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THE CT'S ORDER ON MOTION
TO DISMISS - 991534
Intermedia v. Boltsco



U.S. District Court



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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

INTERMEDIA COMMUNICATIONS INC.,

Plaintiff,

v.

CASE NO. 4:00cv0386-PH

THE FLORIDA PUBLIC SERVICE
COMMISSION, et al.,

Defendants.

ORDER ON MOTION TO DISMISS

This is an action challenging a decision of the Florida Public Service Commission interpreting an interconnection agreement (as amended) between defendant BellSouth Telecommunications, Inc. (an incumbent local exchange carrier) and plaintiff Intermedia Communications Inc. (a

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Paisano, Cantero, Rapelle, Conis, Lobel, Smith

DEC 21 11 53 AM '00
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competing local exchange carrier). Intermedia has named as additional defendants the Florida Public Service Commission and its individual Commissioners in their official capacities.

The Florida Commission and its Commissioners have moved to dismiss the complaint based on Eleventh Amendment immunity and for failure to state a claim on which relief may be granted. I conclude that the Eleventh Amendment does not bar Intermedia's claims against the individual Commissioners to the extent based on federal law, does bar Intermedia's claims against the individual Commissioners to the extent based solely on state law, that the Florida Commission should be dismissed as a defendant, and that in other respects the motion to dismiss should be denied.

Under 47 U.S.C. § 252(e)(6), this court has jurisdiction to review certain "determinations" of state public service commissions for compliance with the federal Telecommunications Act of 1996. An action for judicial review of a state commission's decision may proceed against the individual commissioners in their official capacities in

accordance with Ex Parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), and thus is not barred by the Eleventh Amendment. See MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., 1997 WL 1133453 (N.D. Fla. 1997).

Ex Parte Young does not, however, authorize actions in federal court against state officials seeking to compel compliance with state law. See, e.g., Pennhurst State School and Hosp. v. Halderman, 465 U.S. 89, 121, 104 S. Ct. 900, 79 L.Ed.2d 67 (1984) (holding that the Eleventh Amendment bars any claim for injunctive relief based on state law against a state or against a state officer in his or her official capacity). Any claims by Intermedia against the Commissioners based solely on state law, unaffected by the requirements of the Telecommunications Act, thus are barred by the Eleventh Amendment.

With respect to the Florida Commission itself, the appropriate disposition is the same as in AT&T Comms., Inc. v. GTE Florida, Inc., No. 4:97cv300-RH (N.D. Fla. Dec. 17, 2000):

I dismiss this case as against the Florida Commission on the grounds that its presence in this case as a defendant is merely redundant to the presence of the Commissioners in their official capacities. Cf. Busby v. City of Orlando, 931 F.2d 764, 776 (11th Cir. 1991) (approving dismissal of official capacity defendants whose presence was merely redundant to naming of institutional defendant). I thus do not address the substantial issue of whether the Florida Commission has waived its Eleventh Amendment immunity from suit in federal court by choosing to conduct an arbitration and to render a determination explicitly subject to review in federal court. Compare, e.g., MCI Telecomms. Corp. v. Illinois Bell Tel. Co., 222 F.3d 323 (7th Cir. 2000) (finding waiver) with, e.g., GTE North, Inc. v. Strand, 209 F.3d 909, 922 n.6 (6th Cir. 2000) (expressing skepticism toward waiver theory). Any ruling on this issue in this case would make no real difference and thus appropriately should be avoided. Cf. Ashwander v. TVA, 297 U.S. 288, 341, 565 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring).

Id. (slip opinion at 6 n.2). Intermedia's claims against the Florida Commission in its name thus will be dismissed.

That leaves the issue of whether the complaint should be dismissed for failure to state a claim on which relief may be granted. A motion to dismiss for failure to state a claim should be granted only if it appears to a certainty that the plaintiff would be unable to recover under any set

of facts that could be proved in support of the complaint. See, e.g., Hunnings v. Texaco, Inc., 29 F.3d 1480, 1484 (11th Cir. 1994). The motion to dismiss now before the court does not meet this standard.

I need not address at this time the issue of the extent to which § 252(e)(6) authorizes review in federal court of state commission decisions interpreting interconnection agreements. It is enough for present purposes to recognize that there are at least some circumstances under which such review would be available; otherwise state commissions could render § 252(e)(6) virtually meaningless, simply by approving appropriate agreements but interpreting them in a manner inconsistent with the Telecommunications Act. That cannot be what Congress intended when it adopted § 252(e)(6). Whether this is a case in which the Florida Commission's interpretation is inconsistent with the Telecommunications Act is an issue that cannot properly be resolved on motion to dismiss.

Moreover, Intermedia clearly has stated a claim for declaratory relief regarding the meaning of its

interconnection agreement (as amended) with BellSouth. Even if it turns out that either interpretation of the agreement would not violate federal law, there remains a state law issue on which declaratory relief would be appropriate, at least absent a jurisdictional bar. Although the Commissioners have Eleventh Amendment immunity from claims based solely on state law, BellSouth does not. The procedural and jurisdictional issues that might be presented from any holding that federal law does not impact the interpretation of the agreement are not now before the court; what is clear is that the complaint states a claim on which relief could be granted, judged by the Hunnings standard.

For these reasons,

IT IS ORDERED:

1. Defendants' motion to dismiss (document 3) is GRANTED IN PART and DENIED IN PART. All claims against the Florida Public Service Commission in its name are dismissed. Any claims against the defendant Commissioners of the Florida Public Service Commission arising solely under state

law are dismissed. In all other respects the motion to dismiss is denied.

2. Within 28 days, the attorneys shall confer and submit a joint report on (a) whether they agree to submission of this matter based on the record compiled in the Florida Public Service Commission and appellate style briefs, (b) if so, a proposed briefing schedule, and (c) if not, all matters set forth in Federal Rule of Civil Procedure 26(f).

SO ORDERED this 20th day of December, 2000.



Robert L. Hinkle
United States District Judge