

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

FILED  
U.S. DIST. COURT  
MIDDLE DIST. OF LA.

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BELLSOUTH  
TELECOMMUNICATIONS, INC.,

Plaintiff,

CIVIL ACTION

VERSUS

NO. CV 03-372-D

THE LOUISIANA PUBLIC SERVICE  
COMMISSION, JACK "JAY" BLOSSMAN, JR.,  
IRMA MUSE DIXON, DALE SITTIG,  
JAMES M. FIELD, AND FOSTER L. CAMPBELL,  
THE COMMISSIONERS OF THE  
LOUISIANA PUBLIC SERVICE COMMISSION,

Defendants,

and

AT&T CORPORATION, MCI WORLDCOM  
COMMUNICATIONS, INC., AND MCIMETRO ACCESS  
TRANSMISSION SERVICES LLC,

Intervenors.

**RULING ON MOTION FOR STAY**

This matter is before the court on Plaintiff Bellsouth Telecommunications, Inc.'s ("Bellsouth") Motion for Temporary Stay Pending Resolution of Emergency Request for Declaratory Ruling (doc. 55). Defendants and Intervenors have both filed responses. There is no need for oral argument. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and § 1367 .

Date Docketed
APR - 6 2004
Notices Mailed To:

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This is an action wherein BellSouth is challenging a decision of the Louisiana Public Service Commission ("LPSC") regarding BellSouth's DSL service. Specifically, BellSouth maintains that the LPSC's orders R-26173-A and R-26173, are (1) inconsistent with decisions promulgated by the Federal Communications Commission (FCC); (2) preempted by the Federal Communications Act of 1996; (3) inconsistent with BellSouth's federally-filed tariffs; (4) beyond the LPSC's authority under the Louisiana constitution; and (5) a violation of BellSouth's substantive and procedural due process rights under the United States Constitution.

On December 9, 2003, BellSouth filed an Emergency Request for Declaratory Ruling with the FCC, asking the FCC to declare that state agency decisions such as the one at issue in this case are preempted by federal law and inconsistent with federally-filed tariffs. BellSouth has now asked this court to invoke the doctrine of primary jurisdiction and issue a stay in the underlying proceeding pending the resolution of the FCC's decision. For the following reasons, this court grants BellSouth's motion.

#### **Scope of Review**

The doctrine of primary jurisdiction serves to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some relevant issue under its charter, while allowing the court to benefit from a specialized agency's determination on a technical issue. See 73 C.J.S. *Public Administrative Law and Procedure* §37 (2003). Under the doctrine

of primary jurisdiction, when a court and an administrative agency have concurrent jurisdiction over a controversy, the court may decline judicial relief pending administrative review when the court finds that (1) administrative review of the controversy will promote uniformity and consistency in the application of the pertinent statutes, rules, and regulations; (2) agency expertise is required; and (3) initial agency review will materially assist the court upon later review. See *Southwestern Sugar and Molasses Co. v. River Terminals Corp.*, 360 U.S. 411, 420-21 (1959); *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 532 F.2d 412, 418-19 (5th Cir. 1976).

### Analysis

To determine whether a stay would be appropriate, the court must first analyze whether administrative review by the FCC would promote uniformity and consistency in the application of the regulations in dispute. BellSouth has brought several civil suits in federal courts around the country, arguing that state agency decisions, such as the one at issue here, are preempted by federal law and outside the scope of state commission jurisdiction. In fact, United States district and appellate courts in Georgia, Florida, and Ohio have already issued rulings ordering similar cases stayed, pending the FCC's determination. Therefore, it is clear that the FCC's review will be considered by federal courts around the country, promoting uniformity and consistency regarding whether state laws, such as the one in this case, conflict with federal law.

Additionally, the technical issues involved in these proceedings are complex and especially suited to the FCC's expertise regulating interstate and international communications. Finally, because the issues before the FCC are exactly the same as three of the five issues before this court, the FCC decision will ultimately assist this court in arriving at an outcome in this case. Accordingly, this court will invoke the doctrine of primary jurisdiction and stay the proceedings in this matter pending administrative review.

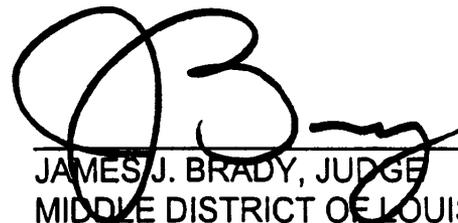
### Conclusion

IT IS ORDERED that BellSouth's motion to stay the proceedings (doc. 55) is hereby GRANTED.

IT IS FURTHER ORDERED that the stay be maintained until there has been a final, non-appealable ruling. The stay will remain in effect pending further order of this court.

IT IS FURTHER ORDERED that within twenty-one (21) days after the FCC's determination, the parties shall file memoranda advising the court about the significance of the FCC's decision and its affect on the proceedings before the court.

Baton Rouge, Louisiana, this 6<sup>th</sup> day of <sup>APRIL</sup>~~March~~, 2004.

  
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JAMES J. BRADY, JUDGE  
MIDDLE DISTRICT OF LOUISIANA