STATE OF MICHIGAN

COURT OF APPEALS

AMERITECH MICHIGAN,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, AT&T COMMUNICATIONS OF MICHIGAN, MICHIGAN EXCHANGE CARRIERS ASSOCIATION, ATTORNEY GENERAL of the STATE of MICHIGAN, and MCI TELECOMMUNICATIONS COMPANY,

Appellees.

UNPUBLISHED
February 7, 1997

No. 184718
LC No. 0010138

GTE NORTH, INC.

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, AT&T COMMUNICATIONS OF MICHIGAN, INC. MCI TELECOMMUNICATIONS CORPORATION, and ATTORNEY GENERAL of the STATE of MICHIGAN,

Appellees.

No. 186602

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

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* Circuit judge, sitting on the Court of Appeals by assignment.

In these consolidated appeals, Ameritech Michigan (Ameritech) and GTE North, Inc (GTE) appeal by right from orders of the Michigan Public Service Commission (PSC) regarding the implementation of "dialing parity" for intrastate long distance telephone calls within Local Access Transport Areas (LATAs). We affirm.

The orders at issue in these appeals are part of a continuation of proceedings which have already been the subject of review by this Court in *GTE North, Inc v Public Service Comm*, 215 Mich App 137; 544 NW2d 678 (1996).[1] In *GTE North, supra* at 140, we affirmed a decision of the PSC entered on February 24, 1994, following evidentiary hearings in 1992 and 1993, directing Local Exchange Carriers (LECs) such as Ameritech and GTE to implement intraLATA dialing parity by January 1, 1996. Essentially, the PSC concluded that dialing parity is necessary to facilitate effective competition in the intraLATA market between LECs and other long distance carriers, i.e., Interexchange Carriers (IXCs) such as appellees AT&T Communications of Michigan, Inc, (AT&T) and MCI Telecommunications Corporation (MCI). *Id.* at 156-158. The PSC also concluded that implementation of intraLATA dialing parity should not be delayed beyond 1995, even if federal restrictions prohibiting Ameritech and GTE from competing in the *inter*LATA market have not been removed by that time. *Id.* at 163-164.

As part of its February 24, 1994 decision, the PSC directed its staff to organize a task force, comprised of representatives from the various interested parties, for the purpose of addressing issues regarding the process of implementing intraLATA dialing parity. The PSC staff then asked all interested parties to submit proposed issues to be addressed by the dialing parity task force. Proposed issues were submitted by a number of parties, including Ameritech and GTE. After reviewing the parties' proposals, the PSC staff prepared a list of the issues to be addressed by the task force. A number of the issues proposed by Ameritech were excluded from the list.

An initial task force meeting was conducted on May 18, 1994 to discuss the listed issues and to coordinate the formation of committees to address the issues. Committees were formed to address seven broad categories of implementation issues, namely, switch inventory, cost and availability of software, balloting, cost recovery, engineering and billing, voluntary versus mandatory participation in intraLATA dialing parity, and the impact of intraLATA dialing parity upon "secondary" exchange carriers. Thereafter, the individual committees met independently, primarily by conference telephone call although some in-person meetings were also held.

On September 23, 1994, the PSC received the report of the task force including the recommendations of the various task force committees. On some matters, the task force committees were able to reach a consensus, but the resolution of other issues remained in dispute. The task force report requested the PSC to adopt the committees' unanimous recommendations and to take further action in those areas where a consensus was not reached.

In accordance with the schedule set forth in the PSC's February 24, 1994 decision, interested parties were given until October 24, 1994 to file written comments in response to the task force report. Comments were timely filed by various participants, including Ameritech and GTE. Ameritech's

comments were accompanied by a legal brief challenging the adequacy of the task force proceedings to serve as the basis for the PSC's resolution of disputed issues, and requesting a supplemental evidentiary hearing on those issues. Among other things, Ameritech objected to the composition of the task force committees arguing that (1) the committee was skewed in favor of the IXCs because they were represented in greater numbers than the LECs, and (2) the PSC lacked a sufficient evidentiary record to resolve the issues in areas where consensus had not been reached.

In a March 10, 1995 decision, the PSC rejected the objections to the legal sufficiency of the task force proceedings and denied Ameritech's request for a supplemental evidentiary hearing. The PSC then proceeded to adopt the unanimous recommendations of the task force report and to decide the various other matters upon which consensus had not been reached, adopting the position taken by Ameritech and GTE on some matters but rejecting their position on others. Specifically, the PSC ordered statewide deployment of intraLATA dialing parity (subject to a few limited exceptions), on an office-by-office basis, using two-PIC software, according to a firm conversion schedule giving the LECs a nine-month lead time from the date the necessary software is available for the office in question. The cost of conversion would be recovered through the charging of a monthly Equal Access Rate Charge (EARC) over a period of five years.

The PSC rejected the argument of Ameritech and GTE that the IXCs should be required to submit a bona fide request (BFR) for every exchange in which they intend to provide intraLATA toll service, concluding instead that the PSC's own February 24, 1994 decision constitutes a BFR for service in all exchanges. The PSC also adopted its staff's proposal for a 55% discount rate for switched access charges in end offices which fail to meet the scheduled date for conversion to intraLATA dialing parity. In this regard, the PSC rejected Ameritech's objection that the proposed discount rate constitutes an impermissible penalty, reasoning instead that the lower quality of access provided in offices that remain unconverted to intraLATA dialing parity would warrant the discount rate.

With regard to the matter of recovering conversion costs, the PSC rejected a number of proposals made by Ameritech and/or GTE. The PSC rejected the argument that Ameritech and GTE should not be required to participate in the payment of conversion costs with the IXCs unless and until the federal prohibitions against their participation in the interLATA toll market have been lifted. Instead, it concluded that all providers of intraLATA toll services should pay the costs of implementing intraLATA dialing parity in order to ensure full intrastate toll competition. The PSC also rejected Ameritech's proposal to charge end-users for the cost of changing intraLATA toll carriers, and rejected proposals to assess the EARC according to minutes of usage or amount of intraLATA toll revenues generated rather than on a per intraLATA presubscribed access line basis. The PSC also concluded that only those costs directly attributable to intraLATA dialing parity implementation should be recovered through the EARC, rejecting Ameritech's arguments that the recovery should also include the costs of certain central office software upgrades, "stranded investment" in facilities made obsolete by conversion, and the additional facilities and equipment necessary to accommodate rerouted traffic as a consequence of conversion to intraLATA dialing parity.

The PSC also adopted the task force committee's recommendation that for those offices already converted to intraLATA equal access, the LECs should notify end-users twice of the availability of intraLATA dialing parity, first in a notice mailed to customers 90 days before the date intraLATA dialing parity becomes available to those customers, and later in a second notice mailed within 30 days following end-office cutover. The PSC majority rejected objections by Ameritech and GTE that requiring them to provide such notice to their customers would be tantamount to requiring them to subsidize the marketing efforts of their competitors, noting that the cost of providing notice is an implementation expense subject to recovery and that the notice material is expected to be neutral in nature so that no carrier will be advantaged or disadvantaged by it.

In orders entered June 5, 1995, the PSC denied petitions for rehearing filed by GTE and the Michigan Exchange Carriers Association (MECA).

I.

Our review of PSC decisions is narrow in scope. All rates, fares, charges, classification and joint rates, regulations, practices and services prescribed by the PSC are deemed, prima facie, lawful and reasonable. MCL 462.25; MSA 22.44; *Attorney General v Public Service Comm*, 206 Mich App 290, 294; 520 NW2d 636 (1994). A party challenging a decision of the PSC bears the burden of proving by clear and satisfactory evidence that the decision is unlawful or unreasonable. MCL 462.26(8); MSA 22.45(8); *Attorney General, supra*. A decision of the PSC is unlawful when it involves an erroneous interpretation or application of law, and unreasonable when it is unsupported by the evidence. Any factual determinations made by the PSC must be supported by competent, material and substantial evidence on the whole record. Const 1963, art 6, §28. This Court accords due deference to the PSC's administrative expertise and will not substitute its own judgment for that of the PSC or displace the PSC's choice between two reasonable competing alternatives. *Attorney General v Public Service Comm*, 215 Mich App 356, 364; 546 NW2d 266 (1996); *GTE North, supra* at 165.

II.

Turning now to the issues raised by Ameritech and GTE on appeal, we begin by noting that this Court has already held that the PSC had authority and jurisdiction under §205(2) of 1991 PA 179, MCL 484.2205(2); MSA 22.1469(205)(2), to require implementation of intraLATA dialing parity, specifically rejecting the proposition that the PSC's authority was limited to investigating and reporting upon intraLATA dialing parity pursuant to §202(f)(x) of the act, MCL 484.2202(f)(x); MSA 22.1469(202)(f)(x). *GTE North, supra* at 153-156. Moreover, this Court found that the PSC had lawfully and reasonably exercised its authority to require implementation of intraLATA dialing parity pursuant to the proceedings instituted in this case. *Id.* at 153-166. Accordingly, we likewise reject appellants' Ameritech's and GTE's challenges to the PSC's authority to establish procedures and regulatory requirements for the implementation of intraLATA dialing parity.

We also reject appellants' challenge to the task force report and comment procedure used by the PSC to facilitate its resolution of implementation issues. Contrary to appellants' arguments, the PSC

did not substitute the task force report and comment process for contested-case evidentiary hearing procedures. Rather, the PSC essentially used the task force process to supplement the relatively extensive contested-case evidentiary hearings that had already taken place in 1992 and 1993. In fact, nearly all of the disputed task force recommendations that the PSC adopted were based upon testimony adduced at the prior evidentiary hearing phase of the case, e.g., the 55% discount rate, use of the EARC to recover the cost of dialing parity conversion from all carriers participating in the intraLATA toll market, voluntary as opposed to mandatory participation, and the requirements for providing notice to appellants' end-users.

Appellants attempt to discount the importance of the evidence adduced at the 1992 and 1993 hearings by (1) noting that the PSC did not specifically mention the evidence in its March 10, 1995 decision but instead framed its discussion of the issues in terms of the information provided in the task force report, and (2) arguing that if the PSC really believed that the existing evidentiary record was sufficient for purposes of resolving the outstanding implementation issues, the PSC would not have established the task force process in the first place. We find appellants' observations entirely consistent with the PSC's use of the task force process in the limited manner that appellants concede to be legitimate: not as a substitute for further fact-finding and evidentiary record development but merely as a means of identifying and delineating the parties' positions, areas of consensus and the remaining areas of dispute arising from the issues presented on the existing evidentiary record.

It is important to note that all of the PSC's disputed decisions based upon the task force report largely concern policy choices or questions of law rather than disputed issues of fact, i.e., whether the LECs should be required to participate in the cost recovery process prior to receiving federal intraLATA relief, whether the PSC's own February 24, 1994 order constitutes a BFR, and similar questions. The fact that the PSC characterized its resolution of these disputed legal and policy issues as "findings" does not change this conclusion. Essentially, the PSC's task at the implementation phase of the case was to determine which of various alternative procedures and methodologies associated with implementation of dialing parity would best serve the overall policy goal of fostering full intrastate toll competition.

Under the contested-case procedures of the Administrative Procedures Act, which are incorporated by reference in §§203(1) and 213 of 1991 PA 179, MCL 484.2203(1); MSA 22.1469(203)(1) and MCL 484.2213; MSA 22.1469(213), the parties are entitled only to an opportunity to present oral and written arguments, not an evidentiary hearing, when the matters to be decided concern issues of law and policy as opposed to disputed issues of fact. MCL 24.272(3); MSA 3.560(102)(3). Accordingly, it is entirely proper to summarily resolve such matters without an evidentiary hearing where material facts are not at issue and/or where all of the relevant facts necessary for a final decision are already part of the record presented. See e.g., *American Community Mutual Ins Co v Comm'r of Ins*, 195 Mich App 351, 362-364; 491 NW2d 597 (1992). Here, the parties were given ample opportunity to offer written arguments regarding the outstanding implementation issues as part of the post-report comment process. Although they apparently were not afforded an opportunity for oral argument, appellants challenge on appeal only the PSC's failure to conduct supplemental evidentiary hearings, not the lack of oral argument before the PSC.

As for the exclusion of certain issues proposed by Ameritech, the PSC essentially found that the proposed issues were not material to the scope of the implementation phase proceeding, either because they concerned matters already decided in the PSC's previous decision of February 24, 1994, or because they involved matters regarding the impact, prudence or legality of the implementation of dialing parity itself and not the kind of technical and administrative concerns that were properly the focus of the task force process. Ameritech does not make much effort to specifically address the PSC's reasoning in this regard but instead simply objects that issues "dealing with the broad effects of dialing parity" were excluded. Ameritech has not met its burden of rebutting the presumptive lawfulness and reasonableness of the PSC's conclusion that those "broad effects" issues were beyond the proper scope of the task force process. See MCL 462.26(8); MSA 22.45(8).

We are also unpersuaded by appellants' objections to the small number of LEC representatives on the task force committees. The PSC did not merely adopt the majority positions of the task force committees as appellants seem to suggest. Rather, the PSC independently resolved the disputed issues presented in the task force report, specifically addressing the arguments and objections raised by the parties regarding those issues for itself. Indeed, on at least some issues, the PSC adopted appellants' proposals.

We find it unnecessary to decide whether appellants had vested property rights at stake entitling them to procedural due process protection under the State and Federal Constitutions. Procedural due process is a flexible concept that allows procedural requirements to differ depending upon the nature of the proceeding and the issues and interests involved. A full, trial-like proceeding is not necessarily required so long as there is some opportunity to be heard and a chance to know and respond to the evidence. E.g., *Klco v Dynamic Training Corp*, 192 Mich App 39, 42; 480 NW2d 596 (1992). Moreover, even when an evidentiary hearing is required, the failure to conduct a hearing may be considered harmless error if a hearing would not have changed the outcome of the case, particularly where the decision is not dependent upon disputed questions of fact. See *Feaster v Portage Public Schools*, 210 Mich App 643, 655; 534 NW2d 242 (1995), rev'd on other grounds 451 Mich 351; 547 NW2d 328 (1996); *Verbison v Auto Club Ins Ass'n*, 201 Mich App 635, 641; 506 NW2d 920 (1993). Here, appellants were afforded notice and the opportunity to present evidence at a full, trial-like hearing at the initial hearing phase of the case in 1992 and 1993, and they have failed to make any specific offers of proof to indicate any likelihood that a further evidentiary hearing might have changed the PSC's resolution of the outstanding implementation issues in 1995.

We find no merit to Ameritech's objections to the 55% discount access rate that the PSC adopted for those end offices that do not meet the cutover date in the conversion schedule. Although the task force report characterizes the discount rate as a "penalty," the PSC's March 10, 1995 decision clarifies that the PSC adopted the measure as a rate-making provision rather than a penalty based upon a determination that the inferior quality of non-converted access services warranted the proposed lower access rate:

> The Commission finds that Ameritech Michigan's and MECA's arguments should be rejected for three reasons. First, in advancing their arguments, MECA and Ameritech Michigan mischaracterize the proposed discount as a penalty. To the contrary, the discount reflects the fact that there are different levels of service that warrant different pricing. Here, the access that will be provided in offices that do not convert to intraLATA dialing parity as scheduled requires the dialing of access codes, which is different from dialing a single digit. Second, because the parties disagree on the issue, the Commission has the authority, pursuant to Section 310(7) of Act 179, to set the access rates. Third, the Commission is persuaded that a discount will serve as an economic incentive for Ameritech Michigan and GTE to meet the conversion schedule. The Commission therefore concludes that a 55% discount on switched access charges in those end-offices that do not meet the cutover date in the conversion schedule should be adopted.

Ameritech does not directly challenge the soundness of the PSC's conclusion that the lack of scheduled dialing parity access service offered by the offices that do not comply with the conversion schedule may justify a discounted rate. Rather, Ameritech challenges the discount rate solely on procedural grounds, essentially arguing that the PSC cannot use its ratemaking authority as a substitute for its penalty powers under §601 of 1991 PA 179, MCL 484.2601; MSA 22.1469(601). This simply is not so. The PSC can indeed use its ratemaking authority to compel or punish the conduct of regulated utilities by outlining the rate-making consequences of certain acts or omissions. See, e.g., *Midland Cogeneration Venture Limited Partnership v Public Service Comm*, 199 Mich App 286, 324-326; 501 NW2d 573 (1993) (Taylor, J., dissenting in part) (PSC may control a utility's transactions with its corporate affiliates and compel disclosure of corporate affiliate information indirectly through use of the PSC's rate-making authority). This is essentially what the PSC has done here by adopting the 55% discount rate for offices that fail to switch to intraLATA dialing parity according to the PSC's conversion schedule. Basically, the PSC is simply outlining the potential rate-making consequences of failing to comply with the PSC's dialing parity conversion schedule.

Ameritech's objection that no party has ever filed a new, separate complaint in these proceedings specifically requesting the PSC to resolve an access rate dispute pursuant to §310(7) of 1991 PA 179, MCL 484.2310(7); MSA 22.1469(310)(7), is hypertechnical and premature given the advisory nature of the PSC's ruling on the 55% discount rate. We do not interpret the PSC's decision as necessarily foreclosing Ameritech or the other LECs from ever seeking relief from the 55% discount rate, if and when such a rate ever takes effect, on grounds that the LECs' failure to comply with the conversion schedule is due to unforeseen circumstances or is excusable for other reasons. Presumably, under those circumstances, the delinquent party would be afforded an opportunity to establish the reason for its noncompliance with the conversion schedule. This would, in effect, provide the noncomplying party with the same procedural protections provided by §601 of 1991 PA 179, MCL 484.2601; MSA 22.1469(601), with respect to the imposition of penalties.

Appellants also challenge the reasonableness and lawfulness of the PSC's decision to require them to bear a portion of the intraLATA dialing parity conversion costs as well as various other aspects

of the PSC's decision that allegedly require appellants to subsidize their intraLATA toll market competitors. Again, we are unpersuaded that appellants have met their burden of rebutting the presumptive reasonableness and lawfulness of the PSC's decision in this case. As we have already noted, most of the disputed issues in the implementation phase of this case called for an exercise of the PSC's legislative, policy-making authority. It is well established that this Court will not displace the PSC's choice between reasonable competing alternatives and will accord especial deference to the PSC's determinations where, as here, experimental legislation is involved. *GTE North, supra* at 165.

In *GTE North, supra* at 152-153, 162-166, this Court upheld the PSC's decision to require implementation of intraLATA dialing parity by a date certain regardless of whether appellants received corresponding federal interLATA relief by that date. In doing so, this Court recognized, as did the PSC, that there was a potential for appellants to be significantly disadvantaged if intraLATA dialing parity is implemented without corresponding federal interLATA relief, but there were also offsetting disadvantages to deferring implementation of dialing parity indefinitely to await further action by federal policymakers concerning the issue of interLATA relief. This Court found that the PSC was essentially required to make a "judgment call" based upon the various pros and cons of requiring implementation of dialing parity by a date certain versus maintaining the status quo indefinitely, and refused to overturn the judgment of the PSC where the PSC had identified cogent reasons for preferring the former situation to the latter. *Id* at 164-166.

Similarly, many of the decisions at issue here essentially involve the PSC's "judgment call" regarding a choice between reasonable competing alternatives involving the tension between the potential disadvantages for appellants in the absence of corresponding federal interLATA relief and the potential disadvantages to the development of a fully competitive intraLATA toll market if appellants continue to exclusively enjoy the benefits of "1+ dialing" for intraLATA toll service. For example, Ameritech's argument that their participation in implementation cost recovery should have been deferred until corresponding federal interLATA relief is granted roughly parallels the arguments made in *GTE North, supra*, that implementation of intraLATA dialing parity should itself be deferred until corresponding federal interLATA relief is granted. *Id.* at 162-166. By concluding that "all providers of intraLATA toll service should pay the implementation costs because that is most consistent with full intrastate toll competition," the PSC essentially concluded in this case that deferring appellants' participation in implementation cost responsibility would substantially impede the transition to full intrastate toll competition, and the potential advantages to full intrastate toll competition outweigh the potential disadvantages to appellants in the absence of corresponding intraLATA relief.

Appellants do not appear to seriously dispute the fact that granting them immunity from implementation cost recovery places them at an advantage vis-a-vis other intraLATA carriers bearing those costs as far as competition in the intraLATA market itself is concerned. Rather, appellants are arguing, in effect, that such an advantage is necessary to offset the other competitive advantages that the IXCs enjoy as a result of appellants' inability to compete in the interLATA toll market, i.e., the ability of the IXCs to offer "one stop shopping" for both intraLATA and interLATA long distance service. As recognized by this Court *GTE North, supra*, however, there is nothing inherently unlawful, unreasonable, arbitrary or capricious about the PSC's refusal to continue allowing appellants to enjoy

competitive advantages in the intraLATA toll market as a means of offsetting any inequalities in the interLATA toll market where the PSC acts to further fully effective competition in the intraLATA toll market.

The PSC's decisions regarding the BFR and voluntary versus mandatory participation issues are also consistent with the goal of furthering fully effective intraLATA toll market competition. The BFR issue essentially required the PSC to interpret the intent behind its own February 24, 1994 decision and, therefore, the PSC's resolution of that issue is entitled to substantial deference on appeal. See, e.g., *Ass'n of Businesses Advocating Tariff Equity v Public Service Comm*, 212 Mich App 371, 378-380; 538 NW2d 30 (1995); *Michigan Gas Utilities v Public Service Comm*, 200 Mich App 576, 582; 505 NW2d 27 (1993). By interpreting its February 24, 1994 decision as requiring implementation of intraLATA dialing parity in virtually all exchanges, the PSC acted in the interest of establishing a fully competitive intraLATA toll market because lack of dialing parity itself operates as an impediment to effective competition. There are, of course, some countervailing risks that appellants may be competitively disadvantaged in some respects, such as the arguable potential for "cream skimming" identified in appellants' briefs on appeal. The PSC found it doubtful, however, that appellants will incur costs to convert exchanges where no IXCs will provide service given MCI's expressed intention, in the earlier phase of the proceeding, to offer intraLATA toll service in all of the exchanges. While appellants obviously do not share the PSC's confidence in MCI's indication of intent, the fact remains that what is involved here is a weighing of the various pros and cons regarding the PSC's choice of competing implementation methodologies. Whereas reasonable persons may disagree as to the weight that these competing considerations should receive, the PSC's choice, favoring transition to a fully competitive intraLATA toll market place, is not unreasonable, arbitrary, capricious, or an abuse of discretion. *GTE North, supra* at 162, 165-166.

The same thing can be said about the PSC's refusal to assess the EARC charge on a "per minute of usage" basis. The PSC noted that the implementation costs in question are a function of the number of access lines converted rather than the costs associated with usage. Again, appellants are essentially seeking to overturn the PSC's reasoned "judgment call" regarding the likelihood that the IXCs will fail to compete in some exchanges once intraLATA dialing parity is available.

The PSC also articulated cogent reasons for refusing to make certain indirect costs subject to recovery through the EARC charge:

> The Commission finds that only those costs directly attributable to intraLATA dialing parity should be subject to recovery through the EARC. Specifically, the costs for software upgrades that would have taken place regardless of the implementation of intraLATA dialing parity should not be included in the EARC. Recovery of those non-dialing parity costs can be recovered through other mechanisms. Furthermore, the Commission is persuaded that the need for additional trunk terminations and related equipment is uncertain at this time and, therefore, those costs should not be subject to recovery through the EARC. The Commission agrees with the IXCs and the Staff that, if those costs materialize, they can be recovered through other access charges.

Regarding the issue of "stranded investment" costs, the PSC apparently relied upon the reasoning offered by its staff and the state attorney general, summarized at page 25 of the PSC's March 10, 1995 opinion, viewing those costs as the effects of market competition rather than conversion to intraLATA dialing parity itself and thus inappropriate for inclusion as part of the costs recovered for the EARC charge. We are unpersuaded that the PSC's reasoning in support of its resolution of these issues is unreasonable or unlawful.

We disagree with appellants' objection that the PSC's customer notification requirements constitute improper forced subsidization of their competitors' business. As noted by the PSC, it is expected that the material to be distributed to appellants' customers will be neutral in nature so that no carrier is advantaged or disadvantaged, and the material will be previewed by the PSC's staff to insure that this is so. Merely providing neutral notice to customers that they will now be able to choose their intraLATA toll carrier without having to change their dialing pattern hardly constitutes advertising or subsidization in favor of the competing services offered by the IXCs. Rather, appellants simply will be notifying their customers that, in effect, continued use of appellants' intraLATA toll services will now be optional, rather than mandatory by default when 1+ dialing is used.

While appellants correctly note that IXCs such as AT&T and MCI do an extensive amount of nationwide advertising, such advertising, however extensive, hardly suffices as a substitute for direct notice from the customer's own local exchange provider. Customers naturally look to the billing materials received from their own exchange providers for an itemized explanation of the billed costs and services, and it seems entirely logical and reasonable that customers should be notified of the optional nature of the services provided by that means as well. Nor do we agree with appellants that advising customers of their options benefits the IXCs only, because, after all, customers can always elect either appellant, instead of an IXC, as their intraLATA toll carrier. Moreover, as noted by the PSC, appellants will be fully compensated for providing the required notice as an implementation cost.

We also reject appellants' objection that the PSC's customer notification, cost recovery, and other implementation requirements constitute a confiscation of appellants' property in violation of their constitutional rights. Virtually all of the cases appellants cited in support of their arguments are distinguishable because those cases involved private property not committed to public use. Here, the mere fact that the IXCs derive some benefit, as private companies, from the implementation of intraLATA dialing parity hardly suffices to establish that there is no public interest involved. Appellants' arguments overlook the fact that the general public benefits from the transition to a fully competitive intraLATA toll market. This being so, the rulings of the PSC at issue here, made in furtherance of the transition to a fully competitive intraLATA toll marketplace, constitute a lawful exercise of regulatory police power in the public's interest rather than a taking or exercise of eminent domain, notwithstanding any incidental benefits which may accrue to appellants' intraLATA market competitors. Cf., *Michigan State Telephone Co v Michigan Railroad Comm*, 193 Mich 515, 522-524; 161 NW 240 (1916).

Finally, we reject GTE's argument that the customer notification requirement violates GTE's First Amendment free speech rights. We find the cases cited by GTE distinguishable from the instant

situation, where only a neutral and objective notification of customer rights is required. *Mountain States Telephone & Telegraph Co v District Court*, 778 P2d 667, 675-676 (Colo, 1989).

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Jane E. Markey
/s/ Donald A. Teeple

[1] The proceedings in *GTE North, supra*, were conducted pursuant to the *former* Michigan Telecommunications Act, 1991 PA 179, MCL 484.2101 *et seq.;* MSA 22.1469(101) *et seq.*, effective January 1, 1993, which repealed and replaced public acts of 1883 and 1913 regulating telephone service. 1991 PA 179 ultimately lapsed after the instant appeals were filed, pursuant to a "sunset" expiration date of January 1, 1996, set forth in §604 of the act, MCL 484.2604; MSA 22.1469(604). In its place, the Legislature has now enacted a new Michigan Telecommunications Act, 1995 PA 216, which is also codified at MCL 484.2101 *et seq*.; MSA 22.1469(101) *et seq*. Because the briefing in these appeals were completed before the enactment of 1995 PA 216, the new statutory provisions are not discussed herein and any statutory citations in this opinion only refer to 1991 PA 179.