

Before the
Federal Communications Commission
Washington, D.C. 20554

SPRINT COMMUNICATIONS )
COMPANY, L.P., )
MCI TELECOMMUNICATIONS )
CORPORATION, ) File Nos. E-95-032, E-95-036, E-95-037,
) E-95-038, E-95-041, E-95-042, E-95-
Complainants, ) 043, E-96-016, E-96-025, E-96-031, E-
) 96-035, E-96-041, E-96-042
)
v. )
)
BELL ATLANTIC - PENNSYLVANIA, )
et al., )
)
Defendants )

MEMORANDUM OPINION AND ORDER

Adopted: April 27, 2000

Released: April 28, 2000

By the Chief, Enforcement Bureau:

1. In this Memorandum Opinion and Order, we resolve 13 formal complaints brought by Sprint Communications Company, L.P. (Sprint) and MCI Telecommunications Corporation (MCI), both interexchange carriers (IXCs or complainants), against eight local exchange carriers (LECs or defendants),<sup>1</sup> pursuant to section 208 of the Communications Act of 1934, as amended

1 The identification of the parties here is based on their corporate status as of the dates the complaints or other pleadings were filed, but does not reflect subsequent mergers. The defendant LECs are: Bell Atlantic - Pennsylvania, Inc., Bell Atlantic - Washington, D.C., Inc., Bell Atlantic - Maryland, Inc., Bell Atlantic - Virginia, Inc., Bell Atlantic - West Virginia, Inc., Bell Atlantic - Delaware, Inc., and Bell Atlantic - New Jersey, Inc.; New England Telephone and Telegraph Company and New York Telephone Company (collectively Bell Atlantic/NYNEX); Illinois Bell Telephone Company, Indiana Bell Telephone Company, Michigan Bell Telephone Company, Ohio Bell Telephone Company, and Wisconsin Bell, Inc. (collectively Ameritech); BellSouth Telecommunications, Inc. (BellSouth); US West Communications, Inc., The Malheur Telephone Company, and El Paso County Telephone Company (collectively US West); Southwestern Bell Telephone Company and Pacific Bell and Nevada Bell (collectively SWB/Pacific); GTE North, Inc., GTE Northwest, Inc., GTE West Coast, Inc., GTE Southwest Inc., GTE Midwest, Inc., GTE Hawaiian Phone Co., Inc., GTE Alaska, Inc., GTE California, Inc., GTE Florida, Inc., Contel of the South, Inc., Contel of the West, Inc., Contel of Minnesota, Inc., Contel of Texas, Inc., Contel System of Missouri, Inc., Kansas State Telephone, Contel of California, Inc., and The Micronesian Telecommunications Corp. (collectively GTE). This consolidated Order encompasses 13 separate complaints by each IXC against each LEC, except complaints by Sprint against GTE, and by MCI against Ameritech and BellSouth (see para. 2, infra).

(Act).<sup>2</sup> The complaints all similarly allege that the defendant LECs improperly assessed carrier common line (CCL) charges for interstate calls involving certain LEC optional calling services, such as call forwarding and call-waiting. Complainants assert that the LECs' practices violate Section 69.105(a) of the Commission's access charge rules,<sup>3</sup> as well as Sections 201(b) and 203(c) of the Communications Act.<sup>4</sup>

2. These complaints each raise issues virtually identical to another group of complaints that were previously filed by AT&T Corporation (AT&T) and MCI against these same LECs. For this reason, all the parties to the cases at issue here reached agreement to suspend proceedings on these complaints pending final resolution of the earlier-filed AT&T and MCI complaints, and agreed to be bound by the precedents established in the Commission's consolidated order in that proceeding.<sup>5</sup> On December 9, 1998, the Commission released a Memorandum Opinion and Order resolving the liability issues raised in the consolidated AT&T and MCI proceeding (*Liability Order*), and granting those complaints, in part.<sup>6</sup> The Commission also recently denied petitions for reconsideration of the *Liability Order* filed by both complainants and defendants in that proceeding.<sup>7</sup>

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<sup>2</sup> 47 U.S.C. § 208.

<sup>3</sup> 47 C.F.R. § 69.105(a). Part 69 of the Commission's rules governs the application and computation of access charges. The issues involved in the instant complaint proceedings involve the application of the Commission's preexisting access charge scheme, rather than the current access charge regime. For a general history of the development of the access charge system, see *Liability Order*, 14 FCC Rcd at 559-60.

<sup>4</sup> 47 U.S.C. §§ 201(b), 203. Section 201(b) declares unlawful any unjust or unreasonable "charge, practice, classification, or regulation" in connection with interstate or foreign communications services. Section 203(c) states, in relevant part, that "no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation . . . than the charges specified" in the carrier's tariff.

<sup>5</sup> The abeyance arrangement constituted a voluntary commitment by the parties to this current proceeding that they would not relitigate issues of law decided in the *Liability Order*. Letter from Heather L. McDowell, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau to Joint Counsel, dated August 1, 1995. See also Letter from Sprint Communications Company to John Muleta, Chief, Enforcement Division, Common Carrier Bureau, dated March 29, 1996. MCI and the remaining five RBOCs in the MCI complaint series reached a similar agreement. See Joint Motion to Hold in Abeyance, filed November 18, 1996 and grant stamped December 13, 1996, Enforcement Division, Common Carrier Bureau. Several defendants contend that complainants present arguments reasserting the same issues already resolved by the *Liability Order* and are, therefore, improper under the abeyance agreements. Although this may well be true, we have reviewed each of the arguments raised by complainants' briefs and conclude that, separate and apart from the abeyance agreements, nothing there convinces us to find that the *Liability Order* is not controlling on the cases at issue here.

<sup>6</sup> *AT&T v. Bell Atlantic, et al.*, 14 FCC Rd 556 (1998). The *Liability Order* addressed consolidated complaints by AT&T against the seven Regional Bell Holding Companies (RBOCs) and GTE, as well as complaints by MCI against Ameritech and BellSouth.

<sup>7</sup> *AT&T Corp., MCI Telecommunications Corp. v. Bell Atlantic, et. al*, Memorandum Opinion and Order on Reconsideration, File Nos. E-99-12P, E-99-13P, E-99-14P (released April 18, 2000)(*Reconsideration Order*).

3. We conclude that the analysis and conclusions of the *Liability Order* and *Reconsideration Order* control the issues raised in these complaints. We find that the parties to these complaints have raised no new issues or arguments that would lead us to find that these cases are not controlled by the precedent established in that proceeding. Although MCI and Sprint challenge certain conclusions in the *Liability Order* finding that CCL charges were appropriately assessed, we find their arguments to be little more than variations of arguments raised and rejected in that prior proceeding. In any event, we have fully considered each of the arguments raised and are unpersuaded that we should depart from the conclusions reached by the Commission in the prior orders. Accordingly, we will grant the complaints in part, and deny them in part, as detailed in the *Liability Order*.

4. Sprint and MCI may file supplemental complaints for damages pursuant to section 1.722 of our rules.<sup>8</sup> As stated in the *Liability Order*, the appropriate measure of damages is “the difference between the amounts [the IXCs] paid to the LECs for CCL charges and the amount they would have paid had the LECs properly assessed CCL charges for the optional services at issue, plus interest.”<sup>9</sup> If a complainant files a damages claim, its claim must include the methodology and results of any study used to calculate, or intended to be used to calculate damages, consistent with the *Liability Order’s* instructions.<sup>10</sup>

5. Accordingly, IT IS ORDERED pursuant to Sections 1, 4(i), 4(j), 201(b), 203(c), 208, and 415, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 203(c), 208, 415, and Section 69.105(a) of the Commission’s rules, 47 C.F.R. § 69.105(a), and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the above-captioned complaints filed by Sprint Communications Company, L.P. and MCI Telecommunications Corporation ARE GRANTED to the extent discussed above and otherwise ARE DENIED.

6. IT IS FURTHER ORDERED that AT&T’s motion for leave to file an amicus brief IS DENIED.

7. IT IS FURTHER ORDERED that Sprint Communications Company, L.P., and MCI Telecommunications Corporation MAY FILE supplemental complaints for damages within 60 days of the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>8</sup> 47 C.F.R. § 1.722

<sup>9</sup> *Liability Order*, 14 FCC Rcd at 602.

<sup>10</sup> *Liability Order*, 14 FCC Rcd at 602.

