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Special Alert

Federal District Court Concludes That PSPs Cannot Sue To Recover Dial Around Charges

Washington, DC, March 26, 2002. In a stunning setback for payphone industry, a Federal District Court Judge has granted a Motion to Dismiss, with prejudice, the complaint brought by a Payphone Service Provider (“PSP”) to recover dial around charges (“DAC”), concluding that the neither Section 276 of the Telecommunications Act, nor the regulations promulgated by the FCC thereunder, create a private right of action.

In its complaint, the plaintiff alleged that defendant was obligated to pay it compensation for payphone calls under Section 276 of the Telecommunications Act and under Section 64.1300 of the FCC’s rules. In dismissing the complaint, however, the Court found that Section 276 merely mandated that the FCC establish regulations to ensure that PSPs are fairly compensated for calls originating at a payphone and “cannot be violated by a party other than the FCC.” As a logical corollary, the Court went on to find that Section 276 do not expressly “provide a private right of action for violation of the FCC regulations or orders.”

Significantly, the Court also concluded that neither Section 276 nor the regulations promulgated thereunder provide an implied cause of action. Specifically, the Court wrote, “because § 276 is not subject to violation by a party, other than the FCC, and because no express private right of action exists for violations of the FCC regulations which plaintiffs allege were violated, Plaintiff’s claims for violation of 47 C.F.R. § 64.1300 may only survive if an implied right of action exists. The Court finds no such implied right.” On these bases, the Court dismissed Plaintiff’s complaint with prejudice.

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In dismissing the complaint, the Court's Order suggests that aggrieved PSPs are required to seek relief exclusively through the FCC's complaint process. The language, however, leaves open the important question as to whether such PSPs could obtain direct payment of DAC through such complaints or merely through enforcement of the payment obligation by the FCC.

The Court's decision represents a major setback for PSPs which, to an increasing degree, have been seeking the intervention of the courts to secure payment of DAC. This decision, if followed, will foreclose that avenue of relief, leaving PSPs to pursue available remedies only before the FCC.

Technology Law Group served as counsel to one of the defendants in the referenced proceeding and has substantial experience and success in representing carriers and resellers on dial around issues before the FCC and the federal courts. If you would like additional information on this proceeding or on dial around issues generally, please feel free to give us a call.

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