

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the objections of)	
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)	
to the June 1, 1999 assessment levied pursuant to)	Case No. U-12013
Public Act 299 of 1972 by the Michigan Department)	
of Consumer and Industry Services.)	
_____)	

In the matter of the objections of)	
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)	
to the October 1, 1999 assessment levied pursuant to)	Case No. U-12166
Public Act 299 of 1972 by the Michigan Department)	
of Consumer and Industry Services.)	
_____)	

At the March 7, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

History of Proceedings.

On June 14, 1999, AT&T Communications of Michigan, Inc., (AT&T) filed objections to the June 1, 1999 public utility assessment received from the Michigan Department of Consumer and Industry Services (CIS), which was docketed as Case No. U-12013.¹ On October 15, 1999, AT&T

¹Pursuant to Public Act 299 of 1972 (Act 299), MCL 460.111 et seq.; MSA 22.84(1) et seq., all public utilities in this state are required to contribute to the cost of regulation by this Commission. The total cost of regulation is apportioned amongst regulated utilities on the basis of each utility's gross revenue for the preceding calendar year that was derived from intrastate operations in accordance with the formula set forth in Section 2 of Act 299.

filed similar objections regarding the October 1, 1999 assessment from CIS, which was docketed as Case No. U-12166.

The cases were assigned to Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) and were consolidated for hearing. The Commission Staff (Staff) also participated in the proceedings, which included prehearing conferences on August 11, October 6, and November 23, 1999.

On January 14, 2000, the parties filed simultaneous motions for summary disposition. On January 24, 2000, the parties filed reply briefs.

On April 6, 2000, the ALJ issued his written ruling on the motions for summary disposition.

By letter dated October 20, 2000, the parties informed the ALJ that they had reached an agreement on the amount in dispute.² On October 23, 2000, the parties filed a stipulation indicating that the only remaining question related to the effective date of the Court of Appeals' decision in LCI International Telecommunications Corporation v Department of Commerce, 227 Mich App 196; 574 NW2d 710 (1997), lv den 459 Mich 955; 590 NW2d 572 (1999).

On October 30, 2000, the ALJ issued a Proposal for Decision (PFD) that agreed with the Staff's position.

On November 9, 2000, AT&T filed exceptions to the PFD. On November 27, 2000, the Staff filed a reply to exceptions.

Background Information.

In the LCI decision, the Court of Appeals determined that, contrary to the long-standing practice of the Commission and CIS, revenues from interstate telecommunications operations

²The parties stipulated that acceptance of AT&T's position would entitle AT&T to receive a refund of \$230,872.30 for 1998 and \$181,531.89 for 1999, or a total of \$412,404.19.

should not be included in the revenues used to calculate assessments under Section 2 of Act 299. However, the Court of Appeals held that its decision excluding interstate revenues from such assessments should be given prospective application. Therefore, no refunds were ordered to be paid to the plaintiffs in that proceeding.

The Court of Appeals' decision in the LCI case was issued on December 23, 1997. The Commission appealed that decision to the Michigan Supreme Court, which denied the Commission's application for leave to appeal on March 9, 1999.

Following denial of the Commission's application for leave to appeal, CIS informed all businesses that were subject to Act 299 of the Court of Appeals' decision as follows:

Enclosed is your First Quarter 2000 Public Utility Assessment. Please note that there is a surcharge or credit with respect to the prior year 1998/1999 Public Utility Assessment. The credit or surcharge is due to a Court-ordered change in the assessment methodology. See LCI and AT&T v Department of Commerce, 227 Mich. App. 196 (1997); lv den 459 Mich. 950 (1999).

Based on the Court-ordered change in the assessment methodology, the Department of Consumer and Industry Services, when calculating the pro rata fiscal year 2000 assessment for each utility, may no longer include revenues derived from telephone calls that originate in Michigan and terminate in another state.

As a result, for utilities having such revenues, there is a pro rata reduction in the assessment while there is a corresponding pro rata increase in the assessment of other utilities. The change in assessment methodology became effective March 9, 1999 and therefore applies to the Fourth Quarter 1998/1999 Public Utility Assessment, and all subsequent Public Utility Assessments.

Subsequent to receipt of this notice, AT&T filed its objections to the public utility assessment because AT&T believed that the court-ordered change in the assessment methodology should have been implemented as of December 23, 1997, the date of the Court of Appeals decision, not March 9, 1999, when the Supreme Court denied leave to appeal.

Proposal for Decision.

The ALJ considered the legal definitions of the words “precedent” and “execution” in light of the opposing provisions of the Michigan Court Rules (MCR) relied upon by the parties. In so doing, the ALJ observed that the MCR clearly differentiates between an opinion’s effective date for the purpose of the creation of new precedent and its effective date for the purpose of execution or enforcement of judgment. After consideration of all of the arguments, the ALJ determined that the date of execution should govern, and held that AT&T’s objections to the assessments should be denied.

Positions of the Parties.

Citing MCR 7.215(C)(2),³ AT&T maintains that its public utility assessments between December 23, 1997 and March 9, 1999 should have been reduced to reflect solely intrastate revenues. Because the Court of Appeals ordered that its December 23, 1997 decision should be prospectively applied and because MCR 7.215(C)(2) requires that a published Court of Appeals opinion must be afforded precedential effect under the rule of stare decisis as of the date of its publication, AT&T asserts that the Commission’s filing of an application for leave to appeal with the Supreme Court had no effect on the effective date of the Court of Appeals’ decision.

AT&T also argues that the basis for the Staff’s position and the ALJ’s ruling, MCR 7.215(E)(1)(a),⁴ has no applicability to this proceeding because that rule refers to the

³MCR 7.215(C)(2) provides that a published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. This rule also provides that the filing of an application for leave to appeal to the Supreme Court does not diminish the precedential effect of a published opinion of the Court of Appeals.

⁴MCR 7.215(E)(1)(a) provides that, unless otherwise ordered, the Court of Appeals’ judgment is effective after the expiration of the time for filing a timely application for leave to

execution and enforcement of a judgment. According to AT&T, because the Court of Appeals provided for the prospective application of its decision, its judgment in the LCI case simply cannot be the basis of an execution or an enforcement proceeding. AT&T insists that under the Court of Appeals' ruling, there was no judgment upon which an execution or enforcement would be appropriate. Rather, AT&T maintains that the Court of Appeals' ruling had immediate precedential effect under MCR 7.215(C)(2) from December 23, 1997 forward and, therefore, subsequent to December 23, 1997, the Commission was bound to exclude interstate revenues in calculating public utility assessments.

In response, the Staff contends that MCR 7.215(E)(1)(a) controls the outcome of AT&T's challenge. The Staff argues that the plain language of the April 1997 Stipulation for Entry of Judgment and Stay of Execution⁵ (Stipulation), which was jointly executed by the parties and incorporated into the Court of Claims' April 10, 1997 Order of Judgment and Stay of Execution, supports the ALJ's finding.⁶ According to the Staff, subsections (a)⁷ and (c)⁸ of Section 3 of the

appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court.

⁵See Appendix A to the Staff's January 14, 2000 Motion for Summary Disposition.

⁶The Court of Claims' April 10, 1997 order was appealed to the Court of Appeals by AT&T and the issues presented by that appeal were considered and resolved in the LCI decision.

⁷Section 3(a) of the Stipulation recites the understanding of the parties that the Commission will prosecute its appeal to "a final decision."

⁸Section 3(c) of the Stipulation states that "[i]f the final appellate decision affirms Defendants' position as described in paragraph 2 (that no refunds are required and that relief is prospective only from a final appellate decision, or alternatively, if any refunds are required, that the state has the right to recalculate all utilities' assessments, and to require surcharges as well as refunds, to make the state whole), the amount of any assessments owed by Plaintiff and the time period for said assessments, shall be calculated in a manner consistent with the final appellate decision on this issue."

Stipulation clearly evidence the parties' agreement that if the Commission prevailed on the issue of prospective relief, then the court-ordered change in the assessment methodology would be implemented in accordance with and from the date of the final appellate decision on the issue.

Discussion

The Commission finds that AT&T's objections to the public utility assessments should be rejected. The Commission is not persuaded by AT&T's contention that MCR 7.215(C)(2) controls the outcome of this proceeding. Rather, the Commission concludes that MCR 7.215(E)(1)(a), the Court of Claims' April 10, 1997 order, and the Stipulation support the ALJ's determination.

As noted by the ALJ, MCR 7.215(C)(2) and MCR 7.215(E)(1)(a) involve distinct concepts. MCR 7.215(C)(2) establishes that a published decision of the Court of Appeals has precedential value for the purposes of stare decisis without regard to whether the decision has been appealed to the Supreme Court. On the other hand, MCR 7.215(E)(1)(a) determines when the Court of Appeals' judgment in a particular case becomes effective. In Detroit v General Motors Corp, 233 Mich App 132; 592 NW2d 732 (1998), the Court of Appeals addressed the issue of when its judgment becomes effective as follows:

The judgment of the Court of Appeals as rendered in an opinion becomes effective after the expiration of the time for filing a timely application for leave to appeal to the Supreme Court, or, if a timely application has been filed, after the disposition of the case by the Supreme Court. MCR 7.215(E)(1)(a). When the Supreme Court denies leave to appeal after a decision from this Court, "the Court of Appeals decision becomes the final adjudication and may be enforced in accordance with its terms." MCR 7.302 (F)(3).

Detroit v General Motors Corp, *supra*, at 140.

Under the circumstances of this proceeding, the Court of Appeals' judgment in the LCI case did not become effective within the meaning of MCR 7.215(E)(1)(a) until denial of the Commis-

sion's application for leave to appeal by the Supreme Court on March 9, 1999. Further, AT&T agreed that if the Commission were to prevail on the issue of whether relief should be granted only on a prospective basis (which was the result of the Court of Appeals' decision), the amount of any assessments owed by AT&T and the time period for such assessments would be calculated in a manner consistent with the final appellate decision, which was rendered by the Michigan Supreme Court on March 9, 1999.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACSR 460.17101 et seq.; Public Act 299 of 1972, MCL 460.111 et seq.; MSA 22.84(1) et seq.
- b. The objections filed by AT&T to its June 1 and October 1, 1999 public utility assessments should be denied.

THEREFORE, IT IS ORDERED that the objections filed by AT&T Communications of Michigan, Inc., to its June 1 and October 1, 1999 public utility assessments are denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of March 7, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Its Executive Secretary

In the matter of the objections of)
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)
to the June 1, 1999 assessment levied pursuant to)
Public Act 299 of 1972 by the Michigan Department)
of Consumer and Industry Services.)

Case No. U-12013

In the matter of the objections of)
AT&T COMMUNICATIONS OF MICHIGAN, INC.,)
to the October 1, 1999 assessment levied pursuant to)
Public Act 299 of 1972 by the Michigan Department)
of Consumer and Industry Services.)

Case No. U-12166

Suggested Minute:

“Adopt and issue order dated March 7, 2001 rejecting AT&T Communi-
cations of Michigan, Inc.’s argument that its June 1 and October 1, 1999
public utility assessments should be reduced, as set forth in the order.”