# STATE OF MICHIGAN

# COURT OF APPEALS

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IN RE SERVICE QUALITY RULES FOR TELECOMMUNICATIONS PROVIDERS

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VERIZON NORTH, INC., and CONTEL OF THE SOUTH, INC., d/b/a VERIZON NORTH SYSTEMS,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION, TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN and AT&T MICHIGAN,

Appellees.

UNPUBLISHED
January 21, 2010

No. 283028
MPSC
LC No. 00-014962

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MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION and TELECOMMUNICATIONS ASSOCIATION OF MICHIGAN,

Appellees.

No. 283117
MPSC
LC No. 00-014962

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Before: Cavanagh, P.J., and Fitzgerald and Shapiro, JJ.

PER CURIAM.

In these consolidated cases, appellants Verizon North, Inc., and Contel of the South, Inc., d/b/a Verizon North Systems (hereinafter Verizon), and Michigan Bell Telephone Company, d/b/a AT&T Michigan (AT&T), claim appeals from orders entered on September 18, 2007, and December 18, 2007, by appellee Michigan Public Service Commission (PSC) adopting

telecommunications quality of service rules and formally adopting telecommunications service quality rules, respectively. We affirm in both cases.

## I. Background

In July 2001, the PSC opened Case No. U-013013 to consider adopting new telecommunications quality of service rules to replace the rules that were to expire on September 1, 2001. On August 20, 2002, the PSC approved revised rules, some of which contained automatic penalty provisions. However, in *Verizon North, Inc v Public Service Comm*, 263 Mich App 567, 571; 689 NW2d 709 (2004), this Court nullified the rules on the ground that the PSC lacked the statutory authority under the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq*., to promulgate the revised rules.[1]

In 2005, the Legislature amended the MTA via 2005 PA 235. Act 235 amended § 202 of the MTA, MCL 484.2202, to provide in pertinent part:

> (1) In addition to the other powers and duties prescribed by this act, the commission shall do all of the following:
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> * * *
>
> (c) Promulgate rules under section 213[2] to establish and enforce quality standards for all of the following:
>
> (i) The provision of basic local exchange service to end users.
>
> (ii) The provision of unbundled network elements and local interconnection services to providers which are used in the provision of basic local exchange service.
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> (iii) The timely and complete transfer of an end user from 1 provider of basic local exchange service to another provider.
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> (iv) Providers of basic local exchange service that cease to provide the service to any segment of end users or geographic area, go out of business, or withdraw from the state, including the transfer of customers to other providers and the reclaiming of unused telephone numbers.

In 2006, the PSC drafted revised quality of service rules, and those revised rules received administrative approval in early 2007.

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[1] The PSC repromulgated the rules in 2005, but subsequently withdrew them.

[2] Section 213 of the MTA, MCL 484.2213, authorizes the PSC to promulgate rules pursuant to the Administrative Procedures Act (APA), MCL 24.201 *et seq*. The promulgation of such rules is subject to § 201 of the MTA, MCL 484.2201.

## II. Underlying Facts and Proceedings

The PSC announced that it would hold a public hearing on the proposed revisions to the quality of service rules and would accept written comments on the proposed revisions. Attached to the order and notice of hearing was a copy of the quality of service rules, with the proposed deletions and additions indicated by strike marks and bold face type, respectively.

These appeals concern the following quality of service rules:

R 484.535 Business offices. [Rule 35]

* * *

(4) A provider shall ensure that all information provided to customers and others is accurate and in compliance with commission rules and the provider's tariff. A provider shall not make a statement to a customer that the provider knows to be untrue.

R 484.551 Maintenance of plant and equipment.

Rule 51. (1) A facilities-based provider shall adopt and implement **a** maintenance program designed to achieve efficient operation of its system consistent with the rendering of safe, adequate, and continuous service in compliance with applicable codes, **including the national electric safety code and other state and local codes**.

R 484.555 Out-of-service repairs. [Rule 55]

* * *

**(3) If a provider fails to achieve a monthly average repair time of 36 hours or less for 3 consecutive months, that provider shall credit those residential and small business customers for whom the provider fails to repair the service within 36 hours or less, on a going forward basis, an additional $5.00 per day for the fourth and subsequent days of service outage until the first full day that service is restored. The provisions of this subrule shall continue to apply until the provider achieves a 36-hour or less monthly average repair time for 3 consecutive months.**

(~~3~~ **4**) For the same repeat trouble within ~~30~~ **15** days of the first occurrence, a provider shall give a residential or small business customer a credit of $5.00 for each day or portion of each day, ~~commencing when~~ **beginning the second day after** the repeat trouble is reported to or found by the provider, until service is restored. ~~This subrule shall not become effective until June 30, 2008.~~

R 484.557 Repair appointments and commitments.

Rule 57. (1) For all repair requests requiring a customer to be present, a provider shall give a residential or small business customer a 4-hour time period within which the repair shall commence. Otherwise, the commitments will specify a 24-hour time period.

(2) For appointments scheduled at least 48 hours in advance, a provider shall keep all repair commitments unless it contacts the customer not less than 24 hours in advance and reschedules the appointment or commitment. If unusual repairs are required or other factors preclude completing repairs promptly, then a provider shall make reasonable efforts to notify the customer.

(3) If a provider misses a time commitment and subrule (2) of this rule does not apply, then the provider shall give the customer a credit of ~~$25.00~~ **$15.00** for each missed commitment. ~~This subrule shall not become effective until June 30, 2008.~~

R 484.558 Installation **and local number portability** commitments. [Rule 58]

* * *

(4) If a provider does not complete an installation, **except migration,** by the fifth day ~~tenth day for a migration~~, or commitment date, then the provider shall waive 50% of the installation fee, unless the customer or applicant misses the appointment. If a provider does not complete an installation by the eleventh day, **or migration by the sixteenth day,** then the provider shall waive 100% of the installation fee, unless the customer or applicant misses the appointment. ~~This subrule shall not become effective until June 30, 2008.~~

In written comments,[3] Verizon asserted that the automatic service credit provisions contained in Rules 55, 57, and 58 were in fact automatic penalty provisions, and were arbitrary and capricious because they were unrelated to any actual expense that a customer might incur as a result of a service problem. Verizon also argued that the PSC lacked the statutory authority to impose automatic penalties, and that penalties could be imposed only in accordance with the procedure set out in § 601 of the MTA, MCL 484.2601.

[3] Verizon made comments on various rule revisions that are not the subject of Verizon's appeal. We do not address those comments in this opinion.

In written comments,[4] AT&T noted that MCL 484.2202(2) required the PSC to consider whether current market conditions were sufficient to protect customer service when deciding whether to promulgate new rules, and contended that the current market conditions made new quality of service rules unnecessary. In addition, AT&T contended that the proposed revision to Rule 51(1) to require a provider to be in compliance with all applicable national, state, and local codes was overly broad, vague, and unnecessary; that the automatic service credits provided for in Rule 55(3) and 55(4) were in fact automatic penalty provisions, were excessive, and were unlawful because imposition of such penalties did not comply with MCL 484.2601; and that the installation credit provided for in Rule 58(4) should be eliminated because it was unnecessary given the extremely competitive environment in which providers operated.

In an order entered on September 18, 2007, the PSC adopted the quality of service rules.[5] The PSC concluded that: (1) the amendment to Rule 51(1) merely clarified the codes with which providers were required to comply; (2) the automatic service credit provisions in Rules 55 57 were consistent with the MTA and federal law; and (3) the provisions in Rule 58 for waiver of installation fees addressed a service quality issue.

Verizon and AT&T filed petitions for rehearing. In separate orders entered on December 18, 2007, the PSC denied the petitions and formally adopted the quality of service rules.

The arguments raised on appeal by Verizon and AT&T overlap in large measure. In order to avoid repetition, we have arranged the issues into subject groups for purposes of discussion and analysis. Those subject groups are: (1) adoption of quality of service rules without consideration of current market conditions; (2) imposition of automatic penalties/installation credits; (3) Rule 51(1); and (4) Rule 35(4).

## III. Standard of Review

The standard of review for PSC orders is narrow and well defined. 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; *Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC has the burden of proving by clear and convincing evidence that the order is unlawful or unreasonable. MCL 462.26(8). To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its discretion in the exercise of its judgment. *In re MCI Telecom Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). An order is unreasonable if it is not supported by the evidence. *Associated Truck Lines, Inc v Public Service Comm*, 377 Mich 259, 279; 140 NW2d 515 (1966).

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[4] This opinion addresses only those comments that are relevant to the arguments AT&T raises in its appeal.

[5] This opinion addresses the PSC's holdings on only those rules that are at issue in these appeals.

A final order of the PSC must be authorized by law and be supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *Attorney Gen v Public Service Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987).

We give due deference to the PSC's administrative expertise, and as a general rule, we will not substitute our judgment for that of the PSC. *Attorney Gen v Public Service Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999). We give respectful consideration to the PSC's construction of a statute that the PSC is empowered to execute, and will not overrule that construction absent cogent reasons. If the language of the statute is vague or obscure, the PSC's construction serves as an aid to determining the legislative intent, and will be given weight if it does not conflict with the language of the statute or the purpose of the Legislature. However, the construction given to a statute by the PSC is not binding on us. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103-109; 754 NW2d 259 (2008). Whether the PSC exceeded the scope of its authority is a question of law that we review de novo. *In re Complaint of Pelland Against Ameritech Michigan*, 254 Mich App 675, 682; 658 NW2d 849 (2003).

## IV. Analysis

### A. Adoption of Quality of Service Rules Without Consideration of Current Market Conditions

On appeal, both Verizon and AT&T note that § 202(2) of the MTA, MCL 484.2202(2), requires the PSC to examine current market conditions when deciding whether to promulgate quality of service rules to determine if those conditions are sufficient to provide adequate service to end users. Verizon and AT&T argue the PSC did not fulfill this statutory mandate prior to promulgating the quality of service rules, and that therefore, the quality of service rules should be declared invalid. We disagree.

The PSC's consideration of current market conditions satisfied the statutory mandate. Section 202(2) provides:

> (2) Rules promulgated under subsection (1)(c) shall include remedies for the enforcement of the rules that are consistent with this act and federal law. Rules promulgated under subsection (1)(c)(ii) shall not apply to the provision of unbundled network elements and local interconnection services subject to quality standards in an interconnection agreement approved by the commission. In promulgating any rules under subsection (1)(c), the commission shall consider to what extent current market conditions are sufficient to provide adequate service quality to basic local exchange service end users. Any service quality rules promulgated by the commission shall expire within 3 years of the effective date of the rules. The commission may, prior to the expiration of the rules, promulgate new rules under subsection (1)(c). [MCL 484.2202(2).]

The PSC did not explicitly discuss current market conditions in its orders of September 18, 2007, and December 18, 2007. However, in its regulatory impact statement filed before the

adoption of the quality of service rules, the PSC concluded that the new quality of service rules were needed to reflect advancements in technology and to reflect the increased competition in telecommunications services.[6] The evidence supports a finding that the PSC considered current market conditions and determined that revised quality of service rules were needed to address those conditions. Verizon and AT&T seem to argue that because they contended that no new rules need be promulgated, the PSC was required to adopt their position. This argument finds no support in the law.

Verizon and AT&T have not shown that the PSC failed to fulfill the statutory requirement that it consider current market conditions when determining whether to promulgate new quality of service rules. Thus, Verizon and AT&T have not shown by clear and convincing evidence that the PSC's orders are unlawful on this basis. MCL 462.26(8); *In re MCI Telecommunications Complaint*, 460 Mich at 427.

B. Automatic Penalties/Installation Credits

Verizon and AT&T argue that the PSC lacked the statutory authority to promulgate rules containing automatic penalties such as those contained in Rules 55(3) and (4), 57(3), and 58(4). The MTA contains a specific process that the PSC must follow in order to impose penalties. Section 601 of the MTA, MCL 484.2601, allows the imposition of penalties only for violations of the MTA, only after notice and a hearing, and only to protect and make whole persons who have suffered economic losses due to violations of the MTA. The automatic penalty provisions in the quality of service rules do not meet these requirements.

Verizon and AT&T also argue that: the proposed automatic penalties are not the remedies contemplated by MCL 484.2202(2) in that they do not require a provider to develop a plan to improve service and do not have any relationship to any damage caused to a particular customer; the automatic penalty provisions are arbitrary and capricious in that a penalty must be paid even if the provider did not cause the problem that resulted in a service interruption and the amount of a penalty could exceed the costs incurred by a particular customer; and the automatic penalty provisions are unconstitutional because they result in a taking of property without notice and a hearing and provide no due process protections, unlike those in MCL 484.2601. We disagree.

"The PSC possesses only that authority granted it by the Legislature. Authority must be granted by clear and unmistakable language. A doubtful power does not exist." *Michigan Electric Coop Ass'n v Public Service Comm*, 267 Mich App 608, 616; 705 NW2d 709 (2005).

In *Michigan Electric Coop Ass'n*, this Court set out the standard for reviewing an administrative rule:

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[6] The PSC's regulatory impact statement filed in advance of the promulgation of the 2003 rules contained a much more extensive discussion of market conditions.

> In determining the validity of an administrative rule, a court must consider: (1) whether the rule is within the subject matter of the enabling statute; (2) whether it complies with the legislative intent underlying the enabling statute; and (3) whether it is arbitrary or capricious. *Dykstra v Dep't of Natural Resources*, 198 Mich App 482, 484; 499 NW2d 367 (1993). "A rule is arbitrary if it was 'fixed or arrived at through an exercise of will or by caprice, or without consideration or adjustment with reference to principles, circumstances, or significance.'" *Id*. at 491, quoting *Binsfield v Dep't of Natural Resources*, 173 Mich App 779, 786; 434 NW2d 245 (1988). A rule is capricious if it is apt to change suddenly, or is freakish or whimsical. If a rule is rationally related to the statute's purpose, it is not arbitrary or capricious. *Id*. at 786, 787. Any doubt must be resolved in favor of the validity of a rule. *Dykstra*, *supra* at 491. [267 Mich App at 619-620.]

The Legislature amended § 202 of the MTA to require the PSC to promulgate quality of service rules to "establish and enforce quality standards" for telecommunications providers, MCL 484.2202(1)(c), and to provide for "remedies for the enforcement of the rules that are consistent with this act and federal law." MCL 484.2202(2). The MTA does not define the term "remedies," and does not include a statute that specifically authorizes the imposition of penalties for noncompliance with quality of service rules, as does § 10p(8), MCL 460.10p(8), of the Customer Choice and Electricity Reliability Act, MCL 460.10 *et seq*. Nevertheless, the clear language of MCL 484.2202(1)(c) and (2) indicates that the Legislature intended that the PSC provide remedies through which the quality of service rules could be enforced. The rules providing for automatic penalties comport with this legislative intent.

Verizon and AT&T assert that any penalties imposed under the MTA must be imposed in accordance with MCL 484.2601, which provides:

> If after notice and hearing the commission finds a person has violated this act, the commission shall order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:
>
> (a) Except as provided in subsection (b), the person to pay a fine for the first offense of not less than $1,000.00 nor more than $20,000.00 per day that the person is in violation of this act, and for each subsequent offense, a fine of not less than $2,000.00 nor more than $40,000.00 per day.
>
> (b) If the provider has less than 250,000 access lines, the provider to pay a fine for the first offense of not less than $250.00 or more than $500.00 per day that the provider is in violation of this act, and for each subsequent offense a fine of not less than $500.00 or more than $1,000.00 per day.
>
> (c) A refund to the ratepayers of the provider of any collected excessive rates.
>
> (d) If the person is a licensee under this act, the person's license is revoked.

(e) Cease and desist orders.

(f) Except for an arbitration case under section 252 [37 USC 252], attorney fees and actual costs of a person or a provider of less than 250,000 end-users. [Footnote omitted.]

MCL 484.2202(2) requires the PSC to provide for remedies for the enforcement of the quality of service rules; nothing in the statute specifies that those remedies be only those sanctioned in MCL 484.2601. MCL 484.2202(2) and MCL 484.2601 may be construed in a manner that avoids conflict. *House Speaker v State Administrative Bd*, 441 Mich 547, 568-569; 495 NW2d 539 (1993). The automatic penalties provided for in Rules 55(3) and (4), 57(3), and 58(4) apply only to those failures of service addressed in the particular rule, while the penalties and remedies provided for in MCL 484.2601 apply to other violations of the MTA, and may be imposed only after notice and hearing. See *Michigan Electric Coop Ass'n*, 267 Mich App at 618-619. The PSC's interpretation and application of MCL 484.2202(2) is reasonable, and Verizon and AT&T have not demonstrated that cogent reasons exist to overturn that interpretation. *In re Complaint of Rovas*, 482 Mich at 108. Verizon and AT&T have not demonstrated that the PSC exceeded its authority by adopting quality of service rules that provide for automatic penalties, and have not established by clear and convincing evidence that the quality of service rules are unlawful or unreasonable. MCL 462.26(8).

Verizon and AT&T also have not demonstrated that the automatic penalty provisions are arbitrary and capricious. These rules were authorized by statute and comply with the legislative intent. Verizon and AT&T correctly note that service credits imposed as penalties do not relate to the cost of the service interruption or inconvenience experienced by customers; however, this fact does not make the automatic penalties arbitrary or capricious as those terms are defined. *Michigan Electric Coop Ass'n*, 267 Mich App at 619-621.

The assertion by Verizon and AT&T that the rules providing for automatic penalties are arbitrary and capricious because they require a provider to pay penalties even if the provider did not cause the problem that resulted in the service interruption or because they could require a provider to pay penalties that exceed the cost of the service interruption is without merit. The PSC adopted Rule 71, R 484.571, which allows a provider to seek waivers and exceptions under a wide variety of circumstances. Rule 71 provides:

(1) A provider may petition for a permanent or temporary waiver or exception from these rules when specific circumstances beyond the control of the provider render compliance impossible or when compliance would be unduly economically burdensome or technologically infeasible.

(2) A provider may request a temporary waiver in order to have sufficient time to implement procedures and systems to comply with these rules.

(3) A provider is exempt from R 484.555, R 484.557, or R 484.558, under any of the following circumstances:

(a) If the problem is or was caused by the customer, an independent third party, or malicious damage, then a provider's exemption is automatic, and the

information described in subrule (4) of the rule need not be provided unless requested by the staff of the commission's telecommunications division. This exemption is not available if, at the time the damage occurred, the provider was not in compliance with the Miss Dig program procedures.

(b) The problem is or was attributable to an "act of God." The term "act of God" shall include events such as any of the following:

(i) Flood.

(ii) Lightning.

(iii) Tornado.

(iv) Earthquake.

(v) Fire.

(vi) Blizzard.

(vii) Ice storm.

(viii) Other unusual natural or man-made disasters.

(c) There is a work stoppage or other work action by the provider's (or underlying provider's) employees, beyond the control of the provider, that causes or caused a significant reduction in employee hours worked.

(d) The problem occurs or occurred during a major failure. A "major failure" is a single event or occurrence that is not the direct result of action taken by the provider and that generates out-of-service reports affecting 100 or more access lines.

(4) The provider shall notify the commission's telecommunications division, in writing, within 10 business days of its intent to invoke the occurrence of an event described in subdivision (b), (c), or (d) of subrule (3) of this rule. The notification to the commission shall include all of the following information:

(a) Specific description of the event and general impact.

(b) Date or dates of the event.

(c) Location affected, such as exchanges or wire centers.

(d) Estimated number of customers affected.

(5) If the commission's telecommunication division staff disputes the validity of the provider's invocation of an event described in subrule (3) of this rule, it shall notify the provider within 10 business days, in writing stating the

> reasons for such dispute. If the dispute cannot be resolved within 10 business days of the notification, then the provider shall file an application with the commission within 10 business days thereafter for resolution of the dispute.

This rule gives a provider ample opportunity to contest an assertion that it violated the quality of service rules and is required to pay penalties as provided for in the rules. Rule 71(5) indicates that the provider would be entitled to notice and a hearing to resolve the dispute. The rules providing for the imposition of penalties for violation of the quality of service rules cannot be said to be arbitrary and capricious under these circumstances.

A person cannot be deprived of property without due process of law. US Const, Am V; Const 1963, art 1, § 17. A person cannot be deprived of property by administrative rule without receiving notice, an opportunity to be heard, and written findings. See *Bundo v Walled Lake*, 395 Mich 679, 696-697; 238 NW2d 154 (1976). The rules providing for the imposition of automatic penalties do not violate due process. A provider is entitled to seek a waiver of the penalty provisions, and if the dispute is not resolved, to notice and a hearing. The procedures outlined in Rule 71 comport with due process requirements. *Id*.; see also *Michigan Electric Coop Ass'n*, 267 Mich App at 622-623.

The PSC acted within its statutory authority in promulgating quality of service rules providing for the imposition of automatic penalties for violation of the rules. Verizon and AT&T have not demonstrated by clear and convincing evidence that the PSC's orders approving the rules are unlawful or unreasonable. MCL 462.26(8).

C. Rule 51(1)

Verizon and AT&T argue that the requirement in Rule 51(1) that a provider operate its system "in compliance with applicable codes, including the national electric safety code and other state and local codes" is unauthorized, vague, and impossible to enforce, and is unrelated to the quality of service rules. We disagree.

Verizon and AT&T do not argue that they were not required to comply with any codes prior to the amendment of Rule 51(1). The amendment of Rule 51(1) to refer specifically to "the national electric safety code and other state and local codes" seemingly simply clarifies to what codes the rule referred prior to its amendment, as the PSC found. Furthermore, a provider knows the locations in which it operates, and has the capacity to determine what codes are applicable in those locations. The argument that a provider would be unable to determine with what codes it was required to comply is not plausible. Moreover, Rule 71 allows a provider to seek a waiver from compliance when compliance would be unduly burdensome.

MCL 484.2202(1)(c) required the PSC to promulgate quality of service rules to "establish and enforce quality standards" for, among other things, the provision of basic telephone service to end users. Requiring a provider to maintain its system in a manner that complies with all applicable codes serves to ensure that the provider is able to maintain quality standards.

The assertion that Rule 51(1) delegates the PSC's enforcement duties to state and local agencies is not supported by the structure of the quality of service rules. Presumably, a

provider's noncompliance with a state or local code would be reported to the PSC by a state or local agency, and any further action would be taken by the PSC.

The promulgation of a rule clarifying the codes with which a provider must comply was within the PSC's mandate in MCL 484.2202(1). Verizon and AT&T have not demonstrated that cogent reasons exist to overrule the PSC's construction of MCL 484.2202(1), and have not shown by clear and convincing evidence that the PSC's orders approving Rule 51(1) are unlawful or unreasonable. MCL 462.26(8).

### D. Rule 35(4)

Verizon argues that Rule 35(4), which requires a provider to ensure that "all information provided to customers and others is accurate and in compliance with commission rules and the provider's tariff[,]" is overly broad and is unrelated to the quality of service rendered by the provider. The PSC has no statutory authority to regulate a provider's speech to customers. Moreover, Rule 35(4) conflicts with § 502 of the MTA, MCL 484.2502, which prohibits a provider from making "a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a telecommunication service that is false, misleading, or deceptive[,]" or from causing "a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction by making a false, deceptive, or misleading statement or by failing to inform the customer of a material fact, the omission of which is deceptive or misleading." Rule 35(4) prohibits all false statements, not just those related to the terms of service or those likely to result in confusion or misunderstanding. Rule 35(4) exceeds the PSC's jurisdiction because it purports to prohibit all misstatements, even those unrelated to quality of service issues.

Verizon's arguments regarding Rule 35(4) are without merit.

MCL 484.2202(1)(c) mandated that the PSC promulgate quality of service rules regarding the provision of basic telephone service to customers, the provision of unbundled network elements and local interconnection services to other providers, the transfer of a customer from one provider to another, and the transfer of customers whose provider has gone out of business or left the state. Requiring a provider to give accurate information to customers helps to ensure the quality of services delivered to customers.

Moreover, Rule 19, R 484.519, limits the application of the quality of service rules to those services regulated by the PSC. Therefore, contrary to Verizon's assertion, a provider could not be held to have violated Rule 35(4) for giving a customer inaccurate information such as incorrect directions to a particular location in its building.

The PSC's promulgation of Rule 35(4) did not exceed the authority granted to it by MCL 484.2202(1)(c). Verizon has not shown that the PSC's orders adopting Rule 35(4) are unlawful or unreasonable. MCL 462.26(8).

## V. Conclusion

In conclusion, we hold that the PSC's consideration of current market conditions satisfied the statutory mandate in MCL 484.2202(2), the PSC did not exceed its statutory authority by

promulgating rules containing automatic penalty/service credit provisions, the PSC did not exceed its statutory authority by promulgating Rule 51(1), and the PSC did not exceed its statutory authority by promulgating Rule 35(4).

Affirmed.

/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro