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TELECOMMUNICATIONS LITIGATION PRACTICE GROUP
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BREACH-OF-CONTRACT ACTION NOT BARRED BY THE FILED-RATE DOCTRINE
WorldCom, Inc. v. Graphnet, Inc., 343 F.3d 651 (3rd Cir. Sept. 12, 2003)

The Third Circuit ruled that WorldCom can pursue a \$3.4 million breach-of-contract action against Graphnet for failure to pay for telex services, even though the contracts at issue were never filed with the Federal Communications Commission ("FCC").

Section 211(a) of the Federal Communications Act requires common carriers to file copies of all contracts with the FCC. However, the Act contains a provision allowing the FCC to exempt certain contracts from the filing requirement. Pursuant to this authority, the FCC promulgated a regulation which exempts "non-dominant" carriers from the filing requirement. WorldCom argued that it was non-dominant in domestic long-distance operations at the time the contracts were signed. The Third Circuit held that the district court erred by failing to consider this issue.

The Third Circuit went on to hold that, even if WorldCom were required to file its contracts, there was nothing in the Communications Act or case law that would require that WorldCom forfeit all rights to collect from Graphnet, even under an unjust enrichment theory, by its mere failure to file the contracts. The court noted that Section 211 of the Communications Act "says nothing about any penalty for failing to file a contract."

The Third Circuit held that the filed-rate doctrine -- which forbids a carrier from charging or collecting rates for services which vary from the rates in the filed tariff -- was inapplicable in this case because there was no filed tariff covering the types of services which were the subject of the contracts between WorldCom and Graphnet.

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