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Court Rejects Bells' Appeal

by [Sean Donahue](#)

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Overturing an earlier verdict by a lower court, a federal appeals court on Friday rejected a request by three Baby Bells to be allowed to offer long-distance services in their home territories.

The Fifth Circuit Court of Appeals in New Orleans struck down a December ruling that said parts of the 1996 Telecommunications Act were unconstitutional. Had the original ruling been upheld, SBC Communications (SBC), U S West (USW) and Bell Atlantic (BEL) would have been able to offer long-distance service without opening their lucrative local-call business to competition.



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But in its ruling Friday, the appeals court said it couldn't find any constitutional violation in the Telecom Act.

"By clearly linking the lifting of the long-distance ... restrictions to competition in the [Bell operating companies'] local markets, Congress has tailored the burdens imposed to an appropriate end of promoting competition," wrote Judge E. Grady Jolly.

The case revolves around the Baby Bells' contention that the Telecom Act imposes upon them a "bill of attainder" -- or a law that punishes a specific individual or institution without a trial. The Constitution prohibits Congress from imposing such bills of attainder.

The appeals court ruled that rather than being punitive provisions, the restrictions on Bells offering long-distance service were part of a quid pro quo arrangement.

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The court also said the Telecom Act regulations are not a bill of attainder because they do not permanently ban local companies from offering long-distance services. According to rules of the act, the Bells can sell long-distance service after they have sufficiently opened their local markets to rivals.

So far, the Federal Communications Commission has rejected all of the Bells' long-distance applications because it says the firms have not done enough to promote competition in their home territories. A verdict in favor of the Bells from the Fifth Circuit Court of Appeals would have granted the companies immediate entry into the long-distance market.

Several telecom industry executives said they had expected the appeals court to strike the earlier decision down.

"Nobody's really surprised at the Fifth Circuit Court reversing the earlier decision," said Lawrence Spiwak, president of the Phoenix Center, a Washington, DC legal and economic policy think tank. "It was an innovative constitutional argument, and an interesting academic exercise. But speaking as a lawyer, it doesn't hold water."

Representatives for SBC, U S West and Bell Atlantic said that the companies were reviewing the court's ruling, and had not yet decided whether to appeal their case to the US Supreme Court.

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