
Illinois Bell Telephone Company	:	
	:	
Complainant,	:	
vs.	:	Docket No. 03-0194
	:	
MCI WorldCom Communications, Inc.,	:	
	:	
Respondent.	:	

MOTION TO DISMISS

NOW COMES MCI WorldCom Communications, Inc. (referred to as "MCI"), pursuant to Section 200.190 of the rules of the Illinois Commerce Commission ("Commission"), by and through one of its attorneys, and respectfully requests that the Administrative Law Judge ("ALJ" or "Judge") and the Commission dismiss the Verified Complaint filed by Illinois Bell Telephone Company ("SBC") in the above captioned proceeding ("SBC's Complaint" or "Complaint") for lack of jurisdiction. In support of this Motion, MCI states as follows:

I. INTRODUCTION AND BACKGROUND

SBC's Complaint requests that the Commission declare that MCI "... has breached the Settlement Agreement [(from Commission Docket No. 01-04120)]" and to further declare that MCI's "... breach constitutes a 'material default' as defined in the Settlement Agreement." (SBC's Complaint, introductory paragraph). SBC's Complaint does not seek to establish the applicability of any statutory provision enforced by the Commission or of any Commission rule to the person(s) requesting a declaratory ruling. Nor does SBC's Complaint seek to establish whether any person's

compliance with a federal rule will be accepted as compliance with a similar Commission rule.

The agreement that is the subject of SBC's Complaint resolved, among other things, issues that were raised by the complaint that MCI filed against SBC in Commission Docket No. 01-0412.¹ The dispute in the EA Complaint Docket involved SBC's refusal to implement Electronic Authorization ("EA") process whereby changes to a customer's long distance and local toll Primary Interexchange Carrier ("PICs") could be accomplished quickly and efficiently where the customer had a so-called "PIC freeze" or "PIC protection" for his or her long distance and/or local toll service. SBC's refusal to implement the EA process prevented a large number of customers from being able to switch to the intraMSA and interMSA carrier of their choice.² MCI's EA complaint alleged that SBC's refusal to implement EA constituted anti-competitive or otherwise illegal behavior that knowingly impeded the development of competition in Illinois in violation of numerous laws and Commission orders. The agreement that is the subject of SBC's complaint is entitled "Agreement Regarding The Use Of Electronic Authorization As A Means To Lift Slamming Protection" (hereinafter "Agreement") and was entered into by and between MCI and Illinois Bell Telephone Company, Ohio Bell Telephone Company, Michigan Bell Telephone Company, Wisconsin Bell Telephone Company and Indiana Bell Telephone Company (collectively "the EA Parties") on January 23, 2002. Based upon the Agreement, MCI and SBC settled the dispute embodied in EA Complaint Docket and MCI and SBC filed a Stipulation to Dismiss Docket 01-0142 on February 4, 2002. On February 8, 2002, the Commission entered an Order to grant the Stipulation to Dismiss

¹ MCI WorldCom Communications, Inc. vs. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, Complaint pursuant to Section 13-514 and 13-515 and other sections of the Illinois Public Utilities Act, Docket No. 01-0412 ("EA Complaint Docket"). A copy of MCI's EA Complaint is appended hereto and identified as Attachment A.

² See Attachment A, paragraphs 15-28.

II. THE COMMISSION LACKS JURISDICTION OVER THE SETTLEMENT AGREEMENT AND SBC'S REQUEST FOR DECLARATORY RULING WITH RESPECT TO THE SETTLEMENT AGREEMENT

The Commission lacks jurisdiction to issue a declaratory ruling except in very narrow circumstances. It is clear from the face of the Complaint that SBC is requesting the Commission to make a declaratory ruling. The parameters of a declaratory ruling are set forth by Illinois statute rather broadly. The Illinois Declaratory Judgment statute provides, in part, as follows:

No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some part thereof, giving rise to the proceeding. (735 ILCS 5/2-701)

SBC's Complaint is plainly nothing other than a request for declaratory ruling.

The Commission has limited jurisdiction and lacks jurisdiction over the present declaratory complaint. The Commission's rules governing requests for declaratory rulings are set forth in 83 Illinois Administrative Code 200.220. That rule states in part:

Section 200.220 Declaratory Rulings

a) When requested by the affected person, the Commission may in its sole discretion issue a declaratory ruling with respect to:

1) the applicability of any statutory provision enforced by the Commission or of any Commission rule to the person(s) requesting a declaratory ruling; and

2) whether the person's compliance with a federal rule will be accepted as compliance with a similar Commission rule.³

SBC's Complaint does not fit within the parameters of declaratory rulings that the Commission may make under its rules. SBC's Complaint does not purport to establish the applicability of any statutory provision by the Commission of any Commission rule to the person requesting the declaratory ruling. Instead, SBC's Complaint essentially asserts the MCI has violated the Agreement by having more than 5% of its EA files which it as submitted to SBC in any given month be rejected by SBC because the files purportedly are incomplete. Also, SBC's Complaint clearly does not address the issue as to whether compliance with any federal rule should be accepted as compliance with a similar Commission rule. Accordingly, the two specific instances in which the Commission may issue a declaratory ruling under its rules are not reflected in the relief that SBC seeks. Hence, the Commission has not been presented with a request for declaratory ruling over which it maintains jurisdiction. The Agreement also covers SBC's affiliates in Illinois, Indiana, Michigan, Ohio and Wisconsin, and this fact should provide a further basis for resolving disputes about the Agreement in a venue that would have jurisdiction over all of the EA parties.

In Harrisonville Telephone Company v. The Illinois Commerce Commission, 176 Ill. App. 3d 389, 531 N.E.2d 43, (1988), the court clearly ruled that this Commission has limited jurisdiction over declaratory actions and that if this Commission has not enacted a rule allowing for a certain category of declaratory relief at issue in a proceeding, then the Commission has no jurisdiction in that proceeding. Harrisonville stated, in part, as follows:

An administrative agency, such as the Commerce Commission, is created by statute and has no general or common law powers. (Peoples Gas Light & Coke Co. v.

³ The present version of 83 Ill. Adm. Code 200.220 was added at 20 Ill.Reg. 10607, effective August 15, 1996.

Illinois Commerce Comm'n, (1987), 165 Ill.App.3d 235, 520 N.E.2d 46). Because it is a creature of the legislature, the Commerce Commission derives its power and authority solely from the statute creating it, and its acts or orders which are beyond the purview of the statute are void. Illinois Power Co., v. Illinois Commerce Comm'n (1986), 111 Ill.2d 505, 490 N.E.2d 1255.

The Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1001 *et seq.*) applies to proceedings before the Commerce Commission. (Ill. Rev. Stat. 1987, ch. 111 2/3, par. 10 -- 101.) The Administrative Procedure Act provides for "contested case" adjudication and for "declaratory rulings" (Ill. Rev. Stat. 1987, ch. 127, pars. 1003.02, 1009(a)).

"Contested case" means an adjudicatory proceeding, not including rate making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are *required by law to be determined* by an agency only after an opportunity for hearing." (Emphasis added.) Ill. Rev. Stat. 1987, ch. 127, par. 1003.02.

The Commerce Commission has included the foregoing definition in its own rules and has expanded it consistent with section 10 -- 101 of the Public Utilities Act to include any complaint case, investigative proceeding or ratemaking case. (See 83 Ill. Adm. Code 200.40 (1985).) As regards declaratory rulings, the Administrative Procedure Act provides in pertinent part that

"[each] agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable." (Ill. Rev. Stat. 1987, ch. 127, par. 1009(a).)

Our research has revealed no rule of the Commerce Commission which provides for the rendering of declaratory rulings. Barring the adoption of such a rule in compliance with appropriate rulemaking procedures, the Commission has no authority to render declaratory rulings. (Harrisonville, 176 Ill.App.3d at 392-393)

A similar ruling was made in Illinois Municipal Electric Agency v. Illinois Commerce Commission, 247 Ill.App.3d 857, 617 N.E.2d 1363 (1993). Accordingly, where, as here, a pleading styled as complaint has been filed seeking declaratory relief and the complaint is not in compliance

with Section 200.220 of the Commission's Rules, 83 Ill. Adm. Code 200.220, the Commission has no jurisdiction over the matter and must dismiss the complaint.

While paragraph 6 of SBC's Complaint purports to address the jurisdiction of the Commission, SBC misapplies the law. In support of its position, SBC cites the case Security Pacific Financial Services v. Jefferson, 259 Ill.App.3d 914, 918 (1994). In that case, the court order at issue approved a class action settlement finding it to be fair, reasonable, and adequate for the class. In the order approving the agreement, the court also specifically stated that it retained jurisdiction "of all matters relating to the interpretation, administration, effectuation and enforcement of" the settlement agreement. (Security Pacific, 259 Ill.App.3d at 915). Conversely, the February 8, 2002 Certificate of Commission Action announcing that the Illinois Commission entered an order to grant the Stipulation to Dismiss Docket 01-0412 (appended to SBC's Complaint and identified as Attachment 4) does not contain similar language. Indeed, the Certificate of Commission Action simply states that "Notice is hereby given that this proceeding is hereby dismissed."

Also, the Security Pacific case pertains to compelling enforcement of the terms of the underlying settlement agreement by the court which approved of the agreement in the docket to which the agreement applied. In the instant case, SBC is not seeking a continuation of the EA Settlement Agreement, but instead is seeking to discontinue the EA Settlement Agreement and to obtain the imprimatur of a Commission ruling before doing so.

Finally, Security Pacific is not an administrative case and does not address the issue of declaratory actions and the jurisdiction of a regulatory agency where a party seeks declaratory relief. As shown above, the present matter is before an administrative agency, and the

Commission has no jurisdiction over the type of declaratory relief set forth in SBC's Complaint.

SBC also cites the case of Marler, v. Missouri State Board of Optometry, 102 F.3d 1453, 1456-1457 (8th Cir. 1996), but SBC fails to assert how in any way this Marler case is applicable to any aspect of the present proceeding. The Marler case appears inapposite as it concerns a Missouri case where an optometrist agreed to a term of probation as part of being approved to be licensed in that state and then subsequently violated the terms of that probation.

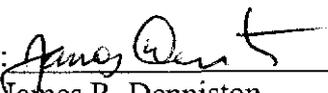
SBC also references Section 13-902 of the IPUA, which addresses verification of carrier changes. SBC asserts that because the Commission has jurisdiction to enforce the provisions of Section 13-902 that it therefore has jurisdiction over the SBC's Complaint. However, SBC has not asserted that MCI in any way has violated Section 13-902 as the basis for its complaint. Therefore, SBC can not rely on Section 13-902 to establish jurisdiction in the present proceeding.

III. CONCLUSION

Wherefore, for all of the foregoing reasons, MCI respectfully requests that the Administrative Law Judge and the Commission dismiss the Complaint filed by SBC because the Commission does not have jurisdiction over SBC's Complaint.

Respectfully submitted,

MCI WorldCom Communications, Inc.

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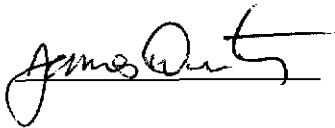
Dated: April 9, 2002

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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MCI WorldCom Communications, Inc.,	:	
	:	
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VERIFICATION

I, James Denniston, Senior Counsel for MCI WorldCom Communications, Inc., state that I have read the foregoing Motion to Dismiss, and know the contents thereof, and that the same are true to the best of my knowledge, information, and belief.



James Denniston

Subscribed to and sworn
to before me this 9th day
of April 2003.



Notary Public

