

Court of Appeals, State of Michigan

ORDER

Westphalia Telephone Company v AT&T Corp

Docket No. 326100

LC No. 00-017619

Peter D. O'Connell
Presiding Judge

Patrick M. Meter

Michael F. Gadola
Judges

The Court orders that appellee Michigan Public Service Commission's (MPSC) motion to remand is DENIED because, by the plain language of MCR 7.211(C)(1)(a), only an appellant may file a motion to remand. Accordingly, to grant a motion to remand filed by an appellee would improperly render nugatory or mere surplusage the language of MCR 7.211(C)(1)(a) limiting the ability to file a motion to remand to an appellant. See, e.g., *Yudashkin v Linzmeyer*, 247 Mich App 642, 652; 637 NW2d 257 (2001) (constructions that would render part of a court rule surplusage or nugatory must be avoided). Further, even apart from the limitation of the ability to file a motion to remand to an appellant, it does not appear that a remand would be warranted at this time as to the legal issue raised by the MPSC.

O'Connell, P.J., would vacate the decision of the MPSC and, on remand, would direct the MPSC to consider this case in light of the March 18, 2015 FCC memorandum opinion and order. It would be in the interests of judicial economy to have the MPSC consider this memorandum before the Court considers this appeal. I would vacate and remand for consideration in light of the previous FCC ruling.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 14 2015

Date

Chief Clerk