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AT&T Communications of the Midwest, Inc., and TCG Omaha, Inc., an Iowa telecommunications corporation, appellants and cross-appellees, v. Nebraska Public Service Commission, an administrative agency of the State of Nebraska, et al., appellees and cross-appellants, and CenturyLink, a Louisiana telecommunications corporation, et al., appellees.

811 N.W.2d 666

Filed February 3, 2012. No. S-11-258.

1. **Administrative Law: Judgments: Appeal and Error.** A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record.
2. ____: ____: ____. When reviewing an order of a district court under the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-920 (Reissue 2008, Cum. Supp. 2010 & Supp. 2011), for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. **Administrative Law: Appeal and Error.** In an appeal under the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-920 (Reissue 2008, Cum. Supp. 2010 & Supp. 2011), an appellate court will not substitute its factual findings for those of the district court where competent evidence supports the district court's findings.
4. **Administrative Law: Statutes: Appeal and Error.** The interpretation of statutes and regulations presents questions of law, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.
5. **Statutes: Appeal and Error.** The rules of statutory interpretation require an appellate court to give effect to the entire language of a statute, and to reconcile different provisions of the statute so they are consistent, harmonious, and sensible.
6. **Statutes: Legislature: Intent.** Components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible.
7. **Statutes: Appeal and Error.** An appellate court will not read into a statute a meaning that is not there.

Appeal from the District Court for Lancaster County: Karen B. Flowers, Judge. Reversed and remanded with directions.

Loel P. Brooks, of Brooks, Pansing & Brooks, P.C., L.L.O., and Leo J. Bub for appellants AT&T Communications of the Midwest, Inc., and TCG Omaha, Inc.

Jon Bruning, Attorney General, and L. Jay Bartel for appellee Nebraska Public Service Commission.

Paul M. Schudel and James A. Overcash, of Woods & Aitken, L.L.P., for appellees "Rural Independent Companies."

Steven G. Seglin, of Crosby Guenzel, L.L.P., for appellee MCI Communications Services, Inc., doing business as Verizon Business Services.

HEAVICAN, C.J., CONNOLLY, GERRARD, MCCORMACK, and MILLER-LERMAN, JJ.

HEAVICAN, C.J.

INTRODUCTION

This case involves a dispute between AT&T Communications of the Midwest, Inc., and TCG Omaha, Inc. (collectively AT&T), and the Nebraska Public Service Commission (PSC) regarding the correct interpretation of Neb. Rev. Stat. § 86-140 (Reissue 2008). That section governs the regulation of access charges. In its order, the PSC determined that telecommunications companies like AT&T could seek the negotiation and review of access charges under § 86-140 only when a local exchange carrier had implemented new or revised access charges, and not "at will," as was contended by AT&T.

AT&T appealed to the district court, which reversed in part and in part modified the decision of the PSC. AT&T now appeals from the order of the district court, and the PSC, joined by various rural independent telecommunications companies, cross-appeals. We reverse the decision of the district court and remand the cause to the district court with directions to remand the case to the PSC to enter an order consistent with this opinion.

BACKGROUND

On February 24, 2009, the PSC opened an investigation into access charge policies under § 86-140. Though not entirely clear from the record, it appears this investigation stemmed, at least in part, from an access charge dispute between AT&T and a local exchange carrier which required an interpretation of § 86-140.

Section 86-140 provides in relevant part:

> (1) Access charges imposed by telecommunications companies for access to a local exchange network for interexchange service shall be negotiated by the telecommunications companies involved. Any affected telecommunications company may apply for review of such charges by the commission, or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within ninety days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.
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> . . . .
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> (3) For purposes of this section, access charges means the charges paid by telecommunications companies to local exchange carriers in order to originate and terminate calls using local exchange facilities.

On April 23 and June 10, 2009, AT&T and several other interested parties filed comments as part of the PSC's investigation. On January 6, 2010, the PSC held a hearing on the issue. More comments were filed by AT&T and others on February 16 and 26.

On April 20, 2010, the PSC issued an order concluding that negotiation and review under § 86-140 was available for only new or revised access charges. AT&T requested a review of that order with the district court on May 20. A hearing was held on August 30, and on February 24, 2011, the district court entered its order holding that § 86-140 was available for new or revised access charges and also in those situations where prior agreements regarding access charges had expired and negotiations for a new agreement were unsuccessful. AT&T filed a motion for clarification, which was denied. AT&T now appeals. The PSC, joined by the rural independent companies, cross-appeals.

ASSIGNMENTS OF ERROR

On appeal, AT&T assigns, restated, that the district court erred in its interpretation of § 86-140. Specifically, AT&T argues that it is entitled to seek negotiation and review under § 86-140 at any time, or "at will," and not just during the time periods as found by the district court.

On cross-appeal, the PSC and the rural independent companies assign, also restated and consolidated, that the district court erred in failing to affirm the PSC's finding that only new or revised access charges are reviewable under § 86-140.

STANDARD OF REVIEW

[1-3] A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-920 (Reissue 2008, Cum. Supp. 2010 & Supp. 2011), may be reversed, vacated, or modified by an appellate court for errors appearing on the record.[1] When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry

[1] *Tyson Fresh Meats v. State*, 270 Neb. 535, 704 N.W.2d 788 (2005).

is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.[2] In an appeal under the Administrative Procedure Act, an appellate court will not substitute its factual findings for those of the district court where competent evidence supports the district court's findings.[3]

[4] The interpretation of statutes and regulations presents questions of law, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.[4]

ANALYSIS

Arguments of Parties.

The only issue presented by AT&T's appeal and the PSC's and the rural independent companies' cross-appeals is the proper interpretation of § 86-140(1). AT&T argues that the PSC and the district court erred by not holding that § 86-140 permits a telecommunications company to initiate negotiations concerning access charges at any time and, failing such negotiations, seek "at will" review of such access charges. Specifically, AT&T contends that there is no language in § 86-140 imposing any limits on an affected carrier's right to seek negotiations and review of another carrier's access charges.

In support of its interpretation, AT&T directs this court to the federal Telecommunications Act of 1996 and 1999 Neb. Laws, L.B. 514, which was the Legislature's response to the 1996 federal act. Specifically, AT&T argues that L.B. 514 sought to make access charge reform and the review of access charges "easier, more standardized and more rapidly responsive to the ever-changing demand of the nation's regulatory environment and competitive market conditions."[5] But, AT&T contends, the district court's order does the opposite: it "restrict[s], limit[s],

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[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Brief for appellants at 12.

encumber[s and] discourage[s] access reform and the review of carrier access charges."[6]

The PSC and the rural independent companies, while agreeing with the district court that "at will" review is unavailable, take issue with the district court's further conclusion that review under § 86-140 is also available for expired agreements. Essentially, they argue that review is available under § 86-140 for only new and revised access charges.

The PSC and the rural independent companies first suggest that AT&T's interpretation allowing "at will" review would render the negotiation requirement of § 86-140 meaningless and would open the floodgates to access charge reviews, which under the statute have to be conducted within a relatively short timeframe. They suggest that allowing such a review would overwhelm the PSC. They further reason that other avenues exist for an "at will" review, namely Neb. Rev. Stat. § 75-119 (Reissue 2009). This section, codified within the statutes setting forth more general provisions relating to the PSC, states:

> When any common carrier or other interested person petitions the commission alleging that a rate, rule, or regulation should be prescribed when none exists or alleging that an existing rule, regulation, or rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing. The minimum notice to be given under this section shall be ten days. The order granting or denying the petition or application shall be mailed to the parties of record. If a petition or application is not opposed after notice has been given, the commission may act upon such petition or application without a hearing.

The PSC and the rural independent companies argue that because of the availability of this review process, the Legislature did not intend for § 86-140 to be the primary mechanism to conduct such reviews.

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[6] *Id.*

They also contend that the "filed rate" doctrine is applicable here and that application of this doctrine requires the conclusion that, as was found by the PSC, only new and revised access charges are subject to review.

The "filed rate" doctrine, which has been adopted in both Nebraska[7] and other jurisdictions,[8] prohibits a regulated entity, like a telecommunications common carrier, from charging any rate other than the rate filed with the relevant regulatory authority—in this case, the PSC.[9] The purpose of the doctrine is to (1) preserve the regulating agency's authority to determine the reasonableness of the rate and (2) ensure that the regulated entities charge only those rates that the agency has approved or has been aware of as the law may require.[10] Consistent with this doctrine, the PSC and the rural independent companies assert that it is not an agreement between the parties that establishes these access charges, but instead, the access charges are controlled by the rate sheets filed by the various carriers. And because a rate sheet controls until a new one is filed by a carrier, there can never be an expiring agreement. As such, the district court was incorrect insofar as it concluded that expiring agreements were subject to review under § 86-140.

Resolution.

Our rules of statutory interpretation are familiar. In examining the language of a statute, its language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.[11]

Section 86-140 states that "[a]ccess charges . . . shall be negotiated by the telecommunications companies involved," and further that "[a]ny affected telecommunications company

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[7] See *In re Formal Complaint of Nebco, Inc.*, 212 Neb. 804, 326 N.W.2d 167 (1982).

[8] See, e.g., *H.J. Inc. v. Northwestern Bell Telephone Co.*, 954 F.2d 485, 488 (8th Cir. 1992).

[9] See *Firstcom, Inc. v. Qwest Corp.*, 555 F.3d 669 (8th Cir. 2009).

[10] *H.J. Inc. v. Northwestern Bell Telephone Co., supra* note 8.

[11] *Skaggs v. Nebraska State Patrol*, 282 Neb. 154, 804 N.W.2d 611 (2011).

may apply for review of such charges . . . .” Our examination reveals nothing in § 86-140 that would limit the availability of the negotiation and review process, nor will this court read such limitations into § 86-140.

[5-7] We agree with the PSC and the rural independent companies that the rules of statutory interpretation require this court to give effect to the entire language of a statute, and to reconcile different provisions of the statute so they are consistent, harmonious, and sensible.[12] Moreover, as the PSC also notes, components of a series or collection of statutes pertaining to a certain subject matter are in pari materia and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible.[13] However, neither of these principles allows this court to read into a statute a meaning that is not there.[14] And the language of § 86-140 is plain, direct, and unambiguous, and not in need of any further interpretation.

The Legislature could easily have chosen to include language in § 86-140 that would limit the rights of telecommunications companies to seek negotiation and review. It failed to do so. We accordingly conclude that the decision of the district court placing certain limitations on the § 86-140 negotiation and review process is reversed, and the cause is remanded with directions. We conclude that the plain language of § 86-140 envisions both a negotiation and a review process that is not limited by the statute. While we acknowledge the PSC and the rural independent companies’ concerns regarding the practical consequences of our holding today, we are constrained by the words chosen by the Legislature in enacting § 86-140. And simply put, those words contain no limitation on the right to negotiate or review access charges.

Given this conclusion, we reject the PSC’s and the rural independent companies’ cross-appeals.

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[12] See *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

[13] See *Travelers Indem. Co. v. Gridiron Mgmt. Group*, 281 Neb. 113, 794 N.W.2d 143 (2011).

[14] See *Cargill Meat Solutions v. Colfax Cty. Bd. of Equal.*, 281 Neb. 93, 798 N.W.2d 823 (2011).

CONCLUSION

The decision of the district court is reversed. We remand the cause to the district court with directions to remand the case to the PSC to enter an order not inconsistent with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.

WRIGHT and STEPHAN, JJ., not participating.

SARPY COUNTY FARM BUREAU, A NEBRASKA NONPROFIT CORPORATION, ET AL., APPELLEES, V. LEARNING COMMUNITY OF DOUGLAS AND SARPY COUNTIES, ET AL., APPELLANTS, AND SARPY COUNTY TREASURER, RICH JAMES, IN HIS OFFICIAL CAPACITY, ET AL., APPELLEES.

808 N.W.2d 598

Filed February 3, 2012. No. S-11-805.

1. **Constitutional Law: Statutes: Appeal and Error.** Whether a statute is constitutional is a question of law; accordingly, the Nebraska Supreme Court is obligated to reach a conclusion independent of the decision reached by the court below.
2. **Pleadings.** A pleading serves to guide the parties and the court in the conduct of cases, and thus the issues in a given case are limited to those which are pled.
3. **Legislature: Municipal Corporations: Taxation: Property.** The levy of a property tax by a local governmental unit should not be treated as a state levy for state purposes merely because the Legislature has authorized or required the local governmental unit to make the levy. The converse is also true; where the Legislature has authorized and required local governmental units to make a property tax levy for state purposes, it should not be treated as a local levy for local purposes merely because it is made by a local governmental unit.
4. **Taxation.** The fact that a tax is for a governmental purpose does not automatically make it for state purposes rather than local purposes. This is so because in many, if not most, cases a governmental function may be accurately described as having both state and local purposes.
5. **Statutes: Intent.** Where state and local purposes are commingled in a statutory enactment, the crucial determination is whether the controlling and predominant purposes are state purposes or local purposes. While this is a judicial question, there is no sure test by which state purposes may be distinguished from local purposes. The court must consider each case as it arises and draw the line of demarcation.
6. **Taxation: Statutes: Legislature: Intent: Evidence.** In deciding whether a state or a local purpose predominates, the language of the statutory scheme is of prime