

STATE OF MICHIGAN
COURT OF APPEALS

AMERITECH MICHIGAN,

Appellant,

V

MICHIGAN PUBLIC SERVICE COMMISSION
and NEXTLINK MICHIGAN, INC.,

Appellees.

UNPUBLISHED

August 17, 2001

No. 218261

Public Service Commission
00-011825

Before: K.F. Kelly, P.J., and White and Talbot, JJ.

PER CURIAM.

Ameritech Michigan appeals as of right the order of the Public Service Commission (PSC) entered on the complaint filed by appellee Nextlink Michigan. We reverse as to the award of attorney fees only.

Nextlink filed a complaint with the PSC asserting that Ameritech violated § 359(2) of the Michigan Telecommunications Act (MTA), MCL 484.2359, by failing to provide Nextlink with an interconnection agreement similar to another provider. After administrative proceedings, the PSC issued an opinion and order finding that Nextlink was entitled to the requested relief. The PSC declined to impose a fine on Ameritech, finding that the precise issue raised by Ameritech had not been previously decided. The PSC awarded reasonable costs, including attorney fees, to Nextlink.

MCL 484.2601 provides that if the commission finds a violation of the act, it shall order remedies and penalties to make whole persons who have suffered an economic loss as a result of the violation. This Court has held that the language of § 601 is not sufficient to confer authority to award attorney fees to a prevailing party. *In re Complaint of Southfield*, 235 Mich App 523, 533; 599 NW2d 760 (1999). The term “economic loss” has acquired a peculiar and specific meaning in the law, and it does not include attorney fees. *Id.* at 534. Michigan jurisprudence precludes such an expansive interpretation of statutory language with reference to attorney fees. *Id.* Where the Legislature intended to authorize an award of attorney fees under the MTA, it did so explicitly. *Id.*; MCL 484.2209(1).

Following *In re Complaint of Southfield*, § 601 does not provide a basis for an award of attorney fees.¹ Where the PSC found that Ameritech raised an issue that had not been specifically addressed before, there is no basis for finding its defense was frivolous, and thus attorney fees could not have been awarded under § 209 of the act.

Appellees assert that the matter should be remanded to the PSC to allow the PSC to determine an appropriate fine. The PSC declined to impose a fine in its opinion and order. Appellees did not cross-appeal, and this issue is not preserved. MCR 7.207.

Reversed as to the award of attorney fees only.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Michael J. Talbot

¹ At oral argument, counsel for the PSC raised for the first time the amendment to MCL 484.2601. Counsel argued that the amendment applies to this case and also that the amendment has retroactive application. Because the amendment became effective July 17, 2000, and counsel neither sought leave to amend its brief nor filed a supplemental brief, see MCR 7.212(F), we decline to address the issue under these circumstances.