to the Telecommunications Act withstanding the party's reliance on 28 U.S.C. §§ 1331, 1337, 2201, and 2202); *see also* GTE North Inc. v. Strand, No. 5:97-CV-01, 1997 WL 811422, at *4 (W.D. Mich. June 2, 1997)(refusing to assert jurisdiction under § 1331); GTE Northwest, Inc. v. Nelson, 969 F. Supp. 654, 656 (W.D. Wash. 1997)(finding that under § 252 the district court lacked jurisdiction regarding objections to an agreement submitted to a state commission and that § 1331 was inapplicable).

Under § 252, jurisdiction exists when: 1) the claim regards a state commission determination; 2) the claimant is an aggrieved party; and 3) the claimant seeks review of whether a statement or an agreement between an interconnecting service provider and local exchange carrier satisfies requirements of sections 251 and 252. Indiana Bell, 30 F. Supp.2d at 1103.

In Indiana Bell, the district court held that it lacked jurisdiction to review counterclaims concerning the interpretation of negotiated agreement terms because they had not been raised before the state commission. Pursuant to § 252(e)(6) of the Act, the plaintiff sought review of several of the state commission's arbitration determinations. Id. at 1102. During the same time, a disagreement arose regarding the interpretation of various terms, which had previously been negotiated and agreed upon by the parties. Id. Despite the fact that the parties could have returned to the state commission and the parties had

an arbitration clause in the agreement, the defendant filed a counterclaim seeking a declaratory ruling that its interpretation of those terms was correct. Id.

The plaintiff argued that § 252(e)(6) did not apply because the claims did not regard a "determination" made by the commission. Id. at 1103. Defendant contended that the commission's approval of the parties' agreement, which included approving of the contract language at issue, constituted a "determination" under the section. Id. Plaintiff countered that approving negotiated contract language was not a determination as the Act mandated that the commission approve negotiated contract terms if they complied with a specific statutory requirement. Id.

While acknowledging that the commission made a determination when it approved the agreement and thus brought the jurisdictional analysis under § 252, the Indiana Bell court explicitly found that the proper interpretation of the negotiated terms had not been determined by the commission. Id. at 1104. In support of its decision, the court noted that the goal of the Act was to permit the state commission to make the first determination of issues prior to any judicial review. Id. Other district courts have also noted that the statutory scheme of the Telecommunications Act does not permit judicial review of disputes arising out of interconnection agreements not previously

subject to action by a state commission. *See, e.g.*, AT&T Communications of Ohio, 29 F. Supp.2d at 856-57 (holding that the district court lacked subject matter jurisdiction under the Telecommunications Act where there was no determination of the issue by the state commission); *see also* AT&T Communications of Illinois, 1998 WL 525437, at *4-5.

In AT&T Communications of Illinois, the court noted that the state commission made a "determination" regarding negotiated contract terms when it approved the agreement. Id. Thus, section 252 governed the court's jurisdictional analysis. However, the court stated that the commission did not make a determination regarding the interpretation of the agreement terms. Id. Thus, as to interpretation, the court lacked subject matter jurisdiction. Id. at *5.

Several parties throughout the country have litigated the issue of whether calls to ISPs require reciprocal compensation. Repeatedly, those cases have first been presented to the governing state commissions. *See, e.g.*, Illinois Bell, Nos. 98-3150, 98-3332, 98-4080 (7th Cir. June 18, 1999); US West Communications, Inc. v. WorldCom Tech., Inc., 31 F. Supp.2d 819 (D. Or. 1998); US West Communications, Inc. v. MFS Intelenet, Inc., No. C97-222WD, 1998 WL 350588 (W.D. Wash. Jan. 7, 1998). In fact, in another case, Bell Atlantic presented the identical issue concerning ISPs and reciprocal compensation to the Virginia

Commission. Final Order, Petition of Cox Virginia Telcom, Inc., Case No. PUC970069 (Va. State Corp. Comm'n Oct. 24, 1997)(finding that ISPs are included for reciprocal compensation).

In this case, Bell Atlantic seeks to determine whether ISPs constitute reciprocal compensation under the terms of the parties' Agreement. Although this dispute does not involve terms arbitrated before the Virginia Commission, the Virginia Commission did make a determination regarding the agreement when it was approved. Thus, the Court finds that § 252 applies. However, the Virginia Commission did not make a determination regarding the interpretation of the claims. This Court finds that the Telecommunications Act was designed to allow the state commission to make the first determination. See Indiana Bell, 30 F. Supp.2d at 1104. Circumventing the state commission's initial review undermines the review process established by Congress in the Telecommunications Act. For those reasons, the Court holds that it lacks subject matter jurisdiction over this dispute until the Virginia Commission makes an initial determination.

C. *The Agreement and Jurisdiction*

The parties further dispute whether the Agreement specifically provides for judicial review of disputes. Section 29.9 of the Agreement states:

> Dispute Resolution. Any dispute between the Parties regarding the *interpretation or enforcement* of this

> Agreement or any of its terms shall be addressed by good faith negotiation between the Parties, in the first instance. Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action in any regulatory or judicial forum of competent jurisdiction.

(Emphasis added). Based on this language, Bell Atlantic contends that the parties bargained for judicial review of this dispute.[3] However, this Court finds that the parties cannot contract for judicial review in direct contravention to the Telecommunications Act. *Accord* AT&T Communications of Ohio, 29 F. Supp.2d at 856-57 (finding that the Court lacked jurisdiction to decide counts not presented to the state commission despite parties' contractual dispute resolution provision in the Interconnection Agreement). Thus, as this Court presently lacks jurisdiction, Bell Atlantic has not initiated an action in a forum of "competent jurisdiction" as indicated in the Agreement.

As this Court lacks jurisdiction, it is not necessary to address Defendant's alternative grounds for dismissal nor Plaintiff's Motion for Partial Summary Judgment.

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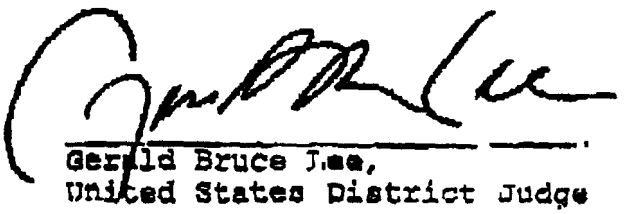
[3]Alternatively, WorldCom contends that the present dispute is a billing dispute governed by section 29.8 of the Agreement, which requires that the parties follow certain procedures, including arbitration.

Conclusion

For the reasons stated above, Defendant's Motion to Dismiss is GRANTED. Plaintiff's Motion for Partial Summary Judgment is DENIED, AS MOOT.

ENTERED this 1st day of July, 1999.



Gerald Bruce Lee,
United States District Judge

Alexandria, Virginia
7/1/99

GTE ANALYSIS

DATE	OWED TO GTE Bill No. E36 HBA-4679 110	Bill No. E36 HBA-4773 109	Bill No. E36 HBN-9816 107	OWED TO COX Invoice No.	Amount
May-98				71899004-D-98135	49,204.59
Jun-98				71899004-D-98166	61,511.10
Jul-98				71899004-D-98196	61,945.31
Aug-98				71899004-D-98227	73,612.05
Sep-98				71899004-D-98258	64,117.59
Oct-98				71899004-D-98288	53,062.54
Nov-98				71899004-D-98319	60,619.91
Dec-98				71899004-D-98349	63,456.47
Jan-99				71899004-D-99015	99,742.36
Feb-99				71899004-D-99046	120,852.34
Mar-99				71899004-D-99074	119,831.18
Apr-99				71899004-D-99105	117,106.79
May-99				71899004-D-99135	112,906.52
Jun-99				71899004-D-99166	120,578.41
07/02/1999	95.00	9,770.08	1,204.46	71899004-D-99196	113,932.47
08/02/1999	484.72	8,684.03	4,451.35	71899004-D-99227	125,568.41
09/02/1999	904.95	10,483.58	3,335.75	71899004-D-99258	134,769.46
10/02/1999	454.97	10,245.72	2,990.82	71899004-D-99288	122,024.28
11/02/1999	1,627.09	11,976.91	438.52	71899004-D-99319	137,456.59
12/02/1999	815.54	7,315.73	67.18	71899004-D-99349	139,401.70
01/02/2000	(144.96)	6,986.71	(4,958.06)	71899004-D-00015	141,189.05
TOTAL	**4,237.31**	**65,462.76**	**7,530.02**		

TOTAL OWED GTE **77,230.09**

TOTAL DUE COX **2,092,889.12**

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, hereby certify that on this 5th day of April, 2000, I caused copies of the foregoing "Comments of Cox Communications, Inc." to be served upon the parties listed below via regular mail:

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Vicki Lynne Lyttle

Vicki Lynne Lyttle

* Denotes Hand Delivery