

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA

BellSouth Telecommunications, Inc.,  
 Plaintiff,  
 v.  
 American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications; ACSI Local Switched Services, Inc. d/b/a e.spire Communications, 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 Susan F. Clark, in her official capacity as a Commissioner of the Florida Public Service Commission, and the Honorable E. Leon Jacobs, Jr., in his official capacity as a Commissioner of the Florida Public Service Commission,  
 Defendants.

Civil Action No. 4:99CV328-RH

AFA \_\_\_\_\_  
 APP \_\_\_\_\_  
 CAF \_\_\_\_\_  
 CMU \_\_\_\_\_  
 CTR \_\_\_\_\_  
 EAG \_\_\_\_\_  
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 SEC   1   \_\_\_\_\_  
 WAW \_\_\_\_\_  
 OTH \_\_\_\_\_

Complaint

Nature of the Action

1. BellSouth Telecommunications, Inc. ("BellSouth") brings this action to seek review of a decision of the Florida Public Service Commission (the "PSC") under the

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Telecommunications Act of 1996 (the "1996 Act"). The PSC decision at issue requires BellSouth to pay reciprocal compensation for Internet-bound calls to defendants American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (collectively, "e.spire"). The PSC's decision is inconsistent with the 1996 Act, arbitrary and capricious, contrary to the record evidence, and results from a failure to engage in reasoned decision-making. It should be declared unlawful, and the parties to this case, and anyone acting in concert with them, 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 American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. is a Maryland corporation with its principal place of business in Annapolis Junction, MD. It is qualified to do business in Florida. ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. also is a Maryland corporation with its principal place of business in Annapolis Junction, MD. It is qualified to do business in Florida. These defendants will be referred to collectively as "e.spire."

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

6. Defendant Susan F. Clark is a Commissioner of the PSC. Commissioner Clark is sued in her official capacity for declaratory and injunctive relief only.

7. Defendant E. Leon Jacobs, Jr. 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 28 U.S.C. § 1331, and the judicial review provision of the 1996 Act, 47 U.S.C. § 252(e)(6). Declaratory relief is also appropriate under 28 U.S.C. § 2201.

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 and Reciprocal Compensation for Internet Communications

10. Prior to this decade, local telephone service was generally provided in Florida and in other States by a single, heavily regulated company such as 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. 230, 104th Cong., 2d Sess. 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 ("incumbents") such as BellSouth to assist new entrants in the local market.

12. Several of those duties are relevant here. First, under 47 U.S.C. § 251(c)(2), BellSouth must allow new entrants to "interconnect" their networks with BellSouth's network, so that the entrants' customers can make calls to, and receive calls from, BellSouth's network.

13. Related to this interconnection obligation is the duty of all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). Reciprocal compensation works as follows. When a customer of Carrier A places a call to the customer of Carrier B in the same local calling area, Carrier A must pay Carrier B for terminating the call. By the same token, when a customer of Carrier B places a local call to a customer of Carrier A, Carrier B must pay Carrier A.

14. As the FCC has determined in a binding order, the obligation to pay reciprocal compensation applies only to "local" calls. See First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) (section 251(b)(5) reciprocal compensation obligations should apply *only* to traffic that originates and terminates within a local area"; those obligations "*do not* apply to the transport or termination of interstate or intrastate interexchange traffic"), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), rev'd in part, aff'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999). Where calls are not local, so-called "exchange access" rules apply, and there is no obligation to pay reciprocal compensation.

15. Under decades of FCC and federal court precedent, whether a call is local or interexchange is determined on an end-to-end basis -- that is, one looks at the complete communication and does not break it into component parts. See, e.g., Southwestern Bell Tel. Co. Transmittal Nos. 1537 and 1560 Revisions to Tariff FCC No. 68, 3 FCC Rcd 2339 ¶ 26 (1988) ("[T]he jurisdictional nature of a call is determined by its ultimate origination and termination, and not . . . its intermediate routing."); Long Distance/USA, Inc., 10 FCC Rcd 1634, 1637, ¶ 13 (1995) ("[B]oth court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications . . . [A] single interstate communication . . . does not become two communications because it passes through intermediate switching facilities.").

16. Under this well-established mode of analysis, Internet-bound calls are not local. An individual usually accesses the Internet through an "Internet Service Provider" or "ISP" -- a company such as America Online, AT&T WorldNet, or UUNet. Thus, when a BellSouth customer logs on to the Internet, he or she generally uses a modem to dial a seven- or ten-digit telephone number to connect his or her computer to the ISP's facilities, which are often located in his or her local telephone exchange. Crucially, however, the call does not terminate there. Rather, the customer uses the ISP as a conduit -- an intermediary -- to receive information from (and transmit information to) Internet sites located all over the country and the world. The ISP connects the customer to the Internet site she wants to visit and routes information from that site through the ISP and back to the customer. Because those sites are almost never located in the same local calling area as the end-user, Internet calls are properly understood as non-local.

17. For these reasons, the FCC has squarely concluded that Internet calls involve a single continuous communication from the end-user through the ISP and on to the Internet site and that the entire communication is “non-local interstate traffic.” Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-38 n.87 (rel. Feb. 26, 1999).

Prior Proceedings and the PSC Decision at Issue Here

18. Under the 1996 Act, the precise terms under which BellSouth must pay reciprocal compensation (as well as meet its other obligations under the 1996 Act) are determined in the first instance through voluntary negotiation between BellSouth and potential local entrants such as e.spire. See 47 U.S.C. § 252(a).

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

20. In this instance, in 1996, BellSouth and e.spire were able to reach a voluntary agreement as to the terms of their interconnection under the 1996 Act (the “BellSouth-e.spire Agreement”). See Exhibit A, attached. That agreement was approved by the Florida PSC.

21. In accord with section 251(b)(5) of the 1996 Act, which, as noted, requires the payment of reciprocal compensation only for "local" calls, the reciprocal compensation provision of the BellSouth-e.spire Agreement states that "the Parties agree that for the purpose of this Agreement only that local interconnection is defined as the delivery of local traffic to be terminated on each party's local network." BellSouth-e.spire Agreement Section VI.A (emphasis added). That agreement also defines "Local Traffic" as "telephone calls that originate in one exchange and terminate in either the same exchange or a corresponding Extended Area Service ("EAS") exchange." Id., Attachment B.

22. After the PSC approved the BellSouth-e.spire Agreement, a dispute arose as to whether Internet-bound traffic qualified as local for purposes of the reciprocal compensation requirements of that agreement. When the parties were unable to resolve that dispute, e.spire filed a petition, asking the PSC to determine whether BellSouth was required to pay reciprocal compensation for Internet-bound traffic under the agreement. The PSC conducted a hearing on that issue on January 20, 1999.

23. On April 6, 1999, the PSC issued an order finding in favor of e.spire on that issue. See Exhibit B, attached. Disregarding the long-settled principles of communications law establishing that Internet-bound traffic cannot be understood to be "local," the PSC, relying on certain supposed indications of the parties' intent, held that Internet-bound traffic did qualify as "local" for purposes of the reciprocal compensation provision of the BellSouth-e.spire Agreement.

24. On July 26, 1999, the PSC denied BellSouth's motion for reconsideration of that determination. See Exhibit C, attached.

24. On July 26, 1999, the PSC denied BellSouth's motion for reconsideration of that determination. See Exhibit C, attached.

Claim for Relief

25. Paragraphs 1 through 24 are incorporated by reference as if set forth fully herein.

26. The PSC's decision that BellSouth must pay e.spire reciprocal compensation for Internet-bound traffic is inconsistent with the 1996 Act and implementing FCC determinations and violates established principles of contract law. The PSC's decision is also arbitrary and capricious, contrary to law, is inconsistent with the evidence presented to the PSC, and results from a failure to engage in reasoned decision-making.

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.

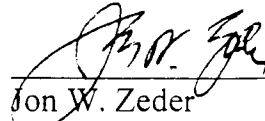
b. grant BellSouth preliminary and permanent injunctive relief to prevent all defendants and anyone acting in concert with them from enforcing or attempting to enforce the PSC's orders to the extent that they require BellSouth to pay e.spire reciprocal compensation for Internet-bound traffic.

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 24<sup>th</sup> day of August, 1999.

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