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STATE OF MICHIGAN
COURT OF APPEALS

AT&T COMMUNICATIONS OF MICHIGAN
and TCG DETROIT,

UNPUBLISHED
November 17, 2005

Petitioners-Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

No. 254832
Ingham Circuit Court
LC No. 03-000972-AA

Respondent-Appellee.

Before: Donofrio, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Petitioners AT&T Communications of Michigan and TCG Detroit (hereafter referred to jointly as "AT&T") appeal by leave granted an opinion and order of the circuit court affirming in part and reversing in part the underlying opinion and order of respondent Public Service Commission (PSC) in this case arising under the Michigan Telecommunications Act (MTA), MCL 484.2101 *et seq.* We affirm in part and reverse in part.

I. Basic Facts

This case arises from a complaint by Covenant House of Michigan that alleged, in relevant part, that AT&T provided to Covenant House and billed it for remote call forwarding service for telephone numbers for which Covenant House did not request that service. Covenant House further alleged that this continued even after Covenant House informed AT&T that it never requested and did not want this service. Pursuant to its finding that this was a violation of MCL 484.2507(1), the anti-"cramming" provision of the MTA, the PSC ordered AT&T to pay a \$30,000 fine, with \$15,000 of that amount to be paid to Covenant House, ordered AT&T to reimburse Covenant House for all reasonable attorney fees and actual costs it incurred in litigating this case, and granted Covenant House other relief. The PSC also ordered AT&T to reimburse the reasonable attorney fees and actual costs of Great Lakes Telecom, Inc. (Great Lakes), which acted as an agent for Covenant House in connection with its AT&T account. The circuit court affirmed the PSC's opinion and order, reversing only the award of attorney fees and costs in favor of Great Lakes.

II. Analysis

The scope of appellate review of PSC orders is narrow. *In re MCI Telecom Complaint*, 255 Mich App 361, 365; 661 NW2d 611 (2003). Under MCL 462.26(8), a party challenging an order of the PSC has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. *In re MCI, supra* at 365. A PSC decision is unlawful when it involves an erroneous interpretation or application of the law. An order is unreasonable if the evidence does not support it. *Id.* Also, a reviewing court should give due deference to the PSC's administrative expertise and should not substitute its judgment for that of the PSC. *In re Michigan Cable Telecom Ass'n Complaint*, 239 Mich App 689, 690; 609 NW2d 854 (2000).

AT&T first argues that the PSC erred by finding that it violated MCL 484.2507. We disagree.

On the basis of the plain language of MCL 484.2507(1), *Ayar v Foodland Distributors*, 472 Mich 713, 716; 698 NW2d 875 (2005), the PSC correctly found that AT&T violated that section by including unauthorized remote call forwarding service in Covenant House's telecommunications service package. MCL 484.2507(1) provides:

A telecommunications provider shall not include or add optional services in an end-user's telecommunications service package without the express oral or written authorization of the end-user.

It is undisputed that AT&T either initially provided or continued to provide remote call forwarding for far more than the nine telephone numbers for which Covenant House authorized this service. This plainly constituted an inclusion by AT&T of an unauthorized optional service in Covenant House's telecommunications service package. If a telecommunications provider provides an optional service to some of a customer's telephone numbers without authorization, that unauthorized optional service is part of the "end-user's telecommunications service package." A customer's authorization of an optional service for some telephone numbers does nothing to alter the fact that the provision of an unauthorized optional service to other telephone numbers constitutes the inclusion of an unauthorized optional service in the customer's telecommunications service package. Therefore, the PSC did not err in finding that AT&T violated MCL 484.2507.¹

AT&T next argues that the circuit court *correctly* concluded that the PSC improperly awarded attorney fees and actual costs to Great Lakes even though the PSC has not appealed the circuit court's ruling in AT&T's favor on this issue. Because AT&T was not aggrieved by this

¹ AT&T also asserts that the PSC erred in finding that it violated MCL 484.2502(1)(c). However, the PSC only imposed a penalty against AT&T on the basis of AT&T's violation of MCL 484.2507. Because we affirm the PSC's finding that AT&T violated MCL 484.2507 and the penalty awarded on that basis, we need not address whether the PSC erred in finding a violation of MCL 484.2502(1)(c). If there was any error in the PSC's finding that AT&T violated MCL 484.2502(1)(c), it was harmless.

portion of the circuit court's ruling, it cannot properly present this issue on appeal. MCR 7.203; *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 542-543; 695 NW2d 508 (2004).

Finally, AT&T argues that the PSC erred in awarding attorney fees and actual costs to Covenant House because MCL 484.2601(f) only allows such an award to a party that suffers economic loss and Covenant House did not suffer any economic loss in this case. We agree.

MCL 484.2601 provides, in relevant part:

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:

* * *

(f) Except for an arbitration case under section 252 of part II of title II of the communications act of 1934, chapter 622, 110 Stat. 66, attorney fees and actual costs of a person or a provider of less than 250,000 end-users.

Thus, attorney fees and actual costs are appropriately awarded to a party if the PSC finds that it suffered economic loss as a result of a violation.

The PSC found that AT&T violated MCL 484.2507, but it also found that Covenant House did not suffer any economic loss as a result of that violation. Nonetheless, the PSC awarded Covenant House attorney fees and actual costs. We conclude that the PSC's opinion is inconsistent in this regard. Because the PSC found that Covenant House suffered no economic losses, there was no basis for the PSC to award it costs and attorney fees. Therefore, we reverse the portion of the PSC's opinion and order requiring AT&T to pay attorney fees and actual costs to Covenant House.

Affirmed in part and reverse in part.

/s/ Pat M. Donofrio
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly