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February 27, 2002

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 001097-TP (Supra Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Supra Telecommunications & Information Systems, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

E. Earl Edenfield, Jr.

E. Earl Edenfield, Jr. (KAH)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

02325 FEB 27 8

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 001097-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Facsimile and U.S. Mail this 27th day of February, 2002 to the following:

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E. Earl Edenfield, Jr.

E. Earl Edenfield Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth Telecommunications, Inc. against Supra Telecommunications and Information Systems, Inc., for Resolution of Billing Disputes.	)	Docket No. 001097-TP
		Filed: February 27, 2002

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Supra Telecommunications & Information Systems, Inc. ("Supra"), in yet another attempt to avoid the Florida Public Service Commission's ("Commission") jurisdiction over the 1997 Resale Agreement with BellSouth Telecommunications, Inc., ("BellSouth")[1], has filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Motion to Dismiss"). As the basis for its Motion to Dismiss, Supra relies solely upon the recent *MCI Decision* from the Eleventh Circuit Court of Appeals. [2] (Motion to Dismiss at 7) Supra's reliance on the *MCI Decision* is misplaced because: (1) Supra misconstrues the impact of the *MCI Decision* on this Commission; and (2) Supra fails to recognize the exclusive remedy provision of the Resale Agreement.

Throughout its Motion to Dismiss, Supra also discusses issues relating to the §252 arbitration proceeding between BellSouth and Supra (Docket No. 001305-TP). Because

[1] Supra filed a Motion to Dismiss BellSouth's Complaint on August 30, 2000. In Order No. PSC-00-2250-FOF-TP, dated November 28, 2000, the Commission granted in part and denied in part Supra's Motion, finding that the Commission had exclusive authority to address BellSouth's billing complaints arising under the 1997 Resale Agreement prior to October 5, 1999.

[2] *BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services, Inc.* Case Nos. 00-12809, 00-12810, 2002 WL 27099 (11th Cir. Jan. 10, 2002). ("*MCI Decsion*") The Commission should also be aware that both the Georgia Public Service Commission and MCI requested a Rehearing En Banc on February 25, 2002.

the BellSouth/Supra §252 arbitration proceeding has no relevance to this proceeding, BellSouth will not address those issues here. Instead, BellSouth will rely upon the pleadings and papers filed in the §252 arbitration as its response to allegations concerning that proceeding. Obviously, the Commission will have to decide whether Supra's comments in this proceeding in any way violate the Commission's Order in the §252 arbitration proceeding relating to page limitations for the Supplemental Briefs regarding this same issue filed by both parties on February 19, 2002.[3]

I. SUPRA MISCONSTRUES THE IMPACT OF THE *MCI DECISION* ON THIS COMMISSION.

The Commission should disregard Supra's reliance upon the *MCI Decision* because, at most, that decision stands for the proposition that, under that court's interpretation of federal law and *Georgia* law, the Georgia Public Service Commission ("Georgia Commission") has no authority to interpret or enforce the terms of the MCI/BellSouth Interconnection Agreement in Georgia. The Eleventh Circuit did not consider the issue of whether this Commission has jurisdiction, under *Florida* law, to resolve disputes arising under an interconnection agreement.[4]

In the *MCI Decision*, the Eleventh Circuit held that the Georgia Commission did not have authority to resolve disputes between BellSouth and MCI/WorldCom concerning the payment of reciprocal compensation under two Interconnection Agreements. The parties' agreements had been filed with and approved by the Georgia

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[3] *See*, Order on Motion for Additional Briefing dated February 15, 2002 in Docket No. 001305-TP.

[4] Supra contends that under the choice of law provision in the Resale Agreement the Commission must rely upon Georgia law as the basis for its jurisdiction. This irrational interpretation of the choice of law provision defies logic and should be summarily rejected by the Commission. Indeed, the choice of law provision merely dictates what law *this* Commission must apply in resolving disputes arising under the 1997 Resale Agreement in Florida; it has no effect on the underlying jurisdiction of the Commission to resolve such a dispute.

Commission under 47 U.S.C. § 252. Upon petition by the parties, the Georgia Commission resolved the disputes and its decision was appealed to federal district court, which affirmed the Georgia Commission's decisions.

On appeal, the Eleventh Circuit concluded that the 1996 Act did not expressly provide for a state commission to resolve disputes arising after an interconnection agreement was approved and that no such authority should be implied:

> The plain meaning of [47 U.S.C. § 252(e)(1)], however, grants state commissions, like the GPSC, the power to *approve* or *reject* interconnection agreements, not to interpret or enforce them. It would seem, therefore, that the 1996 Act does not permit a State commission, like the GPSC, to revisit an interconnection agreement that it has already approved, like the ones in this case.

2002 WL 27099, slip op. at 6. In reaching its decision that the Georgia Commission has no authority to interpret or enforce the terms of an interconnection agreement, the Eleventh Circuit rejected the decisions of the First, Fourth, Fifth, Seventh, Eighth, and Tenth Circuit Courts of Appeals,[5] as well as the Federal Communications Commission's ("FCC") conclusion,[6] that the state commissions have such authority under the Telecommunications Act of 1996.

It is not necessary for the Commission to delve into the Eleventh Circuit's analysis of the Telecommunications Act of 1996 because the court expressly stated that the scope of a state commission's authority is not determined solely by reference to

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[5] Puerto Rico Tel. Co. v. Telecomm. Regulatory Bd. of Puerto Rico, 189 F.3d 1, 10-13 (1st Cir.1999); Bell Atlantic Maryland v. MCI Worldcom, 240 F.3d 279, 304-05 (4th Cir.2001); Southwestern Bell Tel. Co. v. Public Util. Comm'n, 208 F.3d 475, 479-480 (5th Cir.2000); Illinois Bell Tel. Co. v. Worldcom Techs., Inc., 179 F.3d 566, 571-72 (7th Cir.1999); Iowa Util. Bd. v. F.C.C., 120 F.3d 753, 804 (8th Cir.1997), rev'd on other grounds, AT & T v. Iowa Util. Bd., 522 U.S. 1089, 118 S.Ct. 879, 139 L.Ed.2d 867 (1998); Southwestern Bell Tel. Co. v. Brooks Fiber Optic Comm'n of Oklahoma, Inc., 235 F.3d 493, 497 (10th Cir.2000).

[6] *In re Starpower Communications*, 15 F.C.C.R. 11,277 (2000)

federal law, but instead requires an analysis of state law. 2002 WL 27099, slip op. at 9 ("Having determined that the GPSC has no power under federal law to interpret the interconnection agreements, we must now consider whether there is some other appropriate basis for the GPSC to interpret these agreements.").

Under Florida law, the Commission has express authority to interpret and enforce interconnection agreements between ILECs and ALECs. Section 364.162(1), *Fla. Stat.* (1995)[7] specifically grants the Commission "the authority to arbitrate *any dispute regarding interpretation* of interconnection or resale prices and terms and conditions." Thus, unlike the Eleventh Circuit's characterization of the Georgia Commission's authority under Georgia law, this Commission has specific and express authority to decide "any dispute regarding interpretation" of the terms and conditions of interconnection or resale. This grant of authority obviously includes the authority to interpret such terms and conditions when they are included within an interconnection agreement.[8]

Moreover, in the *MCI Decision* the Eleventh Circuit expressly based its decision on a finding that the Georgia Commission was merely a "quasi-legislative body" unsuited to hear contract disputes. 2002 WL 27099, slip op. at 9-11. Under Florida law, however,

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[7] While that section preceded the adoption of the 1996 Act, it was not preempted by that legislation and remains in full force and effect. 47 U.S.C. § 251(d)(3) recognized that certain states, including Florida, had already taken steps to introduce local exchange competition and left state laws in effect, except in limited circumstances.

[8] The Commission also has more general authority in Fla. Stat. § 364.01(4)(g) to "[e]nsure that all providers of telecommunications services are treated fairly . . .." Similarly, Fla. Stat. § 364.337 authorizes the Commission to exercise "continuing regulatory oversight over the provision of basic local exchange telecommunications service provided by a certificated alternative local exchange telecommunications company . . . for purposes of . . . ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace." Either of these general grants of authority could be considered broad enough to include the adjudication of disputes arising under an interconnection agreement.

this Commission exercises quasi-*judicial* authority when such authority is delegated to it by the Florida legislature. *Southern Bell Tel. and Tel. Co. v. Florida Pub. Serv. Comm'n*, 453 So.2d 780, 781 (Fla. 1984) (statute authorizing Commission to adjudicate contract disputes concerning toll revenue was a "proper assignment of quasi-judicial authority" pursuant to Fla. Const. art. V, § 1). The express authority under Section 364.162, *Fla. Stat.* (1995) to resolve "any dispute regarding interpretation" of the terms and conditions of interconnection or resale is also "a proper assignment of quasi-judicial authority" under the Florida Constitution. Therefore, the Commission would not be acting in a quasi-legislative capacity when resolving disputes between ALECs and ILECs arising out of interconnection disputes. Whatever the scope of the Georgia Commission's authority, this Commission plainly has ample authority under state law to resolve disputes that may arise between Supra and BellSouth under the 1997 Resale Agreement.

II. SUPRA FAILS TO RECOGNIZE THE EXCLUSIVE REMEDY PROVISION OF THE RESALE AGREEMENT

Not surprisingly, Supra neglects to address the fact that Supra and BellSouth mutually agreed that the Commission would have exclusive jurisdiction to address disputes arising under the 1997 Resale Agreement. Section XI (Resolution of Disputes) of the 1997 Resale Agreement provides that:

> Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties ***will*** petition the applicable state Public Service Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by that Public Service Commission concerning this Agreement. (Emphasis added)

The United States District Court for the Southern District of Florida confirmed the exclusivity of the Commission as the forum to resolve disputes under the 1997 Resale

Agreement.[9] In rejecting Supra's claims that the Commission lacked jurisdiction to resolve disputes arising under the 1997 Resale Agreement, the Court held:

> Of utmost importance in the resolution of this issue is the fact that Supra contractually agreed to submit all claims pertaining to the implementation of the Agreements to the FPSC. By entering into the Agreements, Supra voluntarily agreed to submit claims of this nature to an administrative agency that cannot award money damages. In doing so, Supra "waived" its ability to present such claims to a state or federal court, either of which is entitled to award money damages. As the Agreements were the product of negotiations between the parties, Supra was in a position to either bargain the dispute resolution clauses out of the Agreements or walk away from the negotiations altogether. However, Supra agreed to the dispute resolution clauses, notwithstanding the fact that the FPSC was incapable of awarding money damages.

USDC Orders dated November 12, 1999 at pp. 6-7.

Also instructive on the issue of exclusive remedy clauses is an unpublished opinion from the Eleventh Circuit Court of Appeals that interpreted language *identical* to that found in Section XI of the 1997 Supra/BellSouth Resale Agreement.[10] The Agreement at issue in the *NOW Opinion* was a 1997 Resale Agreement between NOW Communications and BellSouth, which contained a forum selection clause identical to the one at issue in this proceeding. In affirming the district court's decision rejecting NOW Communications' arguments that the Alabama Public Service Commission was not the proper venue to resolve disputes under the NOW Communications/BellSouth Resale Agreement, the Eleventh Circuit held:

> Appellant's arguments against application of the forum selection clause to this dispute are unavailing. The gravamen of appellant's

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[9] *See, Supra Telecommunications & Information Systems, Inc. v. BellSouth Telecommunications, Inc.*, Case No. 99-1706-CIV-DAVIS/BROWN, Order dated November 12, 1999 and Order dated January 20, 2000 (jointly "*USDC Orders*"). The USDC Orders are attached as Composite Exhibit A.

[10] *See, NOW Communications, Inc. v. BellSouth Telecommunications, Inc*, Case No. 99-12032 (11th Cir. December 28, 1999). ("*NOW Opinion*") The NOW Opinion is attached as Exhibit B.

> complaint is appellee's alleged failure to fulfill its obligations under the parties' Resale Agreement. . . . Whether appellant can obtain money damages for its alleged injuries from a public service commission and whether it can appeal a decision of a public service commission to a federal court does not affect the validity of the parties' forum selection clause. "We will not invalidate choice clauses . . . simply because the remedies available in the contractually chosen forum are less favorable than those available in the courts of the United States." Lipcon, 148 F.3d at 1297.

NOW Opinion at 3-4.

The *MCI Decision*, which Supra relies upon as the basis for its Motion to Dismiss, is fully consistent with the *NOW Decision* and the *USDC Orders*. In discussing the dispute resolution forum language, the Eleventh Circuit noted that "[w]hile we acknowledge that parties are free to predetermine a forum for dispute resolution, there is no indication in the record that the GPSC based its jurisdiction to resolve the dispute between BellSouth and MCImetro on section 23." (*MCI Decision* at FN 13) Clearly, the Eleventh Circuit did not rule in the *MCI Decision* that a state commission was precluded from being the choice of forum under a contract. To the contrary, the Eleventh Circuit merely noted that the Georgia Commission did not rely on a choice of forum provision as the basis for jurisdiction.

That is not the case in this proceeding, where the Commission specifically relies upon the choice of forum provision in the 1997 Resale Agreement as a basis for jurisdiction over the dispute. In its Order Granting Oral Argument in Part and Denying in Part Motion to Dismiss ("Order on Motion to Dismiss") issued in this docket on November 28, 2000, the Commission determined that: "Section XI of the prior agreement provides that all disputes shall be resolved by petition to the Florida Public Service Commission. We, therefore, clearly have exclusive jurisdiction to consider disputes

arising under the earlier agreement." (Order on Motion to Dismiss at 4-5) Thus, even if Supra was correct (which it is not) that the Commission lacked subject matter under the Telecommunications Act of 1996 and under Florida state law, the Commission still has subject matter jurisdiction over this proceeding pursuant to the dispute resolution provisions of the 1997 Resale Agreement.

III. CONCLUSION

For the reasons stated above, BellSouth respectfully requests that the Commission issue an Order denying Supra's Motion to Dismiss.

Respectfully submitted this 27th day of February 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 99-1706-CIV-DAVIS/BROWN

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., a Florida corporation,

Plaintiff,

vs.

BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia corporation,

Defendant.
_____/

FILED by A.J. D.C.
NOV 12 1999
CLERK U.S. DIST. CT. S.D. OF FLA. MIAMI

ORDER

THIS CAUSE is before the Court on Defendant's Motion to Dismiss (August 23, 1999). For the following reasons, the above referenced Motion is granted in part and denied in part.

FACTUAL AND PROCEDURAL BACKGROUND

In 1996, Congress enacted the Telecommunications Act, 47 U.S.C. §151, *et seq.* (the "Act"). The Act was an attempt by Congress to lower the "entry barriers" that existed in, among other things, the local exchange telephone market. For the purposes of the instant Motion, there are two relevant types of local exchange carriers. First, there are "new" telephone companies which are called Competitive Local Exchange Carriers ("CLEC"); Plaintiff Supra Telecommunications & Information Systems, Inc. ("Supra"), is a CLEC. Secondly, there are the "established" telephone companies which are called Incumbent Local Exchange Carriers ("ILEC"); Defendant BellSouth Telecommunications, Inc. ("BellSouth") is an ILEC.

In order to increase the ability of CLECs to enter the local exchange market, Congress

Composite Exhibit A

imposed certain obligations upon ILECs. These obligations, in part, required ILECs to provide CLECs with access to their telecommunications networks. *See* 47 U.S.C. §251. Theoretically, once CLECs were provided with this access, they would be able to engage in direct competition with ILECs. Furthermore, it was Congress' intent that the terms of this access be negotiated between ILECs and CLECs. *See* 47 U.S.C. §251(c)(1).

In accordance with the above described portions of the Act, Plaintiff Supra, a CLEC, and Defendant BellSouth, an ILEC, entered into three separate agreements. The first of these agreements, the Resale Agreement, was entered into by Supra and BellSouth on June 1, 1997. In relevant part, the Resale Agreement provides:

> **IX Resolution of Disputes**
>
> Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the applicable Public Service Commission for a resolution of the dispute.

Subsequent to entering into the Resale Agreement, Supra and BellSouth also entered into a Collocation Agreement on July 24, 1997, and an Interconnection Agreement on October 23, 1997. Both the Collocation and the Interconnection Agreements provide:

> . . . the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the Commission in the State where the services are provided pursuant to this Agreement for a resolution of the dispute . . . .[1]

At this point, attention must be turned towards the "Commission" that is mentioned in the

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[1] For the purposes of this Order, these three clauses will be collectively referred to as the "dispute resolution clauses".

Resale, Collocation, and Interconnection Agreements (collectively, the "Agreements"). This Commission is the Florida Public Service Commission (the "FPSC"). The FPSC was created as a result of the Florida Legislature's finding:

> [T]hat the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws.

Section 364.01(3), Florida Statutes. In light of this finding, the FPSC is empowered to, among other things: (1) "[e]ncourage competition"; (2) "[p]romote competition"; (3) "[e]liminate any rules and/or regulations which will delay or impair the transition to competition"; and (4) "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior . . . ." Sections 364.01(4)(b), (d), (f), and (g), Florida Statutes. To carry out these directives, the FPSC may issue its own orders,[2] and in the event that those orders are not followed, the FPSC "is authorized to seek relief in circuit court including temporary and permanent injunctions, restraining orders, or any other appropriate order." Section 364.015, Florida Statutes.

Attention must now be returned to the facts that underlie the instant action. Subsequent to entering into the Agreements, problems allegedly began to arise. Supra alleges that the retail "ordering systems" BellSouth provided to them "were deficient and not in parity with the systems BellSouth made available to its own retail divisions." (Complaint, ¶74). BellSouth allegedly provided Supra with a "poorly structured" billing system that "effectively denied

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[2] *See generally* Florida Administrative Procedures Act, §120.51, *et seq.*

sufficient information from which the reseller [Supra] could accurately bill their customers." (Complaint, ¶75). BellSouth allegedly failed to provide Supra with a sufficient amount of telephone numbers that could be assigned to Supra's customers. (*Id.*) Furthermore, although BellSouth was contractually obligated to perform repairs for Supra's customers, they allegedly failed to do so in a timely manner.[3] (Complaint, ¶76).

Supra has filed a six-count Complaint. Count I contains a claim for violations of 15 U.S.C. §2. Count II contains a claim for violations of §542.19, Florida Statutes. Count III contains a claim for Fraud. Count IV contains a claim for violations of the Communications/Telecommunications Act. Count V contains a claim for breach of contract. Count VI contains a claim for tortious interference. Through the instant Motion, BellSouth seeks the dismissal of all six counts of the Complaint.

DISCUSSION

A. Standard of Review

When considering a Rule 12 motion to dismiss, the Court must construe the complaint in the light most favorable to the Plaintiff and take its allegations of material fact as true. *Cannon v. Macon County*, 1 F.3d 1558, 1565 (11th Cir. 1993); *op. modified on reh'g*, 15 F.3d 1022 (11th Cir. 1994). The Court should not dismiss a complaint "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). The Court should not consider matters beyond the

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[3] This paragraph does not mention every problem that allegedly arose after the parties entered into the Agreements. However, the alleged problems described herein are representative of the type of problems that are referenced in Paragraphs 74 through 80, inclusive, of Supra's Complaint.

four corners of the complaint. *Milburn v. United States*, 734 F.2d 762 (11th Cir. 1984).

Federal Rule of Civil Procedure 8(a) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Under the liberal notice pleading standard of the federal rules, the plaintiff need not support the claim with detailed factual specificity so long as the complaint "will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley*, 355 U.S. at 47. The moving party bears a heavy burden under this standard. *St. Joseph's Hosp., Inc. v. Hospital Corp. of Am.*, 795 F.2d 948, 953 (11th Cir. 1986).

B. The Merits

1. Counts I, II, IV, V, and VI – The Dispute Resolution Clauses

As stated earlier, the dispute resolution clauses require all disputes regarding the implementation of the Agreements to be submitted to the FPSC. BellSouth maintains that because the claims contained in Counts I, II, IV, V, and VI pertain to the implementation of the Agreements, those claims should be dismissed because the FPSC has exclusive jurisdiction over them. In response, Supra maintains that the FPSC lacks jurisdiction over the above mentioned claims because: (1) those claims do not involve the implementation of the Agreements; and (2) those claims seek money damages and the FPSC is prohibited from awarding money damages.

At the outset, it must be determined whether the claims contained in Counts I, II, IV, V, and VI pertain to the implementation of the Agreements, and thus, are subject to the dispute resolution clauses. As outlined in the Factual and Procedural History section of this Order, the facts that comprise Counts I, II, IV, V, and VI relate to BellSouth's allegedly inadequate performance of its obligations under the Agreements. While these Counts are not couched in

terms of "implementation", their plain language unquestionably reflects Supra's complete dissatisfaction with BellSouth's implementation of the Agreements. As this Court finds that the claims contained in Counts I, II, IV, V, and VI pertain to the implementation of the Agreements, Supra is contractually required to submit them to the FPSC.

Attention must now be focused on the issue of whether the FPSC loses its jurisdiction over these claims simply because the FPSC cannot award money damages. The parties are seemingly in agreement that the FPSC is not authorized to award money damages; and this agreement correctly reflects the law. *See Southern Bell Telephone & Telegraph Co. v. Mobile America Corp., Inc.*, 291 So.2d 199, 201 (Fla. 1974); *Florida Power & Light Co. v. Glazer*, 671 So.2d 211, 213 (Fla. 3d DCA 1996). However, the parties are in disagreement as to whether this inability to award money damages divests the FPSC of the exclusive jurisdiction that was granted to it by the dispute resolution clauses.

Of utmost importance in the resolution of this issue, is the fact that Supra contractually agreed to submit all claims pertaining to the implementation of the Agreements to the FPSC. By entering into the Agreements, Supra voluntarily agreed to submit claims of this nature to an administrative agency that cannot award money damages. In so doing, Supra "waived" its ability to present such claims to a state or federal court, either of which is empowered to award money damages. As the Agreements were the product of negotiations between the parties, Supra was in a position to either bargain the dispute resolution clauses out of the Agreements or walk away from the negotiations altogether. However, Supra agreed to the dispute resolution clauses,

claims to the FPSC.[6]

2. Count III – Fraud

Count III of the Amended Complaint contains a claim for fraud. Supra alleges that after Supra and BellSouth entered into the Interconnection Agreement, but before the Interconnection Agreement was filed with the relevant public service commissions,[7] BellSouth unilaterally altered portions of the Interconnection Agreement. This exact issue was the subject of a claim that was presented to the Georgia PSC. (BellSouth's Exhibit A). While the claim was pending before the Georgia PSC, BellSouth admitted that the Interconnection Agreement had been altered, but BellSouth stated that it was altered without intent to defraud Supra. (*Id.*). In light of this admission, the Georgia PSC required BellSouth to file the correct version of the Interconnection Agreement and found that there was "not sufficient reason to believe that BellSouth acted intentionally in filing the incorrect version of the [Interconnection] agreement." (*Id.*).

BellSouth argues that as a result of the Georgia PSC's decision, Count III is barred by the doctrine of res judicata. Supra maintains that res judicata does not apply because Supra was not

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way that these claims could be taken out of the purview of the dispute resolution clauses.

[6] As dismissal of these Counts is proper for the reasons contained in this section, this Court does not have occasion to consider BellSouth's alternative arguments of implied antitrust immunity, primary jurisdiction, and election of remedies.

[7] The Interconnection Agreement covered nine different states within BellSouth's coverage area, including Florida. As such, the Interconnection Agreement was required to be filed with the relevant public service commissions of each of the nine states.

given an opportunity to litigate the issue, the Georgia PSC's decision was not the product of a hearing on the merits, and the Georgia PSC's finding was not necessary to its final decision. Ultimately, Supra is correct.

In *Pantex Towing Corp. v. Glidewell*, 763 F.2d 1241, 1245 (11th Cir. 1985), the Eleventh Circuit held:

> [W]hen an administrative body has acted in a judicial capacity and has issued a valid and final decision on disputed issue of fact properly before it, collateral estoppel will apply to preclude relitigation of fact issues only if: (1) there is identity of the parties or their privies; (2) there is identity of issues; (3) the parties had an adequate opportunity to litigate the issues in the administrative proceeding; (4) the issues to be estopped were actually litigated and determined in the administrative proceeding; and (5) the findings on the issues to be estopped were necessary to the administrative decision.

The Georgia PSC's decision did not rest upon its finding that the evidence was insufficient to prove that BellSouth intentionally defrauded Supra. Instead, the language of the Order indicates that the agency's decision rested upon BellSouth's admission that the Interconnection Agreement was, in fact, altered. Seemingly, in the interests of administrative efficiency, the Georgia PSC preferred to require BellSouth to simply file the correct version of the Interconnection Agreement instead of engaging in needless litigation over the existence of intent. This Court holds that the relevant finding of the Georgia PSC was not necessary to the agency's final, administrative decision; therefore, res judicata does not bar Count III. As such, BellSouth's Motion to Dismiss, as it relates to Count III, is denied.

CONCLUSION

For the forgoing reasons, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss (August 23, 1999) is GRANTED IN PART AND DENIED IN PART. Defendant's Motion to Dismiss, as it relates to Counts I, II, IV, V, and VI of Plaintiff's Complaint is GRANTED. Counts I, II, IV, V, and VI of Plaintiff's Complaint are hereby DISMISSED WITHOUT PREJUDICE so as to allow Plaintiff to submit the claims contained therein to the Florida Public Service Commission. Defendant's Motion to Dismiss, as it relates to Count III of Plaintiff's Complaint, is DENIED. Plaintiff shall have twenty (20) days from the date stamped on this Order to file an Amended Complaint that reflects the contents of this Order.

FURTHER ORDERED AND ADJUDGED that Defendant's Request for Oral Argument (August 23, 1999), Defendant's Motion to Strike Opposition to Motion to Dismiss or Alternatively Motion for Default (October 26, 1999), and Defendant's Motion for Leave to File Reply Brief and Incorporated Memorandum (November 10, 1999) are DENIED.

DONE AND ORDERED in Chambers in Miami, Florida on this 12th day of November 1999.

EDWARD B. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

Copy to:

Christine M. Peirano, Esq.
Mark E. Buechele, Esq.
Fred A. Walters, Esq.
Edward H. Bergin, Esq.
T. Michael Twomey, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 99-1706-CIV-DAVIS/BROWN

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC., a Florida corporation,

Plaintiff,

vs.

BELLSOUTH TELECOMMUNICATIONS, INC., a Georgia corporation,

Defendant.
_____/

ORDER

FILED by _____ D.C.
JAN 21 2000
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

THIS CAUSE is before the Court on Plaintiff's Motion to Vacate and/or Reconsider This Court's Order of November 12, 1999 (November 29, 1999). For the following reasons, the above referenced Motion is granted in part.

FACTUAL AND PROCEDURAL BACKGROUND

By Order dated November 12, 1999, this Court dismissed Counts I, II, IV, V, and VI of Plaintiff Supra Telecommunications & Information Systems, Inc.,'s ("Supra") Complaint. Count III of Supra's Complaint was not dismissed. The dismissal of these Counts was based on this Court's finding that under the forum selection clauses contained in the parties' Resale Agreement, Collocation Agreement, and Interconnection Agreement (collectively, the "Agreements"), Supra was contractually obligated to present its claims to the Florida Public Service Commission ("FPSC")

It has now come to light that BellSouth, in its Motion to Dismiss, misquoted the

provision of the Interconnection Agreement that this Court relied upon. Whereas BellSouth stated that the relevant portion of the Interconnection Agreement provides that the parties "will" petition the FPSC for resolution of certain disputes, in actuality, the Interconnection Agreement provides that either party "may" petition the FPSC for resolution of these disputes.

Supra maintains that reconsideration of this Court's Order dated November 12, 1999, is appropriate for three reasons. First, Supra argues that this Court erroneously relied on matters outside the four corners of the Complaint in dismissing the above mentioned Counts. Second, Supra argues that the Interconnection Agreement is the "master agreement"; therefore, the Interconnection Agreement's use of the word "may" supercedes the other agreements' use of the word "will". Alternatively, Supra maintains that irrespective of whether the Interconnection Agreement is a master agreement, that Agreement's permissive dispute resolution clause allows Supra to submit disputes to this Court.

DISCUSSION

A. Standard of Review

It is generally recognized that any one of the following three grounds may provide the basis for the reconsideration of an order: "(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice." *Florida College of Osteopathic Medicine, Inc v. Dean Witter Reynolds, Inc*, 12 F.Supp.2d 1306, 1308 (M.D. Fla. 1998); *McDonough v. Americom International Corp.*, 905 F. Supp. 1016, 1023 (M.D. Fla. 1995). In this instance, Supra maintains that reconsideration is necessary in order to correct clear error or manifest injustice.

B. The Merits

1. Matters Outside the Four Corners of the Complaint

As mentioned above, Supra argues that this Court erred in considering matters outside the four corners of the Complaint. Specifically, Supra contends that because the Agreements were not a part of the Complaint, this Court was prohibited from considering portions of the Agreements in holding that Supra was required to submit its claims to the FPSC. This argument is without merit.

BellSouth moved for dismissal pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure which provides that improper venue is grounds for the dismissal of a claim or action. In ruling upon a Rule 12(b)(3) motion to dismiss:

> The Court may consider matters outside the pleadings, and often must do so, since without aid of such outside materials the Court would be unable to discern the actual basis in fact, of a party's challenge to the bare allegation in the complaint that, as here, venue is proper in this Court.

Thomas v. Rehabilitation Services of Columbus, Inc., 45 F. Supp. 2d 1375, 1377 (M.D. Ga. 1999); *see also* 5A Wright & Miller, Federal Practice and Procedure: Civ 2d §1364 (1990). This reasoning is extremely applicable here.

Supra did not attach the Agreements to its Complaint. BellSouth, in arguing that the Agreements made venue improper in this Court, was forced to quote the relevant provisions of the Agreements in its Motion to Dismiss precisely because the Agreements were not a part of the Complaint. In granting BellSouth's Motion to Dismiss, this Court looked outside the Complaint and relied upon the quoted portions of the Agreements.

If, as Supra maintains, a court was not permitted to rely on such "outside matters" in

considering a Rule 12(b)(3) motion to dismiss, then a plaintiff could effectively evade a forum selection clause by simply choosing to not include the relevant contract in its complaint. As applied to the instant case, without relying on the "outside" language of the Agreements, this Court could not have determined the actual basis of BellSouth's challenge to the bare allegations contained in Supra's Complaint regarding venue in this Court. Consequently, this Court acted properly in considering the Agreements despite the fact that they were outside the four corners of the Complaint.

Alternatively, Supra argues that the quoted portions of the Agreements were not the sort of material that this Court could properly rely upon. Supra points out that "[n]o evidence or affidavits were proffered in support of" BellSouth's argument that the Agreements required the disputes to be submitted to the FPSC. This argument misses the mark.

The Agreements themselves are the best evidence of whether Supra was contractually obligated to submit its claims to the FPSC. BellSouth, for reasons known only to them, merely quoted the relevant portions of the Agreements in the body of their Motion to Dismiss instead of also submitting the Agreements, in their totality, as an exhibit to their Motion. At that point, Supra was free to submit entire copies of the Agreements in connection with their Response if they believed that: (1) there was an authentication problem; (2) the language of the Agreements were misrepresented; or (3) that in the spirit of "completeness", this Court should have had full copies of the Agreements before it. Supra decided against this.

So, while this Court did not have the benefit of the full body of the Agreements, extremely truncated versions of the Agreements were available. As the Agreements themselves are undoubtedly the best evidence of the language contained in the Agreements, this Court was

entitled to rely upon the quoted provisions of the Agreements.

2. The Misquoted Interconnection Agreement

As stated above, BellSouth only quoted the relevant provisions of the Agreements in its Motion to Dismiss instead of also attaching complete versions of the Agreements. In choosing this course of action, BellSouth elected to shoulder the responsibility of correctly quoting the relevant provisions; however, BellSouth, through professed inadvertence, misquoted the Interconnection Agreement.

In its Motion to Dismiss, BellSouth quoted the Agreements as providing that the parties "will" submit any dispute regarding the implementation of the Agreements to the FPSC. On this basis, this Court held that Supra was required to submit the claims contained in Counts I, II, IV, V, and VI to the FPSC because those Counts all pertained to the implementation of the Agreements. However, this holding was based on partially false information.

The Collocation and Resale Agreements do, in fact, require Supra to submit the claims contained in the above mentioned Counts to the FPSC. However, the Interconnection Agreement provides that "if any dispute arises as to . . . the proper implementation of this Agreement, either party may petition the Commission for a resolution of the dispute." (Emphasis added) (Interconnection Agreement, p.9). As a result of this misquotation, Supra makes two arguments.

First, Supra maintains that the Interconnection Agreement is a "master agreement" that supersedes the other two Agreements. Second, Supra maintains that irrespective of whether the Interconnection Agreement is a master agreement, the permissive language of that Agreement mandates reinstatement of the relevant counts. Each of these arguments will be addressed, in turn, below.

As to Supra's first argument, the Interconnection Agreement provides:

> This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

(Interconnection Agreement, ¶24). Thus, Supra argues that the both the Collocation and Resale Agreements, including their dispute resolution clauses' use of the word "will", have been superseded by the Interconnection Agreement whose dispute resolution clause uses the word "may". This argument is contradicted by the above quoted passage of the Interconnection Agreement for two reasons.

First, the Interconnection Agreement incorporates by reference certain "Attachments". The Interconnection Agreement's "Table of Contents" indicates that Attachment 1 is the Resale Agreement and Attachment 4 is the Collocation Agreement. Supra's argument envisions a scenario whereby the Interconnection Agreement voids the Collocation and Resale Agreements while simultaneously incorporating them by reference. This does not make sense.

Second, as quoted above, the Interconnection Agreement "supersedes prior agreements between the Parties relating to the subject matter contained herein . . . ." This language does not mean that <u>any</u> prior agreement between the parties is superseded by the Interconnection Agreement. Instead, <u>only</u> prior agreements that pertained to the subject matter contained in the Interconnection Agreement were superseded. As the Collocation and Resale Agreements do not involve the subject matter contained in the Interconnection Agreement, those Agreements are not

the type of "agreements" that were superseded by the Interconnection Agreement. Thus, the Interconnection Agreement is not a master agreement.

However, this does not end the inquiry. The permissive language of the Interconnection Agreement provides that a dispute regarding the implementation of the Interconnection Agreement may be submitted to the FPSC, but it does not have to be.[1] As such, any of the claims that were contained in the Counts that have been dismissed must be reinstated to the extent that those claims seek recovery under the implementation of the Interconnection Agreement. Therefore, the relevant issue is whether any of the dismissed Counts contained claims pertaining to the implementation of the Interconnection Agreement.

In its Complaint, Supra alleges that under the Interconnection Agreement, BellSouth was required to provide Supra with "access to transport, the local loop and the acquisition of UNEs [unbundled network elements] and other essential facilities necessary to provide telecommunications services . . . ." (Complaint, ¶63). In each of the five Counts that were

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[1] BellSouth argues that under *Florida Polk County v. Prison Health Services, Inc.*, 170 F.3d 1081 (11th Cir. 1999), the Interconnection Agreement's dispute resolution clause should be read as mandatory, not permissive. In *Polk County*, the parties entered into a contract that "vested 'jurisdiction regarding the rights and obligations of either party under this agreement and all litigation resulting therefrom . . . in the . . . [circuit court of] Polk County, Florida.'" *Id.* at 1083. The Eleventh Circuit held that this provision should be interpreted as mandatory in nature, thus requiring all litigation to be conducted in the Circuit Court of Polk County. *Id.* at 1084.

Whereas the dispute resolution clause at issue in *Polk County* contained neither "may" nor "will", the instant dispute resolution clause includes the word "may". This crucial difference in language makes *Polk County* inapplicable here. To interpret "may" as mandatory, which is what BellSouth urges this Court to do, would lead to absurd results. Such a reading of the word "may" would make it almost impossible for a contract to ever contain a permissive forum selection clause. This was not what the Eleventh Circuit envisioned in *Polk County*.

dismissed, Supra sought recovery for BellSouth's alleged failure to provide Supra with this access to UNEs and other essential facilities. (Complaint, ¶¶100, 110, 128, 132, & 136). Claims of this nature pertain to the implementation of the Interconnection Agreement. As the Interconnection Agreement allowed Supra to submit such claims to this Court, the Counts in which these claims were embodied should not have been dismissed. Therefore, reconsideration is appropriate.

CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Plaintiff's Motion to Vacate and/or Reconsider This Court's Order of November 12, 1999 (November 29, 1999) is GRANTED IN PART. This Court's Order dated November 12, 1999, is VACATED IN PART to the extent that it dismissed claims pertaining to the implementation of the Interconnection Agreement. Plaintiff shall have twenty (20) days from the date stamped on this Order to file an Amended Complaint that seeks recovery solely for BellSouth's alleged failure to provide Supra with "access to transport, the local loop and the acquisition of UNEs [unbundled network elements] and other essential facilities necessary to provide telecommunications services" under the Interconnection Agreement.

DONE AND ORDERED in Chambers in Miami, Florida on this 20th day of January, 2000.

EDWARD B. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

Copy to:

Christine M. Peirano, Esq.
T. Michael Twomey, Esq.
Edward H. Bergin, Esq
Mark E. Buechele, Esq.
Fred A. Walters, Esq.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 28 1999
THOMAS K. KAHN
CLERK

No. 99-12032
Non-Argument Calendar

D.C. Docket No. 98-02874-CV-P-W

NOW COMMUNICATIONS, INC.,

Plaintiff-Appellant,

versus

BELLSOUTH TELECOMMUNICATIONS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(December 28, 1999)

Before COX, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

Appellant NOW Communications, Inc. appeals the district court's grant of Defendant-Appellee BellSouth Telecommunications' motion to dismiss for improper venue. The district court held that the present dispute was covered by the forum selection clause in the parties' contract requiring that the parties bring any dispute concerning their contract to the appropriate state public service commission for

resolution. Appellant argues the dispute does not raise issues related to the contract and is not, therefore, covered by the forum selection clause.

We normally review a district court's dismissal for improper venue under Federal Rule of Civil Procedure 12(b)(3) using an abuse of discretion standard. See, e.g., Home Insurance Co. v. Thomas Industries, Inc., 896 F.2d 1352, 1354 (11th Cir. 1990). We have also held, however, at least in the case of international agreements, that the enforceability of forum selection provisions are questions of law that we review de novo. See Lipcon v. Underwriters at Lloyd's London, 148 F.3d 1285, 1290 (11th Cir. 1998).

Upon thorough review of the parties' briefs, the record, and the relevant law, we can find no reversible error under either standard of review and affirm.

In May 1997, NOW and BellSouth entered into a Resale Agreement whereby NOW purchased local telecommunications services from BellSouth and access to BellSouth's network and resold this service to residential telephone customers. The Agreement contained a forum selection clause which provided:

> Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the applicable state Public Service Commission for resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by that Public Service Commission concerning this Agreement.

Appellant argues the present dispute is not governed by the forum selection clause contained in Resale Agreement because the language of that clause applies only to disputes over the implementation and interpretation of the contract. Appellant adds that because this suit is not about contractual interpretation or implementation but instead about appellee's allegedly tortious acts, the forum selection clause should not apply. Appellant further claims that a state public service commission is an inappropriate forum for this lawsuit because public service commissions cannot award monetary damages and because there is no guarantee that appellant will have a right to federal judicial review of a state commission's decision in light of recent decisions extending 11th Amendment immunity to state agencies such as public service commissions. See AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc., 43 F. Supp. 2d 593, 597 (M.D. La. 1999).

Appellant's arguments against application of the forum selection clause to this dispute are unavailing. The gravamen of appellant's complaint is appellee's alleged failure to fulfill its obligations under the parties' Resale Agreement. Indeed almost every Count of appellant's Second Amended Complaint alleges that appellee has taken some act in "disregard of its duties and obligations under the law and the agreement." See Second Amended Complaint, ¶¶ 49, 56, 59, 62, 65, 74, 77, 80, 83, 86, 89, 92, 94. Because implementation of the Agreement is ultimately what this dispute is about, the district court correctly concluded that the forum selection clause applies to this dispute and mandates its dismissal. Whether appellant can obtain money damages for its

alleged injuries from a public service commission and whether it can appeal a decision of a public service commission to a federal court does not affect the validity of the parties' forum selection clause. "We will not invalidate choice clauses . . . simply because the remedies available in the contractually chosen forum are less favorable than those available in the courts of the United States." Lipcon, 148 F.3d at 1297. Moreover, even if appellant is not entitled to federal judicial review of a state public service commission decision, it would be entitled to state judicial review of such a decision. See Ala. Code § 37-1-120.

We conclude the district court correctly held that this dispute is governed by the forum selection clause in the parties' Agreement and we therefore affirm the district court's order granting appellee's Motion to Dismiss.

AFFIRMED.

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Western Division

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U.S. DISTRICT COURT
N.D. OF ALABAMA

NOW COMMUNICATIONS, INC.
Plaintiff,

-vs.-

BELLSOUTH TELECOMMUNICATIONS, INC.,
Defendant.

No. CV-98-P-2874-W

ENTERED

JUN 0 2 1999

ORDER

Before the court are the defendant's Motion to Dismiss or, in the Alternative, Transfer, the defendant's Motion to Dismiss, and the defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction. Additionally, although the court has not heard argument on it, the defendant's Motion to Dismiss the Second Amended Complaint and Motion for More Definite Statement is before the court.

The plaintiff, NOW Communications, Inc., is a Competitive Local Exchange Carrier (CLEC) that provides telecommunications services through local exchanges in BellSouth operating areas in Alabama, Louisiana, Mississippi, Georgia, and Tennessee. Under a Resale Agreement entered into by plaintiff NOW and BellSouth, NOW obtains telecommunications services directly from BellSouth at discounted rates and resells them through local exchanges to its own pre-paid customers in particular geographic markets. The plaintiff brought this action on November 17, 1998, alleging that the defendant refused to provide interconnection and access to the local exchange on a non-discriminatory basis. The plaintiff's Second Amended Complaint contains nineteen counts, including tortious breach of contract, fraud, and violations of the Sherman Act, and seeks certification of a class

of CLECs.

The defendant offers several arguments as to why the court should dismiss this action. BellSouth first points to the dispute resolution provision in the Resale Agreement. That provision reads as follows:

> Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the applicable state Public Service Commission for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by that Public Service Commission concerning this Agreement.

BellSouth argues that this provision is, in effect, a forum selection clause that makes venue in this court improper. In response, the plaintiff maintains that this action involves neither the interpretation nor the implementation of the Agreement, but rather damages for tortious misconduct and monopolistic actions. However, inasmuch as the Agreement provides for BellSouth's making available telecommunications services, and because the gravamen of the Complaint is BellSouth's refusal to do just that, the court finds that the implementation of the Agreement is what is at issue. Consequently, the dispute resolution provision applies to this dispute and mandates dismissal of this action.

Although the court need not address the defendant's arguments concerning abstention, exhaustion, and primary jurisdiction, the court notes the complexities implicated in this kind of dispute as well as the extensive state and federal regulation of CLECs. The concern for uniformity of decisions, especially apparent when a plaintiff seeks certification of a class of at least 300 CLECs, counsels against judicial resolution of a dispute involving telecommunications services in multiple states. Additionally, the need for administrative and regulatory expertise in this relatively new area

supports the defendant's argument that the plaintiff's recourse lies with the FCC or with state public service commissions. Indeed, what constitutes non-discriminatory access should not be determined on a case-by-case basis in the courts, but should be considered by the administrative agencies charged with regulating the telecommunications industry.

The court also notes that its decision does not foreclose further administrative or judicial review. In addition to federal district court review of a state commission's action concerning any interconnection agreement, *see* 47 U.S.C. § 252(e)(6), parties can also file a complaint with the FCC pursuant to 47 U.S.C. § 208 and, in Alabama, for example, can appeal the public service commission's final action or order to the Circuit Court of Montgomery County, *see* Ala. Code § 37-1-120, or, in cases involving rates and charges, directly to the Alabama Supreme Court. *See* Ala. Code § 37-1-140.

The defendant's motions to dismiss for improper venue are hereby GRANTED and the case is DISMISSED without prejudice to consideration by the appropriate state public service commissions. Costs, but not attorney's fees, are taxed against the plaintiff.

Dated: May 27, 1999

Chief Judge Sam C. Pointer, Jr.

Service list:

Mr. Carroll H. Ingram
Mr. John L. Maxey, II
Mr. Samuel L. Begley
Mr. Fred A. Walters
Mr. J. Frank Ozment