| PETITION FOR DECLARATORY RULING | § | STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION |
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| IN RE: ALABAMA LONG DISTANCE ASSOCIATION, et al., | § | DOCKET NO. DR. 85-163 |
| | § | |
| Petitioners. | § | |

DECLARATORY RULING

Pursuant to the provisions of Code of Alabama 1975, §41-22-11, the Petitioner, Alabama Long Distance Association, requested a declaratory ruling as follows:

> Whether members of the Alabama Long Distance Association, i.e., long distance resalers, who merely act as brokers of long distance service provided by underlying carriers, are engaged in the telephone business as contemplated by Alabama Code 40-21-58 (1975).

The request was subsequently amended so as to include the following interested parties as Petitioners: Telemarketing Communications of Montgomery, Telamarketing Communications of Birmingham, TelNet, Southland Systems, SouthernNet, and Delta Communications.

A hearing was conducted in the matter on November 13, 1985. The parties were represented at said bearing by attorney Michael G. Kendrick, for the Petitioners, and assistant counsel Ron Bowden, for the Revenue Department. The relevant facts, as set out below, are largely undisputed.

Companies offering long-distance telephone services in Alabama can be divided into three general categories, "facility based carriers", "pure resellers", and "hybrid resellers". The Petitioners in this case operate as pure resellers. The distinction

between the different categories is as follows: Facility based carriers, such as South Central Bell and AT&T, own all of the switching and transmitting equipment through which a long-distance call is routed from the originating local telephone company in City A to the receiving local telephone company in City B. Thus, a call made through a facility based carrier would proceed as follows: The call would originate with a local telephone company ln City A. The call would then be switched to a facility based carrier switching center in that same city. The call would then be routed over the facility based carrier's transmission facilities to the local telephone network in City B, where the call would be routed to the called number.

A pure reseller is distinguishable from a facility based carrier in that, except for a reseller's switch in City A, a reseller owns no intercity transmitting equipment, but rather, uses equipment or transmission facilities leased from an underlying facility based carrier. Thus, a call handled by a pure reseller would be switched from the originating local telephone company's switching office in City A to a reseller's switch owned by the reseller, which is also located in City A. From the reseller's switch, the call would be routed to a facility based carrier's switch and thereafter over equipment leased by the reseller from a facility based carrier to the local telephone company in City B, and then on to the called number. Except for the addition of the reseller's switch in City A,

a call through a pure reseller Is transmitted In the same manner as calls through a facility based carrier. A hybrid reseller operates in the same manner as a pure reseller, except that a hybrid reseller owns a portion of the transmitting equipment that is used to route the call from City A to City B.

The services most commonly obtained (leased) by resellers from underlying facility based carriers for resale are foreign exchange lines and WATS service. Resellers buy in bulk and thereafter divide the service into increments, which are resold to the reseller's customers. Both facility based carriers and resellers are subject to regulation by the Alabama Public Service Commission, although the degree of regulation is greater for facility based carriers.

The issue in question is whether the Petitioners operate a telephone business, as that term is used in Code of Alabama 1975, §40-21-58. That section reads as follows:

> In addition to all other taxes imposed by this title, there is hereby levied a license or privilege tax upon each person engaged in the telephone business in the state of Alabama for the privilege of engaging in such business, and said license or privilege tax shall be due and payable annually in advance on or before September 25 of each year to the department of revenue, by check made payable to the treasurer, and shall be in a sum equal to two and one-half percent of the total gross receipts of such telephone company from all the intrastate business within the state of Alabama during the preceding calendar year, the gross intrastate earnings to be determined by the amount received from intrastate business and from messages originating at points in Alabama destined to other points in Alabama although transmitted through another state, said lost named earnings to be apportioned on the basis of earnings per mile transmitted. (Acts 1935, No. 194, p. 256; Acts 1936-37, Ex. Sess., No. 58, p. 36; Code 1940,

> T. 51, §182; Acts 1957, No. 548, p. 768; Acts 1971, No. 1411, p. 2405.)

The revenue code provides no statutory definition for the term "telephone business". Consequently, the term must be given its common, everyday meaning. Alabama Farm Bureau Mut. Cas. Ins. Co. v. City of Hartselle, 460 So.2d 1219 (1984); State v. Crayton, 344 So.2d 771 (1977); Morgan County Commission v. Powell, 293 So.2d 830 (1974). It is self-evident that a telephone company is in the telephone business. A good general definition of a "telephone company" is set out in Jones v. Cumberland Telephone and Telegraph Company, 130 S.W. 994, which reads in pertinent part as follows:

> A "telephone company" Is a common carrier of intelligence, engaged in a public service, holding Itself out to the public, in consideration of certain fees exacted, as able, ready and willing to enter into contracts which will place persons in direct communications with each other; . . .

Further, Code of Alabama 1975, §37-2-170 also provides a working definition of the term as follows:

> (2)TELEPHONE COMPANY. Such term shall mean and include every person not engaged solely in interstate commerce or business that now or may hereafter own, operate, lease, manage, or control, as transportation companies or for hire any telephone line.

The above section makes reference to transportation companies, which are defined at Code of Alabama 1975, §37-2-1 as any person "that now or may hereafter own, operate, lease, manage or control . . . any telephone line."

In consideration of the undisputed fact that the Petitioners are in the business of providing telephone services for a fee, by the

use of their own and also leased equipment (telephone lines), it is hereby found that the Petitioners, i.e. resellers, operate as telephone companies, and therefore, are engaged in the conduct of telephone business within the purview of §40-21-58.

The fact that a reseller does not own a portion of the equipment used to transmit its calls does not change the nature of the business. Clearly, a reseller provides essentially the same services to its customers as the traditional facility based carriers, which are clearly in the telephone business.

The Petitioner's primary argument is that because the resale industry did not exist when §40-21-58 was enacted, that the legislature could not have intended that resellers should be subjected to the tax levied therein The Petitioners are correct in arguing that the intent of the legislature in enacting a statute is important. However, the legislative intent can be gleaned only from the words of the statute, and, if unambiguous, the plain meaning of the words must prevail. Miller v. Director, Ala. Dept. of Indus. Relations, 460 So.2d 1326 (1984); Alabama Indus. Bank v. State ex rel Avinger, 237 So.2d 108 (1970).

In the present case, the commonly understood meaning of the term "telephone business" is sufficiently clear so as to make any strained statutory construction unnecessary, especially in the instant case where the primary, if not only, function of the Petitioners is to provide telephone services, I.e. "own, operate,

lease, manage or control . . . telephone lines", for a consideration. The fact that the particular form of telephone business conducted by the Petitioners had not been developed when §40-21-58 was initially enacted does not indicate a legislative intent to exclude resellers from the tax, and therefore, should not be used to remove the Petitioners from the scope of a definition which their present operations clearly fit.

Done this 3rd day of January, 1986.

BILL THOMPSON
Chief Administrative Law Judge