

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNIMAT, INC.	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 92-5941
v.	:	
	:	
MCI TELECOMMUNICATIONS	:	
CORPORATION	:	
	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, J.

June 22, 2000

Presently before the Court is the Plaintiff's Motion for Reconsideration or Reargument of its Motion to Compel Discovery. For the reasons stated below, the Motion is Denied.

**I. BACKGROUND**

Plaintiff Unimat, Inc. ("Unimat") originally filed a five-count Complaint against Defendant MCI Telecommunications Corp. ("MCIT") on March 15, 1992. The dispute arose over MCIT's assignment of a toll-free "800 number" to Unimat. Unimat alleged the MCIT failed to disclose certain information regarding the particular number assigned to Unimat. The case was removed to Federal Court in October, 1992. Since the claims raised by Unimat concerned the provision of services under the Federal Communications Act, this Court granted MCIT's motion to have the case referred to the Federal Communications Commission ("FCC") under the

doctrine of primary jurisdiction. The Court specifically referred four issues to the FCC. These questions concerned whether MCIT had a duty to inform Unimat of the assigned 800 number's prior history and whether the MCIT's tariff and practices concerning the assignment of 800 numbers was reasonable and in conformity with the Federal Communications Act. By an Order dated June 1, 1999, the FCC answered these questions. In April, 2000, Unimat filed a Motion to Compel Discovery answers to interrogatories and request for admissions. Unimat specifically sought discovery of information related to MCIT's filing and posting of the tariff which governed the Unimat-MCIT contract. This Court denied the Motion through an Order dated May 1, 2000. The Court now explains its reasons for denying the previous Motion.

## **II. DISCUSSION**

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. See Fed. R. Civ. P. 26(b)(1). MCIT objected to most of the discovery requests sought by Unimat based on its lack of relevance to the issue before the Court. Basically, Unimat is seeking to information to challenge the validity of MCIT's tariff. MCIT argues that this issue has already been decided by the FCC's Order.

The FCC Order stated that carriers, such a MCIT, may place a reasonable limitation on their own liability through a "limitation of liability clause" in the governing tariff.

The FCC continued:

"MCI's *filed* tariff carries the force of law, and fully binds MCI and the customer who takes service under the tariff. The limitation of liability clause unambiguously allocates financial risk resulting in misdirected calls to Unimat. Unimat did not argue that the limitation of liability clause was

unreasonable. Absent a showing that MCI's limitation of liability provisions is unreasonable, we find that Unimat is bound by the terms of that provision, and that MCI did not have a duty to disclose that telephone number's prior allegedly problem prone history." (emphasis added).

Later in the opinion, the FCC states:

"Unimat has actual or constructive notice of and was legally bound by, the terms of that tariff when Unimat took service under the tariff."

But the FCC left some work for this Court to do:

"Thus, the District Court, in conducting further fact finding in this matter, might properly look at the circumstances surrounding MCI's assignment (e.g., what MCI knew, when it knew it, and its opportunity to convey that information to Unimat), to decide if MCI's actions were willfully or grossly negligent and would thus warrant a finding that MCI's limitation of liability clause should not apply."

Therefore, it seems clear from reading the FCC Order that there is no issue to be decided with regard to the tariff and its posting. The FCC held that the filed tariff held the force of law, and that Unimat had at least constructive knowledge of its essential provisions. In fact, the FCC believed that the limitation of liability provision was reasonable based on the evidence presented before it. The validity of the tariff was central to the FCC's decision. It could not have decided that the limitation of liability clause was reasonable if the tariff itself had been invalid. However, the FCC decided the question of the clause's reasonableness deserved some further examination. Hence, the only question that remains is whether MCIT acted willfully or grossly negligent. If it did, then the limitation of liability clause may be unenforceable, notwithstanding the validity of the tariff. Information concerning MCIT's tariff will not be relevant towards determining what MCIT actually knew about the "800 number" assigned to Unimat. Therefore,

MCIT's objections to Unimat's request for admissions and interrogatories relating to the validity of the tariff will be sustained. Accordingly, Unimat's Motion will be denied.

An order follows.

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Defendants.	:	

**ORDER**

AND NOW, this 22<sup>nd</sup> day of June, 2000, upon consideration of the Plaintiff's Motion for Reconsideration or Reargument of Plaintiff's Motion to Compel Discovery (Docket No. 41), and the Defendant's Response thereto (Docket No. 42); it is hereby **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.