

STATE OF MICHIGAN
COURT OF APPEALS

AMERITECH MICHIGAN,

Appellant-Cross-Appellee,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee-Cross-Appellee,

and

AT&T COMMUNICATIONS,

Appellee-Cross-Appellant,

and

MCI TELECOMMUNICATIONS, MICHIGAN
PAY TELEPHONE CO., SPRINT
COMMUNICATIONS, and ATTORNEY
GENERAL,

Appellees.

UNPUBLISHED

May 15, 2001

No. 215904

PSC

LC No. 00-011660

Before: Smolenski, P.J., and Holbrook, Jr., and Gage, JJ.

PER CURIAM.

Ameritech Michigan appeals as of right the order of the Public Service Commission (PSC) modifying the implementation of primary interexchange carrier charges (PICCs) on intrastate calls. AT&T Communications cross-appeals, asserting that the PSC order allows Ameritech to continue to impose excessive PICCs. We affirm in part and reverse in part.

The PICC system is a flat rate basis of compensating local exchange carriers for service on long distance calls. Effective January 1, 1998, Ameritech imposed PICC rates on intrastate calls that nearly correspond to the rates allowed by the FCC for interstate calls. PICCs replaced the former usage based method of recovering costs for this service.

AT&T Communications sought a reduction of the PICC rates from Ameritech. When negotiations reached an impasse, AT&T filed an application with the PSC for review of the PICC rates under section 310 of the Michigan Telecommunications Act (MTA), MCL 484.2310; MSA 22.1469(310). The Michigan Pay Telephone Association was allowed to intervene, and raised arguments regarding discriminatory application of the PICCs to pay phone lines. The PSC found that section 310 gave it jurisdiction to rule on the reasonableness of access charges, and to order that they be implemented in a nondiscriminatory manner. When no cost data was available, the PSC found that comparison of the PICC rates with rates charged by Ameritech subsidiaries in surrounding states was appropriate. Based on this information, the PSC found that the PICC rates were excessive, but it could not determine the proper rate due to the lack of detailed cost data. It ordered Ameritech to include the necessary data in its next biennial cost study.

Review of a decision of the PSC is limited. All rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed prima facie to be lawful and reasonable. MCL 462.25; MSA 22.44. An aggrieved party bears the burden of proving by clear and convincing evidence that the order appealed is unlawful or unreasonable. *Attorney General v PSC*, 231 Mich App 76, 77; 585 NW2d 310 (1998). An order is unlawful if it is based on an erroneous interpretation or application of the law, and it is unreasonable if it is not supported by the evidence.

Section 310 of the MTA provides:

(1) Except as provided in this act, the commission shall not review or set the rates for toll access services.

(2) A provider of toll access services shall set the rates for toll access services. Access service rates and charges set by the provider that exceed the rates allowed for the same interstate services by the federal government are not just and reasonable. Providers may agree to a rate that is less than the rate allowed by the federal government. If providers cannot agree on a rate, a provider may apply to the commission under section 204. [MCL 484.2310; MSA 22.1469(310)].

Section 204 provides:

If 2 or more telecommunications providers are unable to agree on a matter relating to a regulated telecommunication issue between the parties, including but not limited to, a matter prohibited by section 305, then either telecommunications provider may file with the commission an application for resolution of the matter. [MCL 484.2204; MSA 22.1469(204)].

The first task, to determine whether the Legislature granted the PSC jurisdiction to issue orders regarding PICCs, is one of statutory construction. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). If the language of the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible. *Id.* While the statute does not allow the PSC to set or review the rates for toll access services, if the providers cannot agree on a rate, they may apply to the Commission under section 204. Where involvement by the

Commission is provided for by section 310(2), the PSC properly found that it had jurisdiction to conduct an investigation, hold hearings, and issue its findings and order. MCL 484.2203(1); MSA 22.1269(203)(1).

We conclude that the PSC did not err in finding that the PICCs were excessive and discriminatory. The finding that the charges were excessive is supported by the limited evidence presented as to access rates from Ameritech subsidiaries in surrounding states. The PSC acted reasonably in deferring to other proceedings a finding as to the proper rates where there was insufficient evidence presented to make that determination in this action. There was sufficient evidence to determine that the rates were excessive, but the PSC lacked the necessary information to determine the proper rates.

Further, the PSC acted within its authority in determining that the PICC should be applied to both interLATA and intraLATA calls. Under § 310(5) of the MTA, a provider of toll access service is required to offer the services to all providers under the same rates, terms and conditions, without unreasonable discrimination. MCL 484.2310(5); MSA 22.1469(310)(5). Ameritech is barred from offering interLATA toll service, thus the application of PICCs solely to interLATA service resulted in a subsidy for Ameritech's intraLATA traffic. The assignment of the entire PICC to each line's interLATA service provider allowed Ameritech to avoid contributing anything toward the recovery of access costs by way of the intrastate PICC. There is no showing that the PSC order applying the PICC to intraLATA as well as interLATA service was unlawful or unreasonable.

The PSC properly considered the claims of the Michigan Pay Telephone Association (MPTA). A surrogate may represent an interested party, and exhaust administrative remedies. *In re Quality of Service Standards for Regulated Telecommunications Services*, 204 Mich App 607, 610; 516 NW2d 142 (1994). The intervention of MPTA was proper under 1992 AACS, R 460.17201. The findings of the PSC in regard to application of the PICC to pay phone rates were supported by the evidence.

The PSC erred in awarding attorney fees under § 601 of the MTA, which allows the PSC to order remedies and penalties for those who have suffered economic loss as a result of the violation of the MTA. MCL 484.2601; MSA 22.1469(601). This Court has held that the language of this provision is not sufficient to confer authority to award attorney fees to a prevailing party. *In re Complaint of Southfield*, 235 Mich App 523, 533-535; 599 NW2d 760 (1999). Accordingly, the award of attorney fees is vacated.

The PSC's award of attorney fees is vacated, but the decision is affirmed in all other respects.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage