

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of	)	
<b>HARPER AVENUE L.L.C., d/b/a CUSTOM VAN</b>	)	
<b>ENTERPRISES, INC., and HARPER AVENUE</b>	)	Case No. U-11983
<b>L.L.C., d/b/a CENTRAL AUTO LEASING, against</b>	)	
<b>AMERITECH MICHIGAN.</b>	)	
_____	)	

At the June 5, 2000 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner  
Hon. Robert B. Nelson, Commissioner

**ORDER DENYING REHEARING**

On May 20, 1999, Harper Avenue L.L.C., d/b/a Custom Van Enterprises, Inc. (CVE), and Harper Avenue L.L.C., d/b/a Central Auto Leasing (CAL), (collectively, Custom Van) filed a complaint against Ameritech Michigan alleging violations of the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq. (the Act). Among other things, Custom Van alleged that Ameritech Michigan discontinued CVE's regulated, local exchange service for failure to pay disputed charges for unregulated service, namely yellow pages advertising provided by an Ameritech Michigan affiliate, Ameritech Publishing, Inc. On July 26, 1999, Custom Van filed an amended complaint inserting allegations of misrepresentation on the part of Ameritech Michigan, asserting that Ameritech Michigan violated Sections 314, 502, and 305 of the Act, and

requesting numerous forms of relief. On July 30, 1999, Custom Van revised the complaint a second time. Ameritech Michigan filed an answer on August 20, 1999 in which it asserted that CVE's service had been properly discontinued and that no violations of the Act had occurred.

On February 22, 2000, the Commission issued an order (the February 22 order) granting, in significant part, Custom Van's complaint and requests for relief.

On March 23, 2000, Custom Van filed a petition for rehearing claiming that five of the conclusions reached by the Commission in its February 22 order were erroneous. On April 13, 2000, Ameritech Michigan filed a response to Custom Van's petition.<sup>1</sup>

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACRS, R 460.17403, (Rule 403) provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The five claims of error set forth in the petition for rehearing are as follows. First, Custom Van claims that because Ameritech Michigan charged CVE for services that it never requested, the Commission should have found a violation of Section 502(b) of the Act. Second, Custom Van asserts that the Commission erred by failing to find Ameritech Michigan's defenses to be so

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<sup>1</sup>Custom Van filed a reply to that response on April 20, 2000 (prompting Ameritech Michigan to file a motion to strike Custom Van's reply on April 26, 2000). The Commission's Rules of Practice and Procedure do not provide for a reply to a response to a petition for rehearing. Consequently, Custom Van's reply (as well as Ameritech Michigan's motion to strike that reply) will not be considered.

frivolous as to justify the payment of attorney fees pursuant to Section 209 of the Act. Third, it contends that it was erroneous to deny CAL's request for compensatory damages, which CAL allegedly sustained because (1) it lost referrals from CVE while CVE's service was turned off and (2) it likely missed some of its own business calls during the times in which CVE's employees made use of CAL's phones. Fourth, Custom Van asserts that the Commission was wrong in rejecting its request to issue additional cease and desist orders beyond those contained in the February 22 order. Fifth and finally, Custom Van argues that the Commission erred in rejecting a portion of its request for non-legal litigation expenses. Among other things, Custom Van claims that the fact that it was late in submitting an updated version of its litigation expense summary-- Exhibit C-12(R)--constitutes insufficient reason for the Commission to exclude from consideration expenses related to work performed by its owners (John and Cheryl Maniaci) in resolving the dispute.

In its response, Ameritech Michigan argues that Custom Van's petition offers nothing new to suggest that rehearing is warranted. Rather, it points out, the complainants in this case merely "rehash their arguments in hopes that the Commission will change its mind simply by the reiteration of those arguments." Ameritech Michigan's response, p. 3. As a result, Ameritech Michigan continues, Custom Van failed to satisfy the standard for rehearing set forth in Rule 403.

The Commission agrees with Ameritech Michigan and concludes that the petition for rehearing should be rejected. As noted by Ameritech Michigan, Custom Van's claims of error merely repeat arguments previously submitted in the Complainants' brief, reply brief, exceptions, and replies to exceptions. These arguments were fully considered and dealt with by the Commission in the February 22 order. Thus, each of Custom Van's five claims of error fails to support rehearing.

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 AACRS, R 460.17101 et seq.
- b. Custom Van's March 23, 2000 petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed on March 23, 2000 by Harper Avenue L.L.C., d/b/a Custom Van Enterprises, Inc., and Harper Avenue L.L.C., d/b/a Central Auto Leasing, is 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 E A L )

/s/ John G. Strand  
Chairman

By its action of June 5, 2000.

/s/ David A. Svanda  
Commissioner

/s/ Dorothy Wideman  
Its Executive Secretary

/s/ Robert B. Nelson  
Commissioner

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated June 5, 2000 denying the petition for rehearing filed by Harper Avenue L.L.C., d/b/a Custom Van Enterprises, Inc., and Harper Avenue L.L.C., d/b/a Central Auto Leasing, as set forth in the order.”