

STATE OF MICHIGAN
COURT OF APPEALS

AMERITECH MICHIGAN,

Appellant,

V

MICHIGAN PUBLIC SERVICE COMMISSION,
WILLIAM ROVAS and SANDRA ROVAS,

Appellees.

UNPUBLISHED

June 17, 2004

No. 244742

PSC

LC No. 00-013079

Before: Murray, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Ameritech Michigan appeals as of right from the Public Service Commission order finding it in violation of the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.* After reviewing the decision of the PSC under a deferential standard of review, we find that the PSC's interpretation of MCL 484.2501(1)(a) was not unlawful or unreasonable. However, because the PSC's decision regarding its directive that Ameritech verify, by entering into each customer's home, that any line problem is either interior or exterior is ambiguous, we remand this remedy issue to the PSC. We affirm and remand.

William and Sandra Rovas filed a complaint with the PSC after they experienced difficulties with repairs on their phone service. Among other claims, the Rovases asserted that Ameritech made false statements that the problem originated inside their house, that was not Ameritech's responsibility to repair, and it erroneously assessed a \$71 service charge based on that finding. Ultimately the problem was found to be in the outside lines, that Ameritech had the responsibility to repair without cost to the customer. Despite the statements of its phone representative, Ameritech did not rescind the service charge until after the Rovases were billed.

The PSC found the statements made to the Rovases that the problem was inside their house and that they owed the \$71 service charge were false, and that those statements directly related to Ameritech's duty to provide free repairs to the service line outside a customer's house. The PSC then went on to find that the statements concerned rates, terms, and conditions of providing telecommunications service, and constituted a violation of section 502(1)(a) of the MTA.

Our review of PSC orders is narrow in scope. The party attacking an order of the PSC bears the burden of proving by clear and satisfactory evidence that the order is 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 and it is unreasonable when it is unsupported by the evidence. *ABATE v PSC*, 219 Mich App 653, 659; 557 NW2d 918 (1996). To the extent that the decision is based on findings of fact, the challenger must show that those findings are not supported by competent, material, and substantial evidence on the whole record. *Id.* This Court gives due deference to the administrative expertise of the PSC, and will not substitute its judgment for that of the PSC. *Id.*

While this Court must give due deference to the administrative expertise of the PSC, the Court may not abandon or delegate its responsibility to interpret statutory language and legislative intent. *In re Complaint of Pelland*, 254 Mich App 675, 681-682; 658 NW 849 (2003). This Court must determine what conduct the Legislature sought to proscribe in section 502(1)(a).

Section 502(1)(a) of the MTA provides that a telecommunications service provider may not:

Make a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a telecommunications service that is false, misleading, or deceptive. [MCL 484.2501(1)(a)].

By its terms, the statute prohibits statements or representations that are false, misleading, or deceptive. The word “false” has multiple meanings. The Random House Webster’s College Dictionary 2nd Edition, p 469 gives the following definitions:

1. not true or correct; erroneous; wrong: *a false statement*. 2. uttering or declaring what is untrue; lying: *a false witness*. 3. not faithful or loyal; treacherous; hypocritical: *a false friend*. 4. tending to deceive or mislead; deceptive: *a false impression* . . .

Given the statutory context, it is plausible this provision is not intended to proscribe a statement that is simply not true or correct, but is only intended to proscribe those statements tending to deceive or mislead. However, the PSC’s interpretation, that the statute does not require an intent to deceive on the part of the telecommunications service provider is equally plausible.

Although it is undisputed that the statements made to complainants were wrong, after carefully reviewing the record, we find that the evidence does not support a finding that Ameritech acted with the intent to mislead. The evidence illustrates the problem with the Rovases’ service was intermittent, and difficult to diagnose. It appears to us that the technician mistakenly concluded the problem was inside, but there is no evidence this action was more than a mistake. If we were members of the PSC we would have concluded that Ameritech did not violate MCL 484.2502(1)(a) when it indicated to the customers in this case that the problem with their phone originated inside the house, and therefore they would be billed \$71.00 for the service call, a determination that was subsequently proven to be incorrect. However, because we must not substitute our judgment for that of the PSC, and must review a decision of the PSC under a deferential standard of review, we find no error. *ABATE, supra*, 219 Mich App 659.

We are charged with giving great deference to the PSC's construction of a statute which the Legislature has required the PSC to enforce, and therefore the mere establishment of an alternative interpretation of a statute to that given by the PSC will not satisfy the appellant's burden of proving the PSC's interpretation was unlawful or unreasonable. We reemphasized this rule in *Ameritech Michigan v Michigan Public Service Commission*, 239 Mich App 686, 690; 609 NW2d 854 (2000):

As a general rule, we will defer to the construction placed on a statute by the governmental agency charged with interpreting it, unless the agency interpretation is clearly erroneous. An agency's initial interpretation of new legislation is not entitled to the same measure of deference as is a longstanding interpretation. However, merely establishing that another interpretation of a statute 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.

See, also *In re Canales Complaint*, 247 Mich App 487, 496; 637 NW2d 236 (2001).

In light of this standard of review, we cannot conclude Ameritech's alternative and plausible construction of the statute means that the PSC's interpretation was unlawful or unreasonable. *Ameritech Michigan, supra*, 239 Mich App 690. Since it is undisputed that the statements made by Ameritech to the customers were wrong, and one definition of "false" is "wrong," the PSC's interpretation of the statute was quite literal and certainly not unlawful or unreasonable.

Finally, Ameritech challenges the PSC's directive that Ameritech verify, by entering into each customer's home, that any line problem is either interior or exterior. We believe the PSC's decision is ambiguous in that regard. In the "discussion" portion of the decision, the PSC does direct Ameritech to refrain from charging the \$71.00 fee until it confirms, by entering the customer's home, the location of the line problem. However, in the "remedies" portion of the decision, there is no similar specific order or directive. It is therefore unclear to us that the PSC actually ordered such a wide ranging process. Moreover, given the complete testimony of Tom Dunning, Ameritech's dispatch control manager, it is questionable whether substantial, competent evidence existed in this record to support such a process or conclusion that this is a systematic problem. Accordingly, we remand this remedy issue to the PSC for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

I concur in result only

/s/ Janet T. Neff