FCC Issues Clarification, Warning about Call Blocking Practices

February 7, 2012

Responding to complaints by rural LECs that call blocking has increased, the FCC yesterday issued a clarification and a stern warning to carriers not to block, choke or restrict calls to other carriers' customers. While call completion issues can occur for a variety of reasons, allegations of "blocking" have arisen in a number of access charge disputes and other forms of telecommunications litigation that we track.

The FCC's declaratory ruling serves as a warning that carriers involved in such disputes should not intentionally block or restrict the ability of callers to reach their intended destinations. It also appears to create affirmative obligations to correct call completion problems that are occurring.

Yesterday's Declaratory Ruling came in response to filings made in June 2011 by several rural local exchange carriers. It reiterates and builds upon a similar Declaratory Ruling issued in 2007 that call blocking is unlawful.

As explained by the FCC, the latest order addresses issues raised by rural carriers:

Call completion problems appear to be occurring particularly in rural areas served by rate of return carriers where the costs that long distance providers incur to complete calls are generally higher than in non-rural areas. To minimize call termination charges, long distance providers often use third-party "least cost routers," which attempt to connect calls to their destination at the lowest cost possible, usually within defined service parameters. Rural associations state that the call completion problems appear to arise from how originating carriers choose to set up the signaling and routing of their calls, and that many of these call routing and termination problems could lie with underlying routing providers selected by carriers who offer retail long distance services.

In the Declaratory Ruling, the FCC broadly asserted that, "carriers are prohibited from blocking, choking, reducing or restricting traffic in any way, including to avoid termination charges." This prohibition, said the FCC, extends to VoIP-PSTN traffic as well as traditional TDM traffic.

Unjust and Unreasonable Blocking Practices. The noteworthy portion of the Declaratory Ruling is the Commission's list of practices that it considers unjust and unreasonable. The order continues a recent trend by the Commission to rely broadly on Section 201(b) to declare specific practices unlawful. For example:

- It is unjust and unreasonable for a carrier that knows (or should know) that it is providing degraded service to certain areas to fail to correct the problem or to fail to ensure that intermediate carriers "are performing adequately."
- It may be unjust and unreasonable to provide a false or misleading intercept message when a

call fails to complete, such as stating that a number is out of service when in fact the number is in service and is reachable.

In addition, the Commission warned that the provision of lower quality service to rural or high cost areas could constitute an unreasonable discrimination under Section 202 of the Act.

Enforcement Actions. The Commission warned that it may "take appropriate enforcement action" against carriers that violate these prohibitions. Although not setting a base forfeiture for call blocking, the FCC noted that the statute authorizes a penalty of up to $150,000 per violation or $1.5 million for a continuing violation of the Act.