KEAN MILLER
FROM MAIN STREET TO WALL STREET
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BUSINESS NOTES
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TELEPHONE COMPETITION – WILL CONSUMERS CONTINUE TO BENEFIT?

Congress passed the landmark Telecommunications Act in 1996.[1] The Act promised to create increased customer choice for local telephone service, spur innovative telephone service offerings, and result in lower prices for consumers. How? It granted companies, such as MCI, KMC Telecom and EATEL, the right to compete against BellSouth in offering local telephone service to consumers. In return, the Act granted BellSouth the right to offer long distance services if it met certain conditions. But, a recent court decision threatens to hurt local telephone competitors and, in turn, consumers.

Before passage of the Act, BellSouth had a legal monopoly over local telephone service throughout most of Louisiana. As a result, BellSouth constructed over many decades a local telephone network. Recognizing that competitors would not be able to quickly or easily replicate such a network of their own, Congress required BellSouth to grant competitors access to its network at rates set by the state public service commission.

Within the last few years, competition in the local telephone market began to produce benefits for consumers, especially small businesses. However, at the urging of BellSouth and other Bell companies, such as SBC and Verizon, the U.S. Court of Appeals for the District of Columbia has thrown out several Federal Communications Commission (FCC) rules that preserved competitors' access to the local telephone network.[2] The Court of Appeals' decision threatens to derail the recent increase in competition and the resulting consumer benefits.

The National Association of Regulatory Utility Commissioners ("NARUC")[3] and a coalition of nearly thirty competitive telephone companies and industry groups have requested the United States Supreme Court to intervene, which it has done twice before. It is unclear, however, whether the Supreme Court will grant this latest request. If the Supreme Court does not intervene, the future of local telephone competition may hinge on decisions of the FCC as it reconsiders the rules thrown out by the appellate court. State public service commissions also may seek to preserve local telephone competition using state law.

Businesses have a vital stake in the outcome. Competing telephone companies and BellSouth have acted to offer a variety of telecommunications services, often bundling local, long distance and data services at reduced prices to win consumers. Recent studies document harm to small businesses in the form of rate hikes if the FCC does not preserve competing companies' access to the local network.[4] Some competing carriers have recently expressed plans to cease taking new orders or to pull out of the residential service market in Louisiana altogether.[5]

Consumers have enjoyed a taste of the benefits of competition. Returning to a deregulated and yet still monopolized market will be very hard to swallow.

(Footnotes)

[1] Pub. L. No. 104-104, 110 Stat. 56.

[2] *United States Telecom Ass'n v. FCC,* 359 F.3d 554 (D.C. Cir. 2004).

[3] NARUC represents the interests of state commissions, such as the Louisiana Public Service Commission.

[4] Association of Local Telecommunications Services, www.alts.org, citing MiCra and Small Business Administration studies (Release dated June 29, 2004).

[5] Justin Rubner, *AT&T, Z-Tel to pull out, cease new orders in eight states*, Atlanta Business Chronicle, June 23, 2004.

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UNDERSTANDING – AND AVOIDING – RECONDUCTED "MONTH-TO-MONTH" LEASES

Tacit reconduction occurs when a lease with a specified duration has expired but the tenant remains in possession of the leased premises, with the landlord's consent. This results in a "reconducted lease," which is actually a continuation of the original lease in all respects except that the fixed duration under the old lease is voided. A reconducted lease of immovable property (excluding agricultural property) is considered to be a month-to-month lease. As a result, under Louisiana law, termination of the reconducted lease can only occur by the party desiring to terminate the lease giving written notice of termination at least ten (10) days before the end of the month.

While being subject to this 10-day termination obligation may not be much of a headache, the greatest risk from being under a reconducted month-to-month lease arises when the terms of the original lease are changed in any manner. If any terms of the original lease are changed, then the old lease will be considered void in its entirety, and a new month-to-month lease is created.

For example, assume that a landlord of commercial property has carefully negotiated a very landlord-friendly lease, which shifts all responsibility for repairs to the tenant, prohibits the tenant from using hazardous materials on the leased property and also prohibits the tenant from assigning the lease or subletting the property. Assume further that after expiration of the lease, the landlord allows the tenant to remain in possession indefinitely, but only if the tenant agrees to increase the rent under the original lease. Once the agreement to vary the terms of the original lease occurs (i.e., the rent increase), then the original, landlord-friendly, lease goes out the window, with the parties being subject only to an oral month-to-month lease, with Louisiana law determining the lease terms and conditions. As a result, the landlord will have responsibility for certain repairs, such as those of a structural nature, the tenant can use the property for any lawful purpose and can assign the lease and sublet the premises.

The time and effort spent negotiating favorable lease terms can be unexpectedly lost if the parties alter the terms of the lease during a reconduction period. Rather than being subject to that possibility, avoid reconducted leases altogether, and take the time to formally, in writing, extend any lease term before it expires if continued possession is desired.

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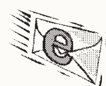

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