>22</sup>

Lastly, the Med Center offered the testimony of Ms. Janet Busse, the Controller for the Med Center. Ms. Busse testified she is the head of the finance department for the Med Center. Ms. Busse in her testimony further explored the bill statements containing the disputed calls. She discussed the delay in billing for the disputed calls, noting the October 2011 calls were billed on the December statement which contained November usage. Similarly, Ms. Busse pointed out that the March 2012 bill statement contained the disputed calls that had been placed, according to the statement, on December 21, 2011. She testified BCN explained calls are not billed until they terminate, but she was unable to explain why the calls that had terminated in previous months did not show on the bill statement to the Med Center until after the month of termination.<sup>23</sup>

Ms. Busse next testified regarding other faxes sent on the same line during the time the disputed calls showed the line in use. She discussed the November 2011 bill statement, which was accepted into the record as Exhibit No. 10, showing the other October 2011 usage of the Med Center. The statement showed four other calls made on the Account 111: Lab Modem line on October 5, 2011, including to Dr. Kummer's number in Lincoln. The disputed calls from the same day that were included on the December 2011 bill statement showed that if the billing was correct, the line would have been tied up with the hung call and therefore subsequent calls could not have been placed.<sup>24</sup> Ms. Busse testified to similar calls on the days and at the same times as the other disputed calls.

<sup>19</sup> TR 54:16-24, TR 60:3 - 61:7.

<sup>20</sup> TR 60:12-25.

<sup>21</sup> TR 65:14 - 66:1 and TR 66:20-25.

<sup>22</sup> TR 67:10 - 68:8.

<sup>23</sup> TR 73:9 - 76:19.

<sup>24</sup> TR 78:9 - 79:16.

Ms. Busse testified the Med Center switched long distance providers from BCN to CenturyLink around January 30, 2015. She further testified the Med Center has experienced no problems with hung calls or calls lasting thousands of minutes since switching providers. Ms. Busse testified that the Med Center has been using the same telephone and fax equipment since 2009.<sup>25</sup>

BCN called Mr. Paul Resende, the Credit and Collections Supervisor for BCN. Mr. Resende prefiled testimony in this matter that was accepted into the record as Exhibit No. 20. Mr. Resende also offered three exhibits into the record which were accepted into the record as Exhibits 21 through 23. Mr. Resende testified regarding the billing dispute between the Med Center and BCN. Mr. Resende explained that BCN is a reseller of MCI long distance service, and as such has no control or management over the network providing the long distance service to the Med Center.

Mr. Resende testified that he became involved in the dispute after the charges were getting "aged."<sup>26</sup> He stated he wasn't involved when the initial calls were disputed or investigated by MCI, but brought himself up to speed through reviewing the documents and emails of his predecessor. Mr. Resende stated that MCI had previously credited BCN for similar charges when disputed by the Med Center as those at issue in this proceeding. BCN, in turn credited the Med Center for those charges.

Mr. Resende testified MCI has refused to issue credits for the disputed calls at issue in this proceeding.<sup>27</sup> He further testified that when BCN asked MCI to investigate the disputed calls, MCI found the calls to be valid. Mr. Resende stated he has no knowledge of how MCI investigates disputed charges or calls and further stated that in all his years of experience, he has never had a carrier report back to a reseller that a charge for a phone call was not valid.<sup>28</sup> Mr. Resende testified that BCN, as a reseller of MCI's long distance service, has a contract with MCI and BCN has already paid the disputed charges to MCI.<sup>29</sup>

Mr. Resende testified that he was aware of the Med Center's critical access status and contacted the Commission to ensure the Med Center had another provider lined up before service was terminated by BCN, if they were unable to work out an arrangement.<sup>30</sup> Mr. Resende further testified that BCN did attempt to find resolution and offered to remove all finance charges, a total of around \$7,000, and said they would accept \$12,970.67 and consider the outstanding bill paid in full. Mr. Resende testified when he spoke with Mr. Johnson the CEO about the disputed charges, he told Mr. Johnson, "the dispute is over at this point."<sup>31</sup> Mr. Resende

<sup>25</sup> TR 82:15 - 83:6.

<sup>26</sup> TR 93:5-21.

<sup>27</sup> TR 95:7 - 96:9 and TR 122:4-20.

<sup>28</sup> TR 96:10 - 98:1.

<sup>29</sup> TR 99:9-22.

<sup>30</sup> TR 100:14 - 102:7.

<sup>31</sup> TR 93:23 - 94:23.

further testified that he got aggressive with the Med Center on the phone in attempting to get payment.<sup>32</sup>

Upon cross examination, Mr. Resende stated he had no knowledge of the equipment or configuration used by the Med Center for its phone system, including the EKG fax machines, nor did he or anyone from BCN inspect or test the Med Center's equipment.<sup>33</sup> Mr. Resende further testified that he was brought into his position with collections to clean up outstanding accounts, including the Med Center's. He confirmed he became involved with the Med Center's account after the disputed charges had become "aged" and was directed to do what he had to do to get the Med Center to pay its outstanding balance.<sup>34</sup>

#### O P I N I O N   A N D   F I N D I N G S

The Nebraska Telecommunications Regulation Act<sup>35</sup> (Act) gives regulatory authority to the Commission to regulate telecommunications carriers. Pursuant to Neb. Rev. Stat. § 86-123, the Commission is given authority to investigate and resolve subscriber complaints concerning quality of telecommunications service and disconnection of said service. Further, the statute directs the Commission to hold a hearing upon petition by a subscriber and gives the Commission discretion to, "by order grant or deny, in whole or in part, the subscriber's petition or provide such other relief as is reasonable based on the evidence presented at the hearing."<sup>36</sup>

The Med Center filed a petition against its former long distance telecommunications carrier, BCN, seeking relief from approximately \$20,000 in charges, including finance charges, billed to the Med Center by BCN for eight long distance calls. The disputed calls were billed to the Med Center on four different bill statements, each statement containing two calls that occurred almost simultaneously. BCN is a reseller of MCI's long distance service and relies on the network and facilities of MCI to provide service to its customers. BCN bills its customers based on usage data provided by MCI.

All the disputed charges relate to phone calls to the Lincoln, Nebraska office of Dr. Joseph L. Kummer. The calls last anywhere from 11,228 minutes to over 74,125 minutes each. All eight of the disputed calls were coded to an account designated by the Med Center for its two portable EKG machines, Account Code: 111, Lab Modem. The Med Center moves the EKG machines to where they are needed, conducts the EKG test, plugs the phone line of the EKG machine in and faxes the results of the test to the appropriate medical specialist. The phone line for the EKG machine is then disconnected from the wall once the fax is sent.<sup>37</sup>

<sup>32</sup> TR 102:15 - 103:20.

<sup>33</sup> TR 127:4 - 128:14.

<sup>34</sup> TR 124:13 - 125:16.

<sup>35</sup> See *Neb. Rev. Stat. § 86-101 et seq.*

<sup>36</sup> *Neb. Rev. Stat. § 86-123(1)* (Reissue of 2014).

<sup>37</sup> TR 17:11 - 18:24.

The Commission heard testimony that the disputed charges are not the first instance of issues between BCN and the Med Center. The Med Center had one previous instance around August of 2011, where the EKG machine account was billed for two similar lengthy calls, resulting in a bill to the Med Center for \$14,000. When the Med Center disputed the charges with BCN, it in turn contacted MCI who agreed to credit the charges. BCN in turn credited the amount to the Med Center.<sup>38</sup> No information was received regarding the decision of MCI to credit the billed amount for the August 2011 calls.

When the Med Center received the next bill statement in December of 2011, containing two charges at issue in this docket, they again disputed the charges with BCN. According to BCN, MCI has refused to credit the charges for the eight calls at issue.<sup>39</sup> As the dispute continued and subsequent statements were received containing disputed charges, the Med Center continued to pay the undisputed portions of its bills. The dispute culminated in January of 2015, when BCN told the Med Center their long distance service would be terminated on January 29, 2015, if they did not pay the outstanding disputed balance, now almost \$20,000, including finance charges.<sup>40</sup>

It is unclear to the Commission why the dispute at issue in this proceeding was allowed to linger since 2011 and continue to grow. We urge both parties in the future to more proactively pursue resolution. Allowing these disputes to remain unresolved does all parties a disservice. We understand contingencies of personnel changes and hectic schedules competing for the attention of businesses, but would counsel more timely and prompt attention to such matters in the future.

There was some disagreement between the witnesses for the Med Center and the witness for BCN as to how much discussion and effort was made to find resolution to this issue. However, for our purposes, resolution between the parties was never reached.

The issue before the Commission in this proceeding distills down to this: was the Med Center owned customer premise equipment and facilities malfunctioning causing the charges at issue or was the malfunction instead somewhere else outside of the control of the Med Center.

BCN maintains the charges billed to the Med Center for the eight calls in question are legitimate. Mr. Resende testified that BCN asked MCI to investigate the charges and they responded that the charges were valid. Mr. Resende himself had no firsthand knowledge of MCI's network or systems, nor does he know what MCI's investigation of the charges entailed.<sup>41</sup> Mr. Resende, the head of the collections department of BCN, came to the dispute late when he was brought in by BCN to clean up overdue accounts. He admitted he used the emails and notes of his

<sup>38</sup> TR 122:4-16.

<sup>39</sup> TR 95:7 - 96:9 and TR 122:4-20.

<sup>40</sup> See Docket FC-1365, Hearing Exhibit No. 8 and Hearing Exhibit 23.

<sup>41</sup> TR 123:1-11.

predecessors to get up to speed with the situation.<sup>42</sup> He further stated he had no firsthand knowledge of the Med Center's facilities or equipment. The only insight offered by Mr. Resende is that in his experience, he has never heard of an underlying carrier responding to a reseller with an answer other than disputed charges are valid.<sup>43</sup> While we are sure Mr. Resende is knowledgeable about the telephone business, in this case, he could offer no information regarding the specifics of this case beyond his attempts to collect the outstanding bill from the Med Center.

The Med Center had its IT person, Mr. Schulte, look into the Med Center's equipment, including the EKG machines, after the bills were received. Mr. Schulte talked with the nursing staff that uses the EKG machines, and they reported no problems with the EKG machines.<sup>44</sup> He contacted CenturyLink, the Med Center's local provider, and they indicated they had experienced no issues with hung calls on the phone lines from the Med Center.<sup>45</sup> Mr. Schulte also contacted Dr. Kummer's office and reported their answer that they had experienced no problems with their fax machine. Mr. Schulte testified it is impossible for the EKG machines to make simultaneous calls to the same number.<sup>46</sup> Mr. Schulte further testified it is not possible for the fax calls to have tied up the fax machines anywhere from almost 8 days to over 51 days and not have anyone at the Med Center notice or have issues sending faxes during that time.<sup>47</sup>

However, Mr. Schulte also testified that no inspections or tests were conducted on the Med Center's physical telephone lines or the equipment, including the EKG machines. Nor were any tests conducted on Dr. Kummer's phone lines or equipment that we are aware of in this proceeding.<sup>48</sup>

Consequently, the Commission is left with mostly anecdotal evidence regarding the underlying cause resulting in the bills for the eight disputed calls. However, there are other undisputed facts on the record that do allow the Commission to draw certain conclusions.

First, the eight calls at issue are obviously anomalies compared to the hundreds of other calls billed to the EKG machine account. All of the other usage of the EKG lines lasted on average from less than a minute to around three minutes. The eight calls at issue by comparison lasted thousands of minutes. Clearly the usage on the disputed bills was well outside of the ordinary usage of the Med Center.

Second, as the EKG fax line was used multiple times to send faxes during the same time period the bill statements show the lines in use due to the hung calls, BCN is unable to show that the Med Center received

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<sup>42</sup> TR 95:10-17.

<sup>43</sup> TR 96:10 - 98:1.

<sup>44</sup> TR 60:12-25.

<sup>45</sup> TR 67:17-22.

<sup>46</sup> TR 57:9-12.

<sup>47</sup> TR 60:12-25.

<sup>48</sup> TR 67:10-14.



any value or actual service that would result in charges for which the Med Center is responsible. In the same way BCN can show no failure of the customer owned equipment of the Med Center that would enable them under the terms and conditions of their service to collect from the Med Center. We find no term of service that would enable BCN to collect charges when no service was rendered or failure by customer equipment shown.

Third, we think it telling that all of the calls at issue were to the same fax line in Lincoln. It would seem to us the likelihood of a malfunction of customer premise equipment only occurring when a specific number is called and never with any other calls extremely rare.

And finally, and in our view most compelling, the Med Center switched long distance carriers around January of 2015 to CenturyLink. The Med Center's equipment, phone lines, system, and usage remained the same as before the dispute, during the dispute with BCN, and since the change to CenturyLink's long distance service. The problems encountered with hung calls on the EKG line when faxing to Dr. Kummer's office have not reoccurred for over a year since the Med Center switched long distance providers.<sup>49</sup> It stands to reason that if the problem occurred as a result of a malfunction in the Med Center's equipment, those same problems would have manifested themselves again with a different long distance carrier. Therefore, it is reasonable to conclude the customer premise equipment was not the source of the trouble that resulted in the bills that caused the dispute.

Based on the evidence in this proceeding, the Commission finds the Med Center is not responsible for the disputed charges arising from the eight EKG calls at issue. While we are unable to definitively state what the malfunction was that caused the charges to accrue, we think it more likely than not the cause was not the Med Center's equipment, phone lines or personnel. We find this to be an issue between BCN and its underlying carrier MCI and should be resolved by those parties. Therefore, we find the Med Center does not owe the outstanding balance in dispute with BCN and hereby find BCN should cease and desist from attempting to collect the disputed amount and any other fees or finance charges associated with the disputed amounts from the Med Center.

# O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Formal Complaint by Howard County Medical Center against BCN Telecom, Inc., be and is hereby, sustained.

IT IS FURTHER ORDERED that the relief sought by the Complainant, be and is hereby, granted, and the Howard County Medical Center is not responsible for the disputed charges including finance charges and fees.

IT IS FURTHER ORDERED that BCN Telecom, Inc., shall cease and desist from attempting to collect any or all of the charges disputed in the above-captioned complaint from the Howard County Medical Center.

<sup>49</sup> TR 82:15 - 83:9.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 29<sup>th</sup> day of March, 2016.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Gerald F. Vay*

*Crystal Knodes*

*Paul J. J. J.*

//s//Frank E. Landis  
//s//Tim Schram

*Tim Schram*  
Chairman

ATTEST:

*LeRoy L. Puley*

Executive Director