

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF
INGHAM

DANA NESSEL, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN, *ex rel.*
The People of the State of Michigan

Petitioner,

No. 21-226-CP

HON. CLINTON CANADY

v

COUNTYWIDE BROADBAND, a/k/a
CWBB, ALLEGAN BROADBAND, IONA
BROADBAND, EFINITY BROADBAND;
ROCKET MARKETING, LLC, and
ANTHONY FISK,

Respondents.

Kathy Fitzgerald (P31454)
Aaron W. Levin (P81310)
Assistant Attorneys General
Attorneys for Petitioner Dana Nessel
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632
Fitzgeraldk@michigan.gov
levina@michigan.gov

Sawyer T. Rozgowski (P84067)
Parmenter Law
601 Terrace Street
Muskegon, MI 49440
P.O. Box 786
Muskegon, MI 49443
(231) 722-5412
Sawyer@parmenterlaw.com

ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE

The Michigan Department of Attorney General and Countywide Broadband
aka CWBB, Allegan Broadband, Ionia Broadband, Efinity Broadband; Rocket
Marketing LLC; and Anthony Fisk (collectively "CWBB" or "Respondents"), hereby

execute and agree to be bound by this Assurance of Voluntary Compliance and Discontinuance (“AVC” or “Assurance”).

This AVC concerns resolution of alleged violations of the Michigan Consumer Protection Act, 1976 PA 331, as amended, MCL 445.901 *et seq.* (“MCPA”).

Respondents agree not to contest any terms of this AVC.

The parties agree that the entry into this AVC by CWBB is not an admission to any violation of the MCPA or factual allegation addressed in this Assurance.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General (“the Department”) has jurisdiction over the subject matter of this AVC pursuant to MCL 445.905. Respondents waive all objections and defenses that they may have as to the jurisdiction of the Department over the matters covered by this AVC.

II. Parties Bound

2.1 This AVC binds CWBB and Anthony Fisk, individually, whether acting through associates, employees, subcontractors, agents, representatives, or other persons; or through any successors, assigns, corporation, assumed name, or other business entity or name. Anthony Fisk is responsible for compliance with the terms of this AVC, and must ensure that all associates, employees, subcontractors, agents, representatives, or other persons acting on his or CWBB’s behalf comply with the terms of this AVC.

III. Definitions

3.1 “AVC” means this Assurance of Voluntary Compliance and Discontinuance.

3.2 “BBB” means the Better Business Bureau.

3.3 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

3.4 “CWBB” or “Respondents” refers to Countywide Broadband, Allegan Broadband, Ionia Broadband, Efinity Broadband, Rocket Marketing, LLC, and Anthony Fisk, individually, whether doing business under any assumed name or other business entity or business name; or acting through their employees, subcontractors, agents, representatives, or any other person(s).

3.5 “Parties” means COD and CWBB, collectively.

3.6 “Wholesaler” means a company that resells internet service provided by an internet carrier to other reseller entities (such as CWBB), or to consumer end-users.

3.7 All other terms shall have the meaning specifically defined in the MCPA.

IV. CWBB’s Business Model and COD’s Investigation

4.1 CWBB advertises fast and reliable broadband internet service to Michigan consumers living in rural areas with sometimes limited internet options.

4.2 CWBB’s website and marketing materials contain misleading representations to gain new customers including, expressly and by implication, that

CWBB provides internet *services* as well as the technology/equipment that makes the internet service possible; by not only including the price of its monthly fee for internet service (separately from the fees for activation and equipment), but by also making such statements as “*we* are excited to be able to offer **true** high-speed *broadband internet service* to rural Michigan...”, and tacitly referring to itself as an internet service provider; (“*Our service* is rapidly growing to be *one of the largest ISPs* in America”, and “...The Federal Communications Commission (FCC) examined *all the top internet providers*...and...*WE* come out on top (#1)...”); by comparing itself and its services to other internet service providers, (“While companies like AT&T or Frontier are offering speeds of up [sic]1 to 6 mbps... We proudly offer speed of up to 100 mbps!” CWBB marketing materials also contain misleading representations that it is the recipient of prestigious awards.

4.3 During the COVID-19 public health emergency, when internet service needs were (and still are) particularly acute, COD became aware of consumer complaints alleging that after CWBB customers paid expensive activation and installation fees, CWBB failed to provide reliable service and represented that an expensive (typically \$800) antenna upgrade sold by CWBB was required and approved by AT&T in order for customers to continue receiving unlimited data after AT&T purportedly reduced data limits because of the pandemic.

4.4 One such complaint, filed with the BBB, alleged that the complainant signed up for service with CWBB in April 2020. At that time, she paid a \$350 activation fee, a \$368.50 installation fee, and a \$299 lifetime lease fee. In October

2020, her service went out without notice. CWBB indicated she was not over her data limit and did not know why her service went out. The customer tried contacting CWBB every day for at least a week but received no answer. Eventually, CWBB told her the carrier that was providing her internet service, AT&T, was no longer offering the plan she was receiving and that CWBB only provided installation services. CWBB told the customer that for her to continue to receive internet service, she would have to pay \$800 to upgrade her exterior antenna tower and pay an additional \$150 lifetime lease fee. Rather than pay these fees, the customer discontinued service with CWBB.

4.5 This and other complaints allege that customers were billed, and paid, monthly internet service charges to CWBB (together with installation, upgrade, and other fees), based on their belief that CWBB was providing internet service in their area. Complainants then report that their service was unreliable and CWBB charged them for expensive upgrades, was unable to help, or both.

4.6 In response to these complaints, CWBB indicated that it is not an internet service provider, but that it only provides installation of equipment necessary to utilize internet access provided by other companies. CWBB stated that it works with several internet service providers to connect customers to prepaid monthly internet plans with no contracts, including wholesaler companies that resell AT&T and other carrier internet services. CWBB also stated that internet outages, service cancellations, and the “required” antenna upgrade were the result of abrupt service plan changes and recommendations to resolve such issues made by

the carriers including, in particular, AT&T and wholly outside the control of CWBB. CWBB further stated it made good faith attempts to resolve carrier-end issues with its customers.

4.7 Two wholesalers that CWBB uses to provide internet service to its customers have an “F” rating with the BBB and have received numerous online customer complaints.

4.8 An *Ex Parte* Petition for Civil Investigative Subpoenas was filed with the Kent County Circuit Court by COD, which the Court granted on April 27, 2021. AT&T and CWBB responded to the subpoenas and provided documents and information to the Attorney General.

4.9 AT&T denies that AT&T end users and customers served by AT&T cellular towers in Michigan were subject to service limitations, changes, or termination by AT&T during the relevant periods of the pandemic. AT&T further denies that the COVID-19 pandemic caused AT&T to impose data caps or change its wireless service, or to terminate service to customers on no-contract plans. AT&T likewise did not require or approve the antenna sold as an upgrade by CWBB, as claimed by Respondents.

4.10 Information obtained through COD’s informal investigation implicates the Michigan Consumer Protection Act. In relevant part, Section 3 of the Michigan Consumer Protection Act prohibits:

- (a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services,

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(j) Representing that a part, replacement, or repair service is required when it is not.

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

MCL 445.903(1).

4.11 In entering this AVC, the mutual objective of the Parties is to resolve, without litigation, COD's potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of the Department's costs and expenses related to the investigation. The entry into this AVC by CWBB is not an admission of liability with respect to any issue addressed in this AVC nor is it an admission of any factual allegations or legal conclusions stated or implied herein. CWBB is entering this AVC to avoid the time and expense of litigating this matter.

V. Implementation of Compliance Measures

5.1 To the extent that CWBB may have engaged in any unfair or deceptive business practices in the State of Michigan, CWBB shall immediately cease and desist such practices.

5.2 CWBB will immediately take action to revise its website and marketing materials to more clearly communicate with consumers the services provided by CWBB, who consumers' internet provider is or may be, and the terms and conditions of CWBB's service. CWBB will not represent on its website or anywhere else that it sells services that it does not provide, nor will CWBB claim awards or accolades awarded to other entities. CWBB will further remove or correct the misrepresentations alleged in paragraph 4.2, above, and in paragraphs 11 and 12 of the *Ex Parte* Petition for Investigative Subpoenas, which claim that CWBB was awarded a #1 ranking by the FCC and a Guinness World Record for having the highest capacity satellite in the world.

5.3 CWBB will notify current and future customers of the identities of their internet carrier and provider (including, where applicable, the wholesaler/reseller).

5.4 To the extent CWBB represents that it can and does connect consumers to reliable internet service, CWBB shall not cancel a customer's service based on complaints regarding service or a need for repairs. CWBB shall provide support and maintenance and may charge for these services where appropriate. Such charges may not be applied for support or upgrades needed to provide the level of service promised to a consumer at a price that did not include such charge(s).

5.5 Respondents will exercise due diligence in the selection of third-party wholesalers as internet providers for CWBB customers, including but not limited to review and consideration of the wholesaler's BBB report and rating, and online consumer complaints.

5.6 Respondents will not make misrepresentations, expressly or by implication, regarding the approval and necessity of an antenna or other equipment upgrade to induce the sale of the same to consumers, in violation of the MCPA. In particular, Respondents will not misrepresent that such antenna is required and/or approved by AT&T, or any other internet service provider, as a condition to receiving any internet service from AT&T cellular towers or otherwise.

5.7 Respondents understand that by accepting these assurances, the Attorney General and COD make no representation as to their adequacy in providing good customer service or compliance with the MCPA. If the Attorney General receives consumer complaints or other information in the future suggesting that one or more potential violations of the MCPA by CWBB has occurred after the date of this AVC, or that CWBB is violating the MCPA, Respondents' implementation of the assurances referred to herein shall not deprive COD from taking any appropriate action described in the MCPA.

5.8 For consumers that have filed complaints with the BBB and/or Attorney General about CWBB prior to the Effective Date of this AVC, Respondents agree to release those consumers from any and all claimed indebtedness and liability arising out of and accruing from customer services and/or customer service

agreements prior to the date of this AVC. A list of the four consumers to whom this section applies was sent by COD to Respondents' counsel on December 20, 2021. The protections of this section shall include all persons in the households of those consumers.

VI. Financial Obligations

6.1 CWBB agrees to pay a total of \$3,000.00 to the Attorney General to resolve the dispute between the Parties.

6.2 The payment required by Paragraph 6.1 shall be made to COD no later than 10 days from the Effective Date of this AVC, by check payable to the "State of Michigan." The payment shall be sent to Kathy Fitzgerald, Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

6.3 The Attorney General will use a portion of the foregoing payment for distribution to consumers who submitted a substantiated complaint against CWBB to the BBB or Attorney General claiming monetary loss prior to the Effective Date of this AVC that has not been resolved. Respondents may not challenge the amounts or appropriateness of the consumer distributions. The remainder of the payment shall be retained by the State of Michigan to compensate for the time and expense associated with the investigation.

VII. Release

7.1 Upon full payment to the State as required by Paragraph 6.1, COD releases and discharges CWBB and Anthony Fisk from any and all civil claims that the Attorney General could have brought under the MCPA based on the conduct

described in and addressed by this AVC that was undertaken prior to the Effective Date of the AVC.

7.2 Notwithstanding the foregoing, nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers or other private party, violations of other laws, or claims for reimbursement of attorney fees and other costs which COD may incur in enforcing this AVC in the event of CWBB's' non-compliance. Should COD prevail in an action for breach based upon Respondents' non-compliance, Respondents shall pay all costs and attorney fees associated with such action.

VIII. General Provisions

8.1 This AVC is binding upon, inures to the benefit of, and applies to the Parties and their successors-in-interest. This AVC does not bind any Division of the Michigan Department of the Attorney General other than COD, or other agencies, boards, commissions, or offices of the State of Michigan.

8.2 This AVC does not affect, expand, or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except that any common law right of set off would still be applicable. Further, this AVC does not create any private right or cause of action to any third party.

8.3 This AVC does not constitute an approval by the Attorney General of any of CWBB's business practices and Respondents must not make any representation to the contrary.

8.4 No change or modification of this AVC is valid unless in writing and signed by all Parties.

8.5 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes CWBB to be in noncompliance with any provision of this AVC, setting forth the basis for such belief. Notice to Respondents shall be made to Respondents' counsel, PARMENTER LAW c/o Sawyer T. Rozgowski, 601 Terrace St., Muskegon, MI 49440.

IX. Signatories

9.1 Each person signing this AVC acknowledges and represents that: (a) they have read this AVC in its entirety and fully understand all of its terms, conditions, ramifications, and consequences; (b) they unconditionally consent to the terms of this AVC; (c) they have consulted with or had ample opportunity to consult with legal counsel of his, her, or its choosing prior to executing this AVC; (d) they have freely and voluntarily signed this AVC; and (e) the consideration received by each party as described in this AVC is adequate.

9.2 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this AVC and to legally bind such party to the terms and conditions of this AVC.

9.3 The Parties may execute this AVC in counterparts, each of which is deemed an original and all of which constitute only one agreement.

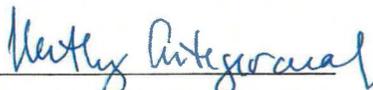
9.4 The Parties agree that facsimile or electronically transmitted signatures may be submitted in connection with this AVC and are binding to the same extent as an original signature.

9.5 A fully executed copy of the AVC will be filed with the Kent County Circuit Court, Case No. 21-03730-CZ, as well as the Ingham County Circuit Court as anticipated by MCL 445.905.

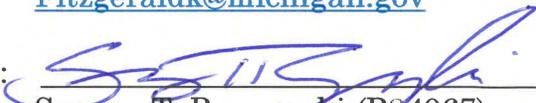
X. Effective Date

10.1 The effective date of this AVC is the date upon which the COD representative signs this assurance.

Dated: February 11, 2022

By: 
Kathy Fitzgerald (P31454)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division
(517) 335-7632
Fitzgeraldk@michigan.gov

Dated: *February 11, 2022*

By: 
Sawyer T. Rozgowski (P84067)
PARMENTER LAW
Attorney for Respondents
(231) 722-1621
Sawyer@parmenterlaw.com