

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

In the Matter of)	
)	
C.F. Communications Corp., et al.,)	
Complainants)	File Nos. E-93-062, E-93-074, E93-081,
)	E-93-034, E-93-035, E-93-036, E-93-
v.)	037, E-93-038, E-93-039, E-93-040, E-
)	93-041, E-93-042, E-93-043, E-93-044,
)	E-93-045, E-93-056, E-93-050, E-93-
Century Telephone of Wisconsin, Inc., et al.)	046, E-93-047, E-93-048, E-93-049
Defendants.)	

ORDER ON RECONSIDERATION

Adopted: July 17, 2000

Released: July 19, 2000

By the Commission:

I. INTRODUCTION

1. In this Order, we grant in part and deny in part two petitions filed by parties in the above-captioned formal complaint proceedings requesting reconsideration and/or clarification of the April 13, 2000 Memorandum Opinion and Order on Remand granting the complaints with respect to liability.¹ In the *Liability Order*, we reversed a previous decision of the Commission that had been vacated by the D.C. Circuit and remanded to us for further consideration consistent with that court's opinion. On remand, we found that the defendant local exchange companies had improperly assessed end-user common line charges upon the complainant independent payphone providers. Accordingly, we granted the 33 formal complaints before the Commission as to liability, and initiated a process for determining damages in those cases.²

¹ *C.F. Communications Corp. v. Century Telephone of Wisconsin, Inc.*, FCC 00-133 (rel. April 13, 2000) (*Liability Order*). Not all of the complainants or defendants sought reconsideration of the *Liability Order*. The file numbers listed in the caption above apply to those complainants or defendants who sought reconsideration of the *Liability Order*. Certain defendants in these complaints (although not BellSouth) have filed appeals of the *Liability Order* in the Court of Appeals for the D.C. Circuit. *Bell Atlantic, et al. v. FCC*, No. 00-1207 (D.C. Cir. filed May 15, 2000).

² *Liability Order* at paras. 40-43. Commission staff subsequently issued a letter ruling delaying the initiation of this process in light of the appeals filed by defendants with the D.C. Circuit. Letter of Glenn T. Reynolds, Chief, Market Disputes Resolution Division, Enforcement Bureau, dated June 8, 2000.

2. We also noted in the *Liability Order* that approximately 3,000 informal complaints have also been filed by independent payphone providers alleging the same claims raised in the 33 formal complaints. Pursuant to the Commission's rules, the filing of an informal complaint may, in effect, toll the statute of limitations applicable to such complaints under specific circumstances. In particular, our rules provide that a complainant whose informal complaint is not satisfied by the carrier may file a formal complaint, and that such formal complaint:

will be deemed to relate back to the filing of the informal complaint: Provided, That the formal complaint: (a) Is filed within 6 months from the date of the carrier's report, (b) makes reference to the date of the informal complaint, and (c) is based on the same cause of action as the informal complaint.³

3. Each of the petitions challenges conclusions in the *Liability Order* concerning the application of this "relating-back" provision. In particular, each petition objects to portions of the following conclusions from that order:

In light of the foregoing, we reject BellSouth's assertion that the Commission's rules prevent a complainant who has filed a formal complaint within six months of the carrier's response to its informal complaint from recovering damages dating back two years from the filing of its informal complaint. Section 1.718 clearly provides for such "relating back." Similarly, we reject complainants' argument that this "relating back" provision is dependent upon when the Commission has "disposed" of an informal complaint. Rather, the clear language of section 1.718 of the rules allows for "relating back" of damages only if a complainant files a formal complaint within 6 months "from the date of the carrier's report."⁴

II. DISCUSSION

A. BellSouth Petition

4. BellSouth requests clarification and/or reconsideration of the first part of the above-quoted language that, it asserts, denotes a misreading of the arguments made in its pleadings.⁵ BellSouth does not question the statement of the law reflected in this paragraph; but, rather, asserts that this statement does not accurately reflect the argument made in its pleading. BellSouth explains that it is concerned that such a statement could be construed to bar it from raising statute of limitations arguments in the supplemental damages phase of the proceeding. Accordingly, BellSouth requests that

³ 47 C.F.R. § 1.718.

⁴ *Liability Order* at para. 37.

⁵ BellSouth Telecommunications, Inc. Amended Petition for Clarification and/or Reconsideration at 5-6 (BellSouth Petition).

we clarify that we did not intend to address the merits of BellSouth's statute of limitations defense with respect to any particular complainant, or alternatively reconsider this finding.⁶ Ascom filed an opposition arguing, in part, that BellSouth's petition was premature since the *Liability Order* makes no determination concerning the application of the statute of limitation to any particular complaint.⁷

5. We need not address whether the *Liability Order* accurately reflects BellSouth's pleadings because the order makes no findings concerning the application of the relating-back rule to any particular complaint or complainant. Thus, BellSouth will be entitled to make these arguments during the supplemental damages proceeding. We note that Ascom, which is the only complainant with a pending formal complaint against BellSouth, agrees that the *Liability Order* deferred these issues to the damages phase of the proceeding.

B. Independent Payphone Providers' Petition

6. Several of the complainant independent payphone providers request reconsideration of the rejection in the above-quoted language of complainants' argument that the application of the relating-back provision is dependent upon when the Commission "disposes" of an informal complaint, rather than the receipt of the carrier's report.⁸ Complainants' petition merely rehashes the precise arguments raised in its previous pleadings and rejected in the *Liability Order*.⁹ Accordingly, we see no reason to reconsider our previous conclusion. As we stated in the *Liability Order*, the explicit language of section 1.718 unambiguously limits the relating-back provision to formal complaints "filed within 6 months from the date of the carrier's report."¹⁰ We find no support for complainants' assertion that "Section 1.717, . . . , clearly authorizes complainants to await disposition of their informal complaint by the Commission before filing a formal complaint."¹¹ Nothing in section 1.717 or 1.718 can be read to restrict the explicit scope of section 1.718 in the way proffered by complainants. Indeed, complainants' argument disregards the fact that the Commission is not required to notify each complainant about the disposition of its complaint.¹²

⁶ *Id.*

⁷ Opposition of Ascom Communications, Inc. to Petition and Amended Petition for Clarification and/or Reconsideration of BellSouth Telecommunications, Inc. at 5-6.

⁸ Complainants' Petition for Reconsideration at 1-2 (Complainants' Petition). Several of the defendant local exchange carriers filed in opposition to this petition. *See* Opposition of BellSouth Telecommunications, Inc.; Opposition of Southwestern Bell Telephone Company, Wisconsin Bell, Inc. and Michigan Bell Telephone Company.

⁹ *See* Brief of Complainants (filed Dec. 18, 1998). Indeed, we note that much of the language in complainants' petition appears to be identical to that in their December 18, 1998 pleading.

¹⁰ 47 C.F.R. § 1.718.

¹¹ Complainants' Petition at 7.

¹² *See* 47 C.F.R. § 1.717 (stating that "[w]here there are clear indications from the carrier's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant.").

7. To the extent that complainants are suggesting some form of detrimental reliance with regard to Ascom Communications, Inc., based on a letter sent by Commission staff that may have suggested Ascom could file after the six month period had passed, we reject this outright.¹³ The six month period had passed well before issuance of the letter, and, consequently, Ascom had no basis for assuming it might be granted an exemption from the clear language contained in section 1.718.¹⁴ We therefore deny complainants' petition for reconsideration.

III. CONCLUSION

8. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 208, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the Petition for Clarification and/or Reconsideration filed by BellSouth Telecommunications, Inc. is GRANTED IN PART AND DENIED IN PART as described herein.

9. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 208, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Complainants' Petition for Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

¹³ Complainants' Petition at 7-8.

¹⁴ Ascom filed its informal complaint on August 5, 1990 and BellSouth denied this complaint in writing on November 1, 1990. BellSouth Petition at 3. The letter sent by Commission staff was dated November 13, 1993. Complainants' Petition at 7.