

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN BELL TELEPHONE CO. d/b/a
AMERITECH MICHIGAN,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,
HARPER AVENUE LLC d/b/a CUSTOM VAN
ENTERPRISES INC., and d/b/a CENTRAL
AUTO LEASING,

Appellees.

UNPUBLISHED
December 28, 2001

No. 226087
Public Service Commission
LC No. 00-011983

HARPER AVENUE LLC,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION
and MICHIGAN BELL TELEPHONE CO.,

Appellees.

No. 228193
Public Service Commission
LC No. 00-011983

Before: O'Connell, P.J., and Sawyer and Smolenski, JJ.

O'CONNELL, P.J. (*dissenting*).

The Public Service Commission (PSC) concluded that Ameritech's conduct amounted to technical violations of the Michigan Telecommunications Act (MTA), MCL 484.2101. However, under the circumstances, I believe that the PSC abused its discretion in imposing a fine against Ameritech in the amount of \$100,000. This Court may reverse a decision of the PSC where it is unlawful. *In re MCI Telecommunications Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999). A decision is unlawful where the PSC has abused its discretion. *Id.* In the instant case, the record evidence is clear that Custom Van Enterprises, Inc. (CVE) was dilatory in

paying regulated charges appearing on its phone bill at the time its phone service was disconnected.¹

Further, I agree with the hearing officer's conclusion that, pursuant to MCL 484.2314(1),² Ameritech was authorized to disconnect phone service for the non-payment of regulated charges. Therefore, I would remand with instructions that the PSC impose a fine more in line with a technical violation rather than a punitive violation in Docket No. 226087.

/s/ Peter D. O'Connell

¹ At the time phone service was disconnected CVE owed \$1,233.80 in regulated charges. Further, according to the testimony of CVE's president, John Maniaci, unregulated charges of approximately \$15,000 had accrued on CVE's phone bill since 1994, but CVE only paid the regulated charges that appeared on each bill.

² MCL 484.2314 is repealed effective December 31, 2005. See MCL 484.2604.