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TELECOMMUNICATIONS E-BRIEF

Federal Appeals Court Decision Demonstrates Importance of Boiler Plate Language Provision

On November 9, 2011, the Federal Appeals Court for the First Circuit issued a fifty-four page decision regarding an interconnection agreement between Puerto Rico Telephone Company, Inc. ("PRTC") and Sprintcom, Inc. ("Sprint"). This summary focuses on two aspects of the decision: (1) did the "change of law" provision modify the compensation rates after the FCC's ISP Remand Order, and (2) was the Puerto Rico Commission's decision interpreting a waiver provision correct.

In 2000, PRTC and Sprint entered into an interconnection agreement. After several extensions, the parties agreed to an automatic renewal of the agreement every thirty days until written termination by either party. The agreement was terminated in August 2007. The rates in this interconnection agreement were higher than the rates contained in the ISP Remand Order.

In 2002, PRTC entered into an interconnection agreement with another carrier. This second interconnection agreement contained rates for reciprocal compensation based upon the rate caps established by the FCC under the ISP Remand Order. The rate caps in the ISP Remand Order became effective on June 14, 2001. PRTC did not notify other carriers of the different rates in the interconnection

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agreement. In 2004, PRTC amended its interconnection agreement with AT&T Wireless to reflect the ISP Remand Order rate caps based upon a request from AT&T Wireless.

In 2005, Sprint became aware of the low rates offered to the other carriers and informed PRTC that the ISP Remand Order triggered the change of law provision in their interconnection agreement. Sprint requested retroactive implementation of the rate caps as of July 19, 2002 (the date that PRTC first offered rates to Sprint's competitor).

Although the law had changed during the term of the agreement, because of the ISP Remand Order regarding the delivery of ISP traffic, the question before the Court of Appeals was whether this "change of law" actually triggered a change in the existing interconnection agreement between the parties before the agreement was terminated and a new agreement executed. The Court ruled that the ISP Remand Order did not trigger the change of law provision because the FCC's ISP Remand Order did not alter or preempt the agreement, even though the FCC's ISP Remand Order would have been a basis for a different compensation scheme between the parties. This change would have to be voluntarily adopted by the parties.

Additionally, the Court upheld the Puerto Rico Commission's ruling that even if the billing party had over billed the billed party (Sprint) for transit traffic, Sprint had waived its right to challenge the invoices because of the waiver provision in the interconnection agreement. This waiver provision provided that the bill would be deemed correct 30 days after mailing.

The Court of Appeal's decision demonstrates the importance of understanding and negotiating proper language regarding change of law and waiver provisions. These types of "boiler plate" provisions are often overlooked by the parties and can be of great importance as circumstances change. This is especially true during this time of ever-changing compensation mechanisms.

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