

Local Carriers' Long-Distance Fees On Wireless Calls OK'd

By **Jacob Fischler**

Law360, Washington (November 17, 2015, 6:10 PM ET) -- A Texas federal judge ruled Tuesday that local phone carriers can charge fees to wireless providers for calls from cellphones to landlines that transmit over long-distance lines, even if the calls begin and end in the same region.

In multi-district litigation encompassing dozens of suits throughout the country, U.S. District Judge Sidney A. Fitzwater dismissed Verizon Select Services Inc. and Sprint Communications Co.'s complaint asking for an injunction to prevent local exchange carriers from assessing switched access charges on wireless carriers for calls within the same major trading area, saying neither the Federal Communications Commission nor Congress expressly took away local carriers' rights to impose such a fee.

Completing calls from wireless phones to landlines requires the cooperation of local carriers and the use of their equipment, and the FCC has said local carriers are able to charge an access fee in exchange for that cooperation, Judge Fitzwater's order and opinion said. The local carriers are required to file the rates of such charges with the FCC, which, under the common law "filed rate doctrine" means the FCC approves of the rate and the rates allowed the force of law, he said.

Under the 1996 Telecommunications Act, the FCC must explicitly overrule such rates in order for them to lose the effect of law, according to the order. Verizon and Sprint's attempts to show that the filed rate doctrine does not apply — because, according to the wireless giants, it could not apply to supposedly unlawful access rate charges — fell short because they cited incomplete rulings from cases that did not decide the issue, Judge Fitzwater said.

"If plaintiffs are relegated to attempting to divine Delphic clues from FCC orders, compelled to cobble together a series of excerpts from these orders, and forced to rely on court opinions that do not decide the question, to maintain that they together establish that access fees are now unlawful, this means the FCC has not yet by regulation explicitly superseded the relevant pre-February 8, 1996 baseline compensation practices," the judge said.

Adding that the FCC — given "its efforts to promote wireless communication" — may soon explicitly hold that local carriers cannot impose long-distance charges on wireless providers, Judge Fitzwater said he was still beholden to interpret the current state of the law.

He also dismissed various state law claims, where the wireless carriers had said states had banned access charges on intra-major trading area calls, saying they lacked the complaint lacked the requisite

specificity to win on such claims. However, he allowed the wireless carriers to amend their complaint to incorporate specific laws for state-level claims.

Sprint spokesman Jeffrey Silva said in an email Thursday the company was “disappointed in the ruling” and was considering its options.

In July, AT&T Inc. argued the case be put on hold until the FCC reached a decision in an open proceeding addressing the access charge issue. An AT&T spokesman declined comment on the decision Tuesday.

The wireless carriers had argued the access charges the long-distance carriers pay to connect calls to the local exchanges are illegal when levied against them for wireless calls within the same major trading area, according to court documents. Sprint and Verizon had said in various suits that they should be able to claim refunds on those tariffs and not have to pay them in the future for those calls.

However, in a May motion to dismiss, the local carriers argued that calls routed as long distance calls require the tariff, regardless of the origin.

Representatives for Verizon and the local carriers did not immediately respond to messages seeking comment.

Sprint is represented by Amy Richardson and Christopher Wright of Harris Wiltshire & Grannis LLP.

Verizon is represented by Tamerlin Godley, Henry Weissmann and Margaret Maraschino of Munger Tolles & Olson LLP.

AT&T is represented by James Bendernagel, Michael Hunseder and Emily Watkins of Sidley Austin LLP.

The defendants are represented by teams from Cooley LLP, Lynn Tillotson Pinker & Cox LLP, Davis Wright Tremaine LLP, Kutak Rock LLP, Mayer Brown LLP, Latham & Watkins LLP, Morgan Lewis & Bockius LLP, McGinnis Lochridge & Kilgore LLP and Pringle & Herigstad PC.

The case is In re: IntraMTA Switched Access Charges Litigation, MDL number 2587, in the U.S. Judicial Panel on Multidistrict Litigation. The dismissal came under case number 3:14-md-02587 in U.S. District Court for the Northern District of Texas.

— Additional reporting by Michael Macagnone. Editing by Ben Guilfooy.