

TELECOMMUNICATIONS LITIGATION
PRACTICE GROUP

TELECOM CASE OF THE MONTH

Several Multidistrict Universal Service Fund Billing Cases Sent Back to State Court
In re Universal Service Fund Telephone Billing Practices Litigation, 2002 WL 31929179
(D. Kan. Dec. 19, 2002)

A United States District Court ordered that some cases alleging that Sprint and AT&T misrepresented Universal Service Fund ("USF") fees charged to customers should be remanded to state court, while others, which claimed the USF fees were excessive, should remain in federal court.

As part of the Telecommunications Act of 1996, Congress created the USF fees to subsidize the provision of telecommunications services to rural customers and non-profit organizations. Telecommunications carriers fund the USF through contributions based on a percentage of gross revenues. Carriers may recoup their USF contributions from customers.

Several plaintiffs throughout the country sued AT&T and Sprint in state courts over their USF billing practices. The complaints alleged that either AT&T or Sprint misrepresented that the USF fund was required by law and fees collected would be paid to the government. In reality, the complaints alleged, AT&T and Sprint charged customers significantly more than the contribution they had to pay the government, so the USF charge ended up being a higher-than-advertised rate for long-distance service. Sprint and AT&T removed the cases to federal court, claiming the suits raised substantial federal questions. The Judicial Panel on Multidistrict Litigation consolidated the cases in the U.S. District Court for the District of Kansas.

The plaintiffs moved to remand eight of the cases back to state court. The Kansas court held that five of the eight cases should be remanded, because the claims rested solely on the alleged misrepresentations, which were state law issues. However, three of the cases also challenged the propriety of the charges themselves; these allegations required proof that AT&T and Sprint violated the Federal Communications Act. Accordingly, the court held that the essence of the three cases was a federal question.

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