

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN BELL TELEPHONE COMPANY,
d/b/a AMERITECH MICHIGAN,

UNPUBLISHED
November 30, 2001

Appellant,

v

Nos. 222785;224143;225162
MPSC
LC No. 00-011989

MICHIGAN PUBLIC SERVICE COMMISSION,
CENTURYTEL WIRELESS, INC, and THUMB
CELLULAR,

Appellees.

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Ameritech Michigan appeals as of right from the PSC orders setting the terms of the interconnection agreements between Ameritech, CenturyTel, and Thumb Cellular. We affirm.

Interconnection agreements cover the manner in which the telephone networks relate to each other, as well as the charges they will pay for services they provide to each other. Under the Federal Telecommunications Act (FTA), incumbent providers of local telephone service are required to negotiate interconnection agreements with entrants to the market. 47 USC 251(c)(1). When the parties were unsuccessful in reaching replacement interconnection agreements, CenturyTel and Thumb Cellular invoked arbitration pursuant to the FTA. Under that act, arbitration is conducted under the auspices of the state commission, using standards set forth in the FTA. 47 USC 252(b). After completing arbitration, the parties filed exceptions to the decision, and the PSC issued orders setting the terms of the final interconnection agreements. Ameritech challenges the resolution of two issues by the PSC.

On appeal, Ameritech bears the burden of showing, by clear and satisfactory evidence, that the decision of the PSC is either unlawful or unreasonable. MCL 462.26(8). A decision of the PSC is unlawful when it involves an erroneous interpretation or application of the law. *Champion's Auto Ferry, Inc v PSC*, 231 Mich App 699, 707; 588 NW2d 153 (1998). A decision is unreasonable when it is unsupported by the evidence. *Id.* The commission's construction of the telecommunications statute is a question of law subject to de novo review. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999). Courts must accord due deference to the PSC's administrative expertise, and may not substitute their judgment for

that of the PSC. *Attorney General v PSC*, 215 Mich App 356, 364; 546 NW2d 266 (1996). Courts must also accord great weight to any reasonable construction of a regulatory statute that the PSC is empowered to administer. *Id.*

Ameritech argues that the commission's decision requiring it to maintain the practice of reverse billing is unreasonable because it is not authorized by statute. Under reverse billing practices, the cellular carrier for the customer receiving the call pays an access charge to the local carrier, in lieu of the local carrier charging its customer directly. The PSC found that it had authority to order the continuation of reverse billing because that practice is part of "interconnection." The Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.*, expressly defines the term "interconnection," as follows:

"Interconnection" means the technical arrangements and other elements necessary to permit the connection between the switched networks of 2 or more providers to enable a telecommunication service originating on the network of 1 provider to terminate on the network of another provider. [MCL 484.2102(j).]

We believe that the definition of "interconnection" is open-ended, and that the commission's decision to include reverse billing within the ambit of "other elements necessary to permit the connection between" the two networks is a reasonable decision. We conclude that Ameritech has failed to carry its burden of proving that the decision of the PSC is unlawful.

Ameritech also argues that the PSC has imposed an unreasonable rate for reverse billing. The MTA provides that the rate for interconnection shall be just and reasonable, as determined by the commission. MCL 484.2352(1). Further, the FTA requires that a state commission's determination of just and reasonable interconnection rates shall be based on the cost of providing the interconnection. 47 USC 252(d)(1). Ameritech has provided no evidence to show that the rate for interconnection ordered by the PSC was not properly based on cost. Because the PSC properly determined that reverse billing is a part of "interconnection," the PSC is authorized to set just and reasonable rates for reverse billing. MCL 484.2352(1). Setting interconnection rates is not a prohibited review of rates for toll service. MCL 484.2312(1).

Finally, Ameritech argues that the commission unreasonably allowed CenturyTel and Thumb Cellular to set off amounts owed to them in reciprocal compensation, paying only the net amount owed to Ameritech. The PSC reasoned that continuing this "netting" practice would allow new entrants to the market to operate without risk to their cash flow. Ameritech asserts that the practice would conflict with the dispute resolution procedure negotiated by the parties. However, Ameritech has failed to carry its burden of demonstrating that the decision of the PSC was unreasonable. Nothing in the MTA abrogates the common law right to setoff debts. *Whispering Pines AFC, Home, Inc v Dept of Treasury*, 212 Mich App 545, 553; 538 NW2d 452

(1995). Ameritech has cited no statutory authority that would preclude the PSC from adopting this practice.

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ Michael R. Smolenski