STATE OF MICHIGAN

COURT OF APPEALS

ADVANTAGE TELECOMMUNICATIONS CORP.,	UNPUBLISHED October 11, 2002
Appellant,	
v	No. 230840 Public Service Commission
MICHIGAN PUBLIC SERVICE COMMISSION and HARRY E. WILSON, d/b/a THE HAMAR HOUSE BED & BREAKFAST,	LC No. 00-012137
Appellees.	

Before: Markey, P.J., and Cavanagh and R.P. Griffin*

PER CURIAM.

Advantage Telecommunications Corporation appeals by right from the Public Service Commission's opinion and order finding that Advantage violated the Michigan Telecommunications Act [MTA], MCL 484.2101 *et seq*., in connection with appellee Harry E. Wilson's complaint for unauthorized switching of long distance service, a practice commonly referred to as "slamming." Advantage was fined $35,000, ordered to pay restitution in the amount of $1,583.20, and ordered to cease and desist from all further violations of the MTA. We affirm.

On September 17, 1999, Wilson, on behalf of himself and his business Hamar House Bed & Breakfast, filed a formal complaint with the MPSC after Advantage changed his long distance service without his authorization. On September 28, 1999, the MPSC served a copy of the complaint on appellant. A notice of hearing followed on September 29, 1999. The notice of hearing informed Advantage that a public hearing would be held October 8, 1999, and that its answer was due no later than October 6, 1999. Advantage did not appear at the hearing or file an answer.

At the hearing, Wilson testified that his April 1999 telephone bill had charges for calls handled by Advantage, although Wilson had a different long distance provider, had not authorized a switch, and had never been contacted by Advantage. Advantage was very difficult to contact, placing Wilson on hold for four hours at one point. Wilson explained that when he

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

was finally able to contact someone, he was sent an audiotape of a stranger's voice saying that he had selected "Advantage Telecom" as his long distance provider.

The hearing referee issued a proposal for decision in which he found that Advantage had violated MCL 484.2505.[1] Accordingly, the referee imposed what he believed to be the maximum fine under MCL 484.2506, $20,000, and ordered Advantage to reimburse Wilson for his expenses in the amount of $683.20. Advantage filed exceptions to the referee's proposed decision, stating generally that it was denied due process but not identifying any specific procedural irregularity. The MPSC rejected appellant's exceptions because the exceptions were merely conclusory statements that were unaccompanied by any reasoned discussion of the evidence and law.

The commission found that the record clearly supported the referee's finding that Advantage violated the MTA by switching Wilson's long distance service without authorization. The MPSC determined, however, that in addition to a violation of MCL 484.2505, the record supported the conclusion that Advantage also violated MCL 484.2502 of the MTA. Penalties for a violation of that section include a fine of not less than $200 or more than $500 per day. MCL 484.2601. The commission imposed the maximum fines set forth in MCL 484.2601 for a total of $15,500, which it imposed in addition to the $20,000 fine for the violation of MCL 484.2505. Finally, the commission ordered Advantage to cease and desist from all further violations of the telecommunications act.

Advantage moved for rehearing, arguing that it was given inadequate time to respond to the complaint and that the hearing was held in violation of MPSC rules. The commission denied the motion, finding that the hearing had been conducted in accordance with the time periods set forth in MCL 484.2203(6). Appellant filed a timely claim of appeal in Ingham County Circuit Court. On October 23, 2000, Judge Carolyn Stell ordered the case transferred to this Court.

A party challenging an order of the MPSC bears the burden of demonstrating by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.26(8). To prove that the order was unlawful, the appellant must demonstrate "'that the commission failed to follow some mandatory provision of the statute or was guilty of an abuse of discretion in the exercise of its judgment.'" *In re MCI Telecommunications Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999) (citation omitted). Similarly, "[t]he hurdle of unreasonableness is equally high. Within the confines of its jurisdiction, there is a broad range or 'zone' of reasonableness within which the PSC may operate." *Id*. Although issues of statutory interpretation are reviewed de novo, "merely establishing that another interpretation of a statue is plausible does not satisfy a party's burden of proving by clear and convincing evidence that the PSC's interpretation is unlawful or unreasonable." *In re Michigan Cable Telecommunications Ass'n Complaint*, 239 Mich App 686, 690; 609 NW2d 854 (2000).

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[1] We note that the provisions of the telecommunications act relevant to this case were repealed effective January 1, 2001. However, the Legislature reenacted the statute in 2000 with amendments. The current version of the MTA is repealed effective December 31, 2005. The subsections at issue in this case have remained unchanged.

At the time of the complaint, the provision at issue, MCL 484.2203, provided in relevant part:

> (1) Upon receipt of an application or complaint filed under this act, or on its own motion, the commission may conduct an investigation, hold hearings, and issue its findings and order under the contested hearings provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.
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> (6) If a hearing is required, the applicant or complainant shall publish a notice of hearing as required by the commission within 7 days of the date the application or complaint was filed or as required by the commission. The first hearing shall be held within 10 days after the date of the notice. If a hearing is held, the commission shall have 180 days from the date the application or complaint was filed to issue its final order. If the principal parties of record agree that the complexity of issues involved requires additional time, the commission may have up to 210 days from the date the application or complaint was filed to issue its final order.

Advantage contends that the phrase "[t]he first hearing shall be held within 10 days after the date of the notice" is ambiguous, and that Wilson failed to comply with the statutory requirement that he "publish" the notice of hearing. Advantage also claims for the first time on appeal that it did not receive the complaint or notice of hearing until after the hearing had been conducted. We decline to address this argument because it has not been preserved for appellate review. *Attorney General v Public Service Comm*, 243 Mich App 487, 494; 625 NW2d 16 (2000).

Addressing the second argument first, it is clear from the language of subsection (6) that publication of the notice of hearing is only necessary if the commission requires it. The statute plainly states that the "complainant shall publish a notice of hearing *as required by the commission*" (emphasis added). In this case, the commission apparently concluded that publication was not necessary and that service by first class mail was sufficient. Consequently, this argument does not provide grounds for a finding of error.

Advantage's first argument is similarly flawed. There is no ambiguity in terms of the fact that the statute requires that the first hearing be held within ten days after the date of the notice of hearing. Advantage insists that the fact that the statute makes reference to a "first" hearing means that there must be a second hearing, warranting the conclusion that the "first" hearing must be a prehearing conference. However, Advantage's interpretation of the statute contravenes the rules of statutory interpretation by requiring that language be read into the statute that the Legislature did not see fit to include, specifically, a requirement for a second hearing. See *J & L Investment Co, LLC v Dep't of Natural Resources*, 233 Mich App 544, 550; 593 NW2d 196 (1999); *In re Marin*, 198 Mich App 560, 564; 499 NW2d 400 (1993).

Rule 311, 1992 AACS R 460.17311, states that an initial hearing may be either an evidentiary hearing or a prehearing conference, as directed in the notice of hearing. In this case, the notice of hearing stated that the hearing scheduled for October 8, 1999, would be a public

[evidentiary] hearing. Advantage could have asked that the hearing be adjourned or redesignated as a prehearing conference, but failed to do so despite the fact that the notice of hearing included a toll-free number at which the commission could be reached.

Advantage also asserts that the commission's own rules provide for a minimum fourteen day notice before a hearing. However, the rules state that they apply "except as otherwise provided by statute." See, e.g., 1992 AACS R 460.17103(1); 1992 AACS 460.17305(1). Similarly, although a party normally has twenty-one days after receiving the notice of hearing to file an answer to a complaint under 1992 AACS 460.17509, the rule also states that the commission may require a shorter time for answering. In this case, the time limits set forth in MCL 484.2203(6) supersede the administrative procedural rules.

In conclusion, we find that the commission's orders in this case were consistent with the requirements of the MTA and that Advantage has failed to meet its burden of demonstrating that the orders were either unlawful or unreasonable.

We affirm.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Robert P. Griffin