

STATE OF MICHIGAN
COURT OF APPEALS

AMERITECH MICHIGAN,

Appellant,

V

MICHIGAN PUBLIC SERVICE COMMISSION,
ALLENDALE TELEPHONE COMPANY,
CLIMAX TELEPHONE COMPANY, d/b/a CTS
TELECOM, INC., LENNON TELEPHONE
COMPANY, AT&T COMMUNICATIONS OF
MICHIGAN, INC., LCI INTERNATIONAL
TELECOM CORPORATION, MICHIGAN
EXCHANGE CARRIERS ASSOCIATION, INC.,
ATTORNEY GENERAL, MCI
TELECOMMUNICATIONS, AND MCIMETRO
ACCESS TRANSMISSION SERVICES, INC.,

Appellees.

UNPUBLISHED

December 28, 2001

No. 216126

Public Service Commission

LC No. 0-011525

Before: K. F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Ameritech Michigan appeals as of right the PSC order requiring it to offer intraLATA toll service¹ to customers of other local exchange service providers in geographic areas in which it provides such service to its own local exchange service subscribers. Ameritech also challenges the portion of the order declaring that it must comply with applicable statutory requirements before it may withdraw service (specifically AETCP² service) from any exchange. We affirm.

¹ IntraLATA toll service refers to local long distance phone service within Local Access and Transport Areas (LATAs), which are geographical areas similar in size to area codes. It is separate from basic local service and from regular long-distance service.

² AETCP stands for Adjacent Exchange Toll Calling Plan.

I

This case involves the interpretation of the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.* Review of a PSC decision is limited. Under MCL 462.25, 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. *Attorney General v PSC*, 231 Mich App 76, 77; 585 NW2d 310 (1998). An aggrieved party bears the burden of proving by clear and convincing evidence that the order appealed is unlawful or unreasonable. *Id.* 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. *Id.* at 78. A reviewing court must give due deference to the administrative expertise of the PSC, and may not substitute its judgment for that of the agency. *Marshall v Consumers Power Co (On Remand)*, 206 Mich App 666, 677; 523 NW2d 483 (1994).

II

Traditionally, Ameritech was the sole provider of basic exchange service in the areas that it served, and it provided intraLATA toll service to its own customers. Ameritech also provided intraLATA toll service, pursuant to MCL 484.2306, to customers of twenty-three small local exchange carriers that did not offer this service.

This case arose out of concerns raised in a previous case (U-11350) concerning termination penalties Ameritech imposed on its ValueLink intraLATA customers when they attempted to change local exchange carriers. The case was settled, but the PSC initiated this action on its own motion, for the purpose of investigating the manner in which Ameritech provides intraLATA toll service to customers of competing local exchange carriers.

The PSC ordered that Ameritech provide intraLATA toll service to any requesting customer within a geographic area in which Ameritech provides that service. The PSC noted that Ameritech's tariffs do not require that a customer for this service also receive local exchange service from Ameritech, and determined that Ameritech's refusal to provide such service would be contrary to public interest and the antidiscrimination provisions of the MTA, and the Federal Telecommunications Act, 47 USC 151, *et seq.*

Ameritech maintains that the decision of the PSC is unlawful because there is no statutory authority requiring Ameritech to provide stand-alone intraLATA toll service, and because the PSC's findings are unsupported. We disagree. There was evidence showing that the denial of stand-alone local toll service has the effect of decreasing competition. Evidence indicated that Ameritech dominates the market for intraLATA toll service, and that this dominance affects competition in the basic local exchange service market.

One of the purposes of the MTA is to allow and encourage competition. Subsection 205(2) allows the PSC to order changes if it finds that a telecommunications service is being provided in violation of the MTA, *or in a manner adverse to the public interest.* MCL 484.2205(2). There is adequate support in the record for the commission's conclusion that the refusal to provide stand-alone intraLATA toll service discourages competition in the provision of basic local exchange service, and is adverse to the public interest.

III

Ameritech also argues that the PSC erroneously ruled that it may not withdraw from an exchange if no other provider offers a similar AETCP in the exchange. Ameritech argues that an AETCP is not service under the statute, but merely a pricing plan.³ Having in mind that adjacent exchange toll calling plans, having been ordered by the PSC in June, 1991, were expressly authorized by statute, MCL 484.2312(4), and that the statute provides that such plans “shall remain in effect under this act until altered by order of the commission,” we reject Ameritech’s argument that the PSC’s decision was unlawful.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Michael J. Talbot

³ We note that although both parties address the substance of the PSC’s observations in its decision, it is questionable whether the merits of those observations are properly before us. In the context of this case, Ameritech was not aggrieved by the PSC decision. The concrete issue presented was whether Ameritech could withdraw its AETCP from the Frontier exchange. Contrary to the recommendation of the ALJ, the PSC determined that under the circumstances that Ameritech provided notice of its intent to withdraw, the PSC staff withdrew its initial challenge to that withdrawal, and Ameritech withdrew from providing intraLATA service to the exchange in reliance on the lack of objection, it would be unfair to require Ameritech to return to the exchange. Thus, Ameritech prevailed regarding the Frontier exchange. The PSC went on to state that the ruling permitting the withdrawal could not be relied on as precedent to support a withdrawal from any other exchange. The PSC ordered simply that before withdrawing from any exchange, Ameritech must comply with the MTA. In its decision, however, the PSC expressed the view that under section 313, in order to withdraw from an exchange, Ameritech must show that a remaining provider carrier is offering the same services, including an optional toll calling plan following the structure of the AETCP.