

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

BELLSOUTH
TELECOMMUNICATIONS, INC.,

CASE NO. 4:98-cv-404-W

Plaintiff,

vs.

*Copy of BellSouth/Zeder
Complaint as filed in
US District Court, Case
No. 4:98CV404-WS*

SUPRA TELECOMMUNICATIONS &
INFORMATION SYSTEMS, INC., THE
FLORIDA PUBLIC SERVICE
COMMISSION, THE HONORABLE J.
TERRY DEASON, in his official capacity as
a Commissioner of the Florida Public Service
Commission, THE HONORABLE JOE
GARCIA, in his official capacity as a
Commissioner of the Florida Public Service
Commission, and THE HONORABLE E.
LEON JACOBS, in his official capacity as a
Commissioner of the Florida Public Service
Commission,

Defendants.

COMPLAINT

Nature of the Action

ACK _____ 1. BellSouth Telecommunications, Inc. ("BellSouth") brings this action to seek
AFA _____
APP _____ review of a decision of the Florida Public Service Commission (the "PSC") under the federal
CAF _____ Telecommunications Act of 1996 (the "1996 Act"). The PSC decision at issue requires
CMU _____
CTR _____ BellSouth to provide Defendant Supra Telecommunications & Information Systems, Inc.
EAG _____ ("Supra") with what is known as "on-line editing capability." The PSC's imposition of that
LEG _____
JIN _____
DPC _____
RCH _____
SEC 1
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requirement is inconsistent with the 1996 Act, with the Federal Communications Commission (the "FCC") orders implementing the 1996 Act, and with BellSouth's agreements with Supra pursuant to the 1996 Act. It is also arbitrary and capricious, results from a failure to engage in reasoned decision-making, and is not supported by the record developed by the PSC. It should be declared unlawful, and all parties to this case should be enjoined from enforcing it against BellSouth.

Parties, Jurisdiction, and Venue

2. Plaintiff BellSouth is a Georgia corporation with its principal place of business in Georgia. BellSouth provides local telephone service throughout much of the State of Florida.

3. Defendant Supra is a Florida corporation with its principal place of business in Miami, Dade County, Florida. Supra also provides local telephone service in Florida. Supra may be served through its registered agent, Olukayode Ramos, at 2620 S.W. 27th Avenue, Miami, Florida 33133.

4. Defendant PSC is an agency of the State of Florida. The PSC is a "State Commission" within the meaning of 47 U.S.C. §§ 153(41), 251 and 252.

5. Defendant Terry Deason is a Commissioner of the PSC. Commissioner Deason is sued in his official capacity for declaratory and injunctive relief only.

6. Defendant Joe Garcia is a Commissioner of the PSC. Commissioner Garcia is sued in his official capacity for declaratory and injunctive relief only.

7. Defendant E. Leon Jacobs is a Commissioner of the PSC. Commissioner Jacobs is sued in his official capacity for declaratory and injunctive relief only.

8. This Court has subject matter jurisdiction over the action pursuant to both 28 U.S.C. § 1331 and the judicial review provision of the 1996 Act, 47 U.S.C. § 252(e)(6). *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 804 n.24 (8th Cir. 1997) (State Commission contract enforcement decisions under 1996 Act reviewable in federal court), *cert. granted on other grounds*, 118 S. Ct. 879 (1998).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391. Venue is proper under § 1391(b)(1) because the Commissioner Defendants reside in this district. Venue is proper under § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in this district, in which the PSC sits.

The 1996 Act

10. Prior to this decade, local telephone service was generally provided in Florida and in other states by a single, heavily regulated company like BellSouth that held an exclusive franchise to provide such service. Congress enacted the 1996 Act in order to replace this exclusive franchise system with competition for local service. *See* 47 U.S.C. §§ 251-253.

11. As Congress explained, the 1996 Act creates a "pro-competitive, de-regulatory" framework for the provision of telecommunications services. S. Conf. Rep. No. 104-230, at 113 (1996) ("Conference Report"). To achieve that goal, Congress not only preempted all

state and local exclusive franchise arrangements (47 U.S.C. § 253), but also placed certain affirmative duties on incumbent local exchange carriers such as BellSouth to assist new entrants in the local market.

12. One of those duties is relevant here. Under 47 U.S.C. §§ 251(c)(3) and 252(d)(1), BellSouth must allow new entrants to lease BellSouth's "network elements" at cost-based rates. A "network element" is defined by the 1996 Act as "a facility or equipment used in the provision of a telecommunications service" as well as "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U.S.C. § 153(29).

13. The FCC has concluded -- in a determination that the Supreme Court is currently reviewing -- that certain "operations support systems" (or "OSS") qualify as "network elements" under the 1996 Act.¹ OSS refers to the computerized ordering, billing, and other similar systems that BellSouth and other incumbents use to support the provision of local service. The FCC requires that BellSouth provide new entrants with access to OSS that

¹ See First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15766-67, ¶¶ 522-23 (1996), *aff'd in relevant part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (1997), *cert. granted*, 118 S. Ct. 879 (1998).

allows those entrants to perform OSS functions in substantially the same time and manner as BellSouth.²

14. The terms under which BellSouth must provide access to OSS (and to other aspects of its business) are determined in the first instance through voluntary negotiation between BellSouth and potential local entrants such as Supra. *See* 47 U.S.C. § 252(a).

15. In the event that BellSouth cannot reach agreement with an entrant on that issue (or any other question arising under the 1996 Act), either party may petition the appropriate state commission to arbitrate that issue in accordance with the terms of the 1996 Act. *See id.* § 252(b)(1). Additionally, after the parties have reached a full agreement -- as a result of either negotiation or arbitration -- the state commission must approve or reject that entire agreement based on whether it meets the criteria set out in sections 251 and 252. *Id.* § 252(e).

16. Any party aggrieved by a state commission determination has a statutory right to bring suit in a federal district court. *Id.* § 252(e)(6).

Prior Proceedings and the PSC Decision at Issue Here

17. In 1997 and early 1998, BellSouth and Defendant Supra reached two agreements regarding the terms under which Supra could obtain access to BellSouth's

² Memorandum Opinion and Order, *Application of BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, FCC 98-271, ¶ 87 (rel. Oct. 13, 1998).

network. Those Agreements track the obligations that the FCC has placed on BellSouth by generally requiring BellSouth to provide Supra with OSS functionalities that allow Supra to provide its customers with service equivalent to what BellSouth provides to its own end-users. These agreements were both approved by the PSC.

18. On January 23, 1998, Supra filed a Complaint and a Petition for Resolution of Disputes with the PSC alleging, among other things, that BellSouth had failed to implement certain aspects of its OSS obligations under the agreements in a way that allowed Supra to provide local exchange service on parity with BellSouth. Supra's complaint and petition did not identify the question of whether BellSouth had provided an "on-line edit checking capability" -- that is, the ability to check whether an order contains errors before that order is processed by BellSouth -- as a matter in dispute. The PSC held a hearing on Supra's claims on April 30, 1998.

19. On July 22, 1998, the PSC issued an order rejecting nearly all of Supra's specific claims against BellSouth. In particular, the PSC concluded that BellSouth had generally provided Supra with adequate access to BellSouth's OSS. In its order, however, the PSC also determined that "the same interaction and edit checking capability must take place when [a new local entrant] is working an order as when BellSouth's retail ordering systems interact with [certain BellSouth databases] to check the accuracy of BellSouth's orders." July 22, 1998 Order at 22.

20. BellSouth believed that the PSC's ruling on this on-line editing issue was both beyond the scope of this proceeding and substantively inconsistent with the requirements placed on BellSouth by the 1996 Act and the FCC's regulations. Accordingly, BellSouth sought reconsideration before the PSC.

21. In an order issued on October 28, 1998, the PSC denied BellSouth's reconsideration motion. A copy of the October 28 order is attached hereto as Exhibit "A" and incorporated herein by reference.

Claim for Relief

22. Paragraphs 1 through 21 are incorporated by reference as if set forth fully herein.

23. The PSC's decision to require BellSouth to provide Supra with on-line editing capability is not consistent with the 1996 Act, the FCC regulations implementing that Act, or the agreements between Supra and BellSouth. That is true because, among other things, on-line editing capability is not properly understood as a part of OSS and, even if it were a part of OSS, the requirement imposed by the PSC is not necessary to ensure that BellSouth provides Supra with adequate access to OSS.

24. The PSC's decision is also arbitrary and capricious, results from a failure to engage in reasoned decision-making, and is not supported by the record developed in the PSC proceedings.

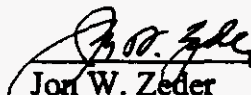
RELIEF REQUESTED

WHEREFORE, as relief for the harms alleged herein, BellSouth as an aggrieved party requests that this Court:

- a. declare that the PSC's and Commissioner Defendants' orders are invalid for the reasons discussed above.
- b. grant BellSouth declaratory and-injunctive relief to prevent all Defendants and anyone acting in concert with them from enforcing or attempting to enforce the PSC's orders to the extent that they require BellSouth to provide Supra with on-line editing capabilities;
- c. grant such other relief as may be sought by BellSouth in further pleadings and as may be appropriate in this case.

Signed on this the 24th day of November, 1998.

ADORNO & ZEDER, P.A.



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