

Court of Appeals Upholds FCC on ISP-Bound Calls

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The U.S. Court of Appeals for the D.C. Circuit has upheld the FCC's November 5, 2008 ruling continuing the rate cap on CLEC intercarrier charges for dial-up Internet calls. In [Core Communications v. FCC](#), decided January 12, 2009, the Court found "no legal error in the Commission's analysis" and thus affirmed the agency's decision. This ruling presumably ends a protracted set of challenges and judicial examinations of the FCC's efforts to limit CLEC charges for receiving ISP bound calls.

The D.C. Circuit has examined the issue several times since 1999, including a 2002 decision that the FCC rate cap could not be justified on the basis of 47 USC 251(g). [WorldCom, Inc. v. FCC](#), 288 F.3d 429 (D.C. Cir. 2002). In that case, the Court rejected and remanded the FCC's rationale for the rate cap but did not vacate it, recognizing that there might be other legitimate bases for the policy. Subsequently, in June 2004, Core Communications asked the Court to order the FCC to respond to the remand, which remained pending. The Court declined, but in 2007 granted a renewed request for mandamus from Core. The FCC followed that order with the [November 5, 2008 ruling](#) which was the subject of the recent Court affirmation. The key legal discussion in the new decision is Court agreement that the FCC is legally empowered to rely on Section 201 of the Communications Act as the supporting basis for the rate cap.

The January 12 opinion reviews and rejects each of the Core Communications challenges to the FCC action. First, the Court finds that Section 201 is not a "general" provision superceded by the more specific Sections 251 and 252 in the area of compensation for ISP bound traffic (which has been found to be interstate, not local in nature). It also rejected arguments that the calls are "local" rather than interstate because they terminate at the ISP. The Court found that it has already been established and accepted that dial up internet calls do not stop at the ISP interface, but instead continue on to the websites being contacted. Similarly, the Court rejected a claim that the FCC was impermissibly discriminating against ISP bound calls by treating them differently from other calls. Finally, the Court rejected other arguments without discussion because they had been improperly raised before the Court.