

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

INFOTELECOM, LLC, Plaintiff,	:	CIVIL ACTION NO. 3:11-CV-739 (JCH)
v.		
ILLINOIS BELL TELEPHONE CO., ET AL., Defendants.	:	OCTOBER 17, 2011

**RULING RE: DEFENDANTS' MOTION FOR RECONSIDERATION (Doc. No. 104)**

**I. INTRODUCTION**

Defendants, Illinois Bell Telephone Company (d/b/a AT&T Illinois), Indiana Bell Telephone Company (d/b/a AT&T Indiana), Michigan Bell Telephone Company (d/b/a AT&T Michigan), Nevada Bell Telephone Company (d/b/a AT&T Nevada), the Ohio Bell Telephone Company (d/b/a AT&T Ohio), Pacific Bell Telephone Company (d/b/a AT&T California), the Southern New England Telephone Company (d/b/a AT&T Connecticut), Southwestern Bell Telephone Company (d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas), and Wisconsin Bell, Inc. (d/b/a AT&T Wisconsin) (collectively, "AT&T") seek reconsideration of this court's Ruling denying in part AT&T's Motion to Dismiss. For the reasons set forth below, the Motion is denied.

**II. BACKGROUND**

Infotelecom, LLC ("Infotelecom") brought this claim against AT&T, seeking a declaratory judgment and a temporary restraining order concerning the Interconnection Agreement ("ICA") between the parties. See Doc. No. 1. On May 24, 2011, Infotelecom filed a Motion for Preliminary Injunction, and AT&T filed a Motion to Dismiss for Lack of Jurisdiction. Doc. Nos. 33 & 43. On July 12, 2011, the court held oral

argument regarding these motions. On July 15, 2011, the court granted AT&T's Motion to Dismiss with regard to Infotelcom's Declaratory Judgment count, but denied the Motion with regard to "the secret agreement and discriminatory treatment claims." In light of this Ruling, the court also terminated Infotelcom's Motion for Preliminary Injunction as moot. See Doc. No. 80 at 26.

### **III. STANDARD**

A Motion for Reconsideration is addressed to the sound discretion of the court. See Kregos v. Latest Line, Inc., 951 F.Supp. 24, 26 (D.Conn. 1996). The standard for granting a Motion for Reconsideration is "strict," and "reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." See Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Generally, the major reasons to grant a motion for reconsideration are "an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Virgin Atl. Airways v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992) (quoting 18 C. Wright , A. Miller & E. Cooper, Federal Practice and Procedure § 4478 at 790). A motion for reconsideration may also be granted if the court "overlooked factual matters that were put before it on the underlying motion." See Eisemann v. Greene, 204 F.3d 393, 395 n. 2 (2d Cir. 2000) (internal quotations omitted).

### **IV. DISCUSSION**

AT&T argues that the court should reconsider its Ruling, which declined to dismiss Infotelcom's claims regarding a secret agreement, in violation of 47 U.S.C. §§ 252(a)(1) and (e), and discriminatory treatment, in violation of 47 U.S.C. § 202(a).

See Mem. Supp. Mot. for Reconsideration at 1–2. In support of its Motion, AT&T argues that AT&T cannot be liable under section 252(a)(1) or (e) because AT&T incumbent local exchange carriers do not act as a “common carrier,” as defined by section 153 of the 1996 amendments to the Telecommunications Act of 1934, when they file (or fail to file) an interconnection agreement. See Mem. Supp. Mot. for Reconsideration at 3–4. Additionally, AT&T argues that Infotelcom has failed to state a claim for damages, and consequently, cannot allege a private right of action for either of these claims under 47 U.S.C. § 207. Id. at 5–6.

AT&T asserts that it “seeks to bring to the Court’s attention issues that AT&T had no occasion to present until now.” Mem. Supp. Mot. for Reconsideration at 2. In its Reply, AT&T reiterates this point, asserting that “AT&T never had a ‘first bite’ at dismissing a claim for damages asserted under 47 U.S.C. § 207 and premised on alleged violations of section 252(a)(1) and (e) . . . and section 202 . . . because Infotelcom alleged no such claim in its Complaint and articulated no such claim in its opposition to AT&T’s motion to dismiss.” Def.’s Reply at 2.

Given these assertions, it is clear that reconsideration is not warranted because the court did not overlook any matters that were previously put before it. Instead, AT&T attempts to assert arguments that the court did not have occasion to properly consider prior to its Ruling.<sup>1</sup> The court cannot reconsider an issue that was not previously fully presented to it.

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<sup>1</sup> Although these issues were briefly discussed at oral argument, as the parties acknowledge, the court did not receive briefing from the parties regarding these specific issues. See Mem. Supp. Mot. for Reconsideration at 2; Response in Opp. at 4 (“AT&T could have made the arguments it makes now in its motion for reconsideration in its earlier motion to dismiss.”).

**V. CONCLUSION**

For the reasons stated above, the court denies AT&T's Motion for Reconsideration. With respect to AT&T's request that the court require Infotelcom to file an amended complaint, the court grants Infotelcom fourteen days to file an amended complaint, if it wishes to do so. If no amended complaint is filed, AT&T may file a motion to dismiss the current complaint, or any other dispositive motion, regarding these issues, within twenty-one days thereafter.

**SO ORDERED.**

Dated at Bridgeport, Connecticut, this 17th day of October, 2011.

/s/ Janet C. Hall  
Janet C. Hall  
United States District Judge