

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 99-50073

SOUTHWESTERN BELL TELEPHONE COMPANY,

Plaintiff-Appellee,

v.

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,

Defendant-Appellee-Appellant,

v.

MCI TELECOMMUNICATIONS CORPORATION; MCIMETRO ACCESS
TRANSMISSION SERVICES, INC.,

Defendants-Appellants-Appellees

and

MFS COMMUNICATIONS COMPANY, INC; PUBLIC UTILITY COMMISSION OF
TEXAS; PAT WOOD, III, in his official capacities as Chair of the
Public Utility Commission of Texas and as arbitrator; JUDY W
WALSH, in her official capacities as Commissioner of the Public
Utility Commission of Texas and arbitrator; BRETT A PERLMAN, in
his official capacities as Commissioner of the Public Utilities
Commission of Texas and arbitrator; E*SPIRE COMMUNICATIONS, INC

Defendants-Appellees

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC

Plaintiff-Appellee-Appellant

v.

SOUTHWESTERN BELL TELEPHONE COMPANY

Defendant-Appellee

v.

THE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

Defendant-Appellee

MCI TELECOMMUNICATIONS CORP, a Delaware Corporation; MCIMETRO
ACCESS TRANSMISSION SERVICES, INC, A Delaware Corporation

Plaintiffs-Appellants-Appellees

v.

SOUTHWESTERN BELL TELEPHONE CO, a Missouri Corporation

Defendant-Appellee

v.

PUBLIC UTILITY COMMISSION OF TEXAS; PATRICK H WOOD, III; JUDY W
WALSH; BRETT A PERLMAN

Defendants-Appellees

SOUTHWESTERN BELL TELEPHONE COMPANY

Plaintiff-Appellee

v.

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC

Defendant-Appellee-Appellant

v.

MCI TELECOMMUNICATIONS CORPORATION; MCI METRO ACCESS TRANSMISSION
SERVICES;

Defendants-Appellants-Appellees

v.

MFS COMMUNICATIONS COMPANY, INC; E*SPIRE COMMUNICATIONS, INC;
PUBLIC UTILITY COMMISSION OF TEXAS; PAT WOOD, III; JUDY W WALSH;
BRETT A PERLMAN

Defendants-Appellees

Appeals from the United States District Court
For the Western District of Texas
A-98-CV-197-SS, A-98-CV-196-SS
A-98-CV-199-SS & A-98-CV-345-SS

February 24, 2000

Before DAVIS, HALL* and SMITH, Circuit Judges.

PER CURIAM:**

ORDER

For a number of reasons, we are persuaded that this case should be remanded to the Public Utility Commission of Texas ("Commission").

First, the central issues raised on appeal by Appellees MCI and AT&T involve interpretation of the Supreme Court's recent decision in AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. 721 (1999), which was rendered after the Commission and the district court had reached their decisions in this case. Second, the issues raised by AT&T and MCI are substantially identical to those currently under consideration by the Commission. Finally, the ultimate resolution of this case will almost certainly require factual determinations best left to the discretion of the Commission.

The order of the district court pertaining to nonrecurring charges is therefore VACATED and the case REMANDED to the Public Utility Commission of Texas for further proceedings in light of the Supreme Court's decision in AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

* Circuit Judge of the Ninth Circuit, sitting by designation.

** Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.