



TELECOMMUNICATIONS

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Release No. 1

February 3, 2003

COURT REMANDS DIAL AROUND RULES

Washington, DC., January 21, 2003. In a not so surprising decision, the United States Court of Appeals for the District of Columbia struck down an F.C.C. attempt to revise its rules in what the court referred to as an “utter disregard” for administrative procedure. Those who practice regularly before the Commission know that such methods of administrative decision making by the Commission is nothing new.

The Commission, through its Common Carrier Bureau, without public notice or opportunity for comment, revised its rules governing the means by which payphone service providers (PSPs) are compensated for dial around calls. The Administrative Procedure Act clearly forbids such types of unilateral administrative legislation. The reasons for this are not arbitrary. To the contrary, as the court observed, public notice and the opportunity for comment “improves the quality of agency rulemaking,” provides

for “diverse” views by affected parties, “ensures fairness,” and develops a record that “enhances the quality of judicial review.”

As a result of this decision, PSPs must resort back to the blurred interpretations of the prior rule that requiring the first facilities-based carrier to compensate PSPs for the completed dial around calls that they handled. While the Commission’s actions may have been conceived with its stated good intent to address the PSPs difficulty in obtaining compensation for dial around calls, this disregard to proper procedure has cost many a great deal of time and money and consequently, forced back the rulemaking process by years. The good news? Those affected by dial around compensation rules now possess a figurative crystal ball. With such foresight into the exact language of the modified rules intended by the Commission, interexchange

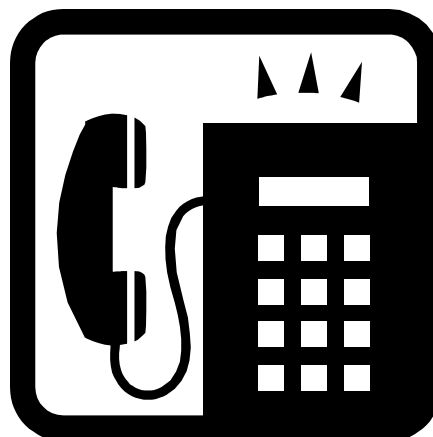
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carriers (IXCs), switch-based resellers (SBRs), and PSPs may all have the opportunity to *directly* address their views and concerns regarding dial around compensation rules.

A glimpse into the future is achieved by way of the Commission's intended Second Order on Reconsideration (Second Order), now on remand. With the Second Order, the Commission intended to shift the burden of tracking calls and compensating PSPs from the IXC and SBRs to the IXC alone. The rationale was that IXCs could recover the costs from SBRs and require SBRs to report tracking information to the IXCs as a condition of their service contracts. Furthermore, the Commission intended to broaden the IXC reporting obligations by requiring IXCs to inform PSPs of the volume of dial around calls received from individual PSP's payphones. To widen even further the doors to promote confusion, the Commission noted that PSPs could still negotiate private contracts with IXCs and SBRs with alternative compensation schemes, seemingly nullifying the need for regulation in the first place.

Prior to and rejected by the Second Order, a simple solution was offered by a coalition of the largest PSPs to solve the confusion surrounding the compensation obligations. The coalition suggested that the obligation to compensate PSPs should fall upon the entity identified by the Carrier Identification Code (CIC) used in routing the dial around call. Considering that the Commission favors compensation to the PSP be paid by the entity that receives the economic benefit of the completed call, it seems illogical that the Commission would reject this solution in favor of placing the burden, and the trust, in the hands of the IXCs. ?



If you would like additional information on this proceeding or on dial around compensation issues generally, please feel free to give us a call.

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