

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

WORLDCOM TECHNOLOGIES, INC., : CIVIL ACTION
et al. :
 :
v. :
 :
INTELNET INTERNATIONAL, INC., :
et al. : NO. 00-2284

MEMORANDUM AND ORDER

BECHTLE, J.

October 2, 2000

Presently before the court is defendants Intelnet International, Inc., et al.'s ("Defendants") Motion to Transfer Venue, or in the Alternative, to Abstain from Exercising Jurisdiction; plaintiffs Worldcom Technologies, Inc., et al.'s ("Plaintiffs") Brief in Opposition thereto and Defendants' Reply to Plaintiffs' Brief in Opposition. For the reasons set forth below, the court will deny the motion.

I. BACKGROUND

Plaintiffs Worldcom Technologies, Incorporated ("Worldcom") and MCI Telecommunications Corporation ("MCI") commenced this action against defendants Intelnet International, Incorporated ("Intelnet") and Associated Business Telephone Systems Corporation ("ABTS") to recover monies allegedly owed under contracts for long distance telecommunications services. Plaintiffs' Complaint seeks recovery under theories of: breach of tariff/express contract, quantum meruit and unjust enrichment. (Compl. ¶¶ 22-49.)

MCI Worldcom, Inc. ("MCI Worldcom") is the successor corporation to a 1998 merger between MCI, Worldcom and other entities. It owns and operates a long distance telecommunications network. MCI Worldcom is incorporated in Delaware, has its principal place of business in Jackson, Mississippi, and maintains an office in Bala Cynwyd, Pennsylvania.

Intelnet is a New Jersey Corporation with its principal place of business in West Berlin, New Jersey. Plaintiffs aver that Intelnet is the successor and/or alter-ego of ABTS. (Compl. ¶ 6.) ABTS was incorporated in New Jersey and maintained its principal place of business in West Berlin, New Jersey. Intelnet is registered to do business in Pennsylvania, as was ABTS.

Pursuant to an agreement executed on January 4, 1993, MCI sold long distance telecommunications services to ABTS, which then resold those services to the public. (Defs.' Mot. to Transfer Venue or, in the Alternative, to Abstain from Exercising Jurisdiction ("Defs.' Mot. to Transfer Venue") at 2.) Worldcom and Intelnet entered a similar agreement in March of 1998, under which Intelnet resold services provided by Worldcom. Id. Both agreements stated that service would be provided pursuant to tariffs filed by MCI and Worldcom with the Federal Communications Commission ("FCC"). (Pls.' Br. in Opp'n at 4.)

This case represents part of a larger dispute between the parties, some of which was the subject matter of a suit in

New Jersey filed in April of 1999.¹ MCI Worldcom removed that suit from the Superior Court of New Jersey to the United States District Court for the District of New Jersey (Camden) and asserted counterclaims identical to the claims asserted here.² (Defs.' Mot. to Transfer Venue at 5.) The New Jersey suit was remanded to state court for lack of subject matter jurisdiction over Intelnet's claims. Intelnet Int'l Corp., et al. v. Worldcom Techs., Inc. et al., Civ. No. 99-2273 (D.N.J. April 10, 2000). Neither the federal District Court nor the state court addressed the merits of the case, which is currently closed.³ (Pls.' Br. in Opp'n at 5.)

¹ Intelnet Int'l Corp., et al. v. Worldcom Techs., Inc., et al., Civ. No. L-2400-99 (N.J. Super. Ct. Law Div. filed April 1, 1999). In that suit, Intelnet sued MCI and Worldcom for intentional interference with business relations and slander. (Defs.' Mot. to Transfer Venue at 3.) Intelnet alleged that MCI Worldcom desired to sell a telephone calling card plan to Price Costco, one of Intelnet's largest customers, but was precluded from doing so by the contract between Intelnet and Price Costco. Id. at 3-4. Intelnet claims that in order to sell the calling card plan, MCI Worldcom repeatedly represented to Price Costco and other Intelnet customers that Intelnet was about to go out of business and was not paying its bills, and threatened to disconnect service to those customers if they continued to honor their agreements with Intelnet. Id. at 4.

² Discovery was conducted in Federal Court in New Jersey for over a year under the supervision of three different judges. (Pls.' Br. in Opp'n at 10.) It consisted of interrogatories, requests for admission, and extensive document production. (Defs.' Mot. to Transfer Venue at 9.)

³ However, a motion to reinstate is pending in the Superior Court in Camden County. See Cert. in Supp. of Pls.' Mot. To Reinstate in Intelnet Int'l Corp., et al. v. Worldcom Techs., Inc., et al., Civ. No. L-2400-99 at Ex. B (N.J. Super. Ct. Law Div.) (filed Sept. 12, 2000).

II. DISCUSSION

Intelnet asserts two grounds upon which it bases its motion. First, Intelnet argues that the court should transfer this action to the United States District Court for the District of New Jersey (Camden) pursuant to 28 U.S.C. § 1404(a). Second, Intelnet contends that the court should abstain from exercising jurisdiction pursuant to the Colorado River Doctrine. See, e.g. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) (discussing doctrine). The court will address each argument separately.

A. Transfer of Venue

"[F]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Defendants bear the burden of proving that transfer is appropriate. Superior Precast, Inc. v. Safeco Ins. Co. of Am., 71 F. Supp. 2d 438, 445 (E.D. Pa. 1999); Harris v. Nat'l R.R. Passenger Corp., 979 F. Supp. 1052, 1053 (E.D. Pa. 1997).

In deciding whether to transfer an action, the court shall consider the following private and public interests:

The private interests have included: plaintiff's forum preference as manifested in the original choice; the defendant's preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses--but only to the extent that the witnesses may actually be unavailable for

trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

The public interests have included: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; and the familiarity of the trial judge with the applicable state law in diversity cases.

Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-80 (3d Cir. 1995) (citations and internal quotations omitted). The burden of establishing that the balance of proper interests weighs in favor of transfer rests with the movant. Id. In ruling on a motion to transfer, "plaintiff's choice of venue should not be lightly disturbed." Id. (citation and internal quotation omitted).

Intelnet does not dispute that this court is a valid forum. The court has subject matter jurisdiction over Plaintiffs' causes of action because they arise out of the FCC's Tariff Filing Requirements for Interstate Common Carriers. MCI Telecomms. v. Teleconcepts, 71 F.3d 1086, 1096 (3d Cir. 1995) (holding that long-distance telephone company's suit to recover unpaid services under company's tariff raises federal question). As MCI Worldcom maintains an office in Bala Cynwyd, it is a resident of this district for purposes of venue. 28 U.S.C. § 1391(c).

Intelnet argues that the case should be transferred to New Jersey because all operative facts occurred there and because

Pennsylvania is not MCI Worldcom's "home." (Defs.' Mot. to Transfer Venue at 7.) Specifically, Intelnet maintains that the contracts underlying this dispute were negotiated and executed in New Jersey, and that all communications regarding the implementation of and disputes over those contracts took place from New Jersey. Id. at 7-8. Intelnet also claims that it would be inconvenient and create unnecessary expense if this court heard the case because: MCI Worldcom is litigating identical claims in New Jersey where significant discovery has taken place, all of these discovery documents are at Intelnet's New Jersey offices, the District Court in New Jersey is familiar with the dispute, and the same witnesses will likely be necessary for this litigation. Id. at 8-10. Lastly, at least one party witness is over 100 miles from this court, and thus cannot be summoned to appear under Fed. R. Civ. Pro. 45(c)(1).⁴

The balance of factors does not favor transferring venue. First, geographical considerations do not favor transfer. The District Court in Camden is only two miles from this court. This additional two miles will hardly cause any extra inconvenience or expense for the parties or witnesses. See Harris, 979 F. Supp. at 1054 (denying motion to transfer venue from Philadelphia to Wilmington); Klaudo and Nunno Enters., Inc. v. Hereford Assocs., Inc., 732 F. Supp. 336, 351-52 (E.D. Pa.

⁴ Specifically, Arthur Anderson, Intelnet's Certified Public Accountants, are located approximately 110 miles from this court in Roseland, New Jersey. (Defs.' Mot. To Transfer Venue at 10.)

1989) (denying motion to transfer venue to District of New Jersey and noting that "geographical factors . . . count for little when the venues are close"). Secondly, while significant discovery has taken place in the New Jersey litigation, the merits of the case were not addressed and that litigation is closed. Also, there is no reason that the parties and this court cannot utilize that discovery to avoid duplication and unnecessary expense. Thirdly, employees from MCI Worldcom's Bala Cynwyd office wrote the letters on which Intelnet bases its claim of entitlement to credits. Thus, some operative facts in this dispute occurred in Pennsylvania and persons residing in this district are likely to be material witnesses. Lastly, as MCI Worldcom maintains an office here, this district is its home for venue purposes. Thus, the balance of factors generally weighs in favor of venue in this court, rather than transfer to the District Court in New Jersey.

In conclusion, the court finds no reason to disturb MCI Worldcom's choice of the Pennsylvania venue in this civil action. Thus, the court will deny Intelnet's motion to transfer venue.

B. Abstention

The Colorado River Doctrine permits federal courts to abstain from exercising jurisdiction over a dispute in favor of parallel state proceedings. Colorado River, 424 U.S. at 817. While there was a case pending in New Jersey concerning the same dispute at issue in this case, the New Jersey litigation is currently closed. See Cert. in Supp. of Pls.' Mot. To Reinstate in Intelnet, Civ. No. L-2400-99 ¶ 6 & Ex. B (N.J. Super. Ct. Law

Div.) (filed Sept. 12, 2000). Thus, there is no parallel state proceeding. Accordingly, the court will not abstain from exercising jurisdiction.

III. CONCLUSION

For the foregoing reasons, the court will deny Intelnet's Motion to Transfer Venue, or in the Alternative, to Abstain from Exercising Jurisdiction.

An appropriate Order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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v.	:	
	:	
INTELNET INTERNATIONAL, INC.,	:	
<u>et al.</u>	:	NO. 00-2284

ORDER

AND NOW, TO WIT, this day of October, 2000, upon consideration of defendants Intelnet International, Inc., et al.'s Motion to Transfer Venue, or in the Alternative, to Abstain from Exercising Jurisdiction; plaintiffs Worldcom Technologies, Inc., et al.'s Brief in Opposition thereto and Defendants' Reply to Plaintiffs' Brief in Opposition, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.