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International Restrictions on Call-Back Service

On June 13, 1997, the Federal Communications Commission ("FCC" or "Commission") released a Public Notice announcing the availability of updated information concerning the permissibility of so-called "call back" services in a number of foreign countries. Although the FCC permits U.S. licensed carriers to provide call-back services, it has also indicated that it will act as a repository for information from foreign governments which seek to put U.S. carriers on notice that call-back using uncompleted calls is prohibited in their territories. The Commission has made clear, however, that it will not undertake its own enforcement efforts to prevent or punish the offering of such "prohibited" call-back services unless foreign administrations provide specific information concerning their domestic laws prohibiting call-back or unless an individual party shows that a carrier has violated its Section 214 authorization because of the carrier's failure to comply with a foreign law which specifically prohibits call-back service.

Although a substantial number of countries have notified the FCC that they do not allow call-back services within their borders, only two countries, Saudi Arabia and the Philippines have submitted information to the FCC that is sufficiently specific to enable the Commission potentially to act against specific U.S. operators providing call-back service to these countries. This memorandum summarizes the general legal positions of countries that have provided information to the FCC concerning call-back service restrictions, describes specific enforcement actions the FCC has taken against carriers providing call-back service in the Philippines, and also describes possible FCC enforcement approaches to stop U.S. carriers from providing call-back service in countries that in the future provide sufficient information concerning call-back restrictions to warrant agency action.

1. U.S. Regulatory Background Concerning Call-Back Service

Call-back service is used by international long distance resellers to bypass the domestic long distance companies of foreign countries. U.S. carriers typically implement call-back through uncompleted call signaling. When a subscriber wants to make a long distance call, the subscriber calls the U.S. long distance carrier, allows the phone to ring



a predetermined number of times, and suspends the connection without the U.S. carrier completing the call (i.e., the carrier does not answer the call). The unanswered call signals the U.S. long distance carrier's switch which automatically "calls back" the subscriber to provide a dialtone and to establish the call. The call is billed at U.S. tariffed rates.

Many foreign governments wish to prohibit call-back in their territories to prevent loss of revenues for monopoly national long distance providers that otherwise, in the absence of call-back, would be able to complete a higher volume of long distance calls billed at their own higher rates.

The FCC has stated that call-back service neither violates domestic law nor international law. In fact, the Commission looks favorably upon call-back because this service promotes competition in international long distance markets. As a matter of international comity, however, the FCC prohibits carriers from offering call-back service in countries which clearly and explicitly prohibit this service.

The FCC has indicated in its Call-Back Proceeding that the Commission will use its enforcement authority to assist governments unable to enforce their domestic prohibition on call-back services. The FCC will undertake enforcement efforts when foreign administrations provide the following specific information: (1) a copy of the legislation that explicitly bans call-back; (2) the names and addresses of the specific U.S. providers which allegedly provide call-back illegally; (3) specific evidence that there are violations of their domestic prohibition; and (4) evidence that unsuccessful enforcement measures have been undertaken against the companies alleged to be operating illegally. Additionally, the Commission invites countries to submit information to the FCC to put companies on notice that international call-back utilizing uncompleted call signaling is illegal in their territories. The FCC has placed this information in a public file in its Reference Center ("Call-Back Public File").

2. General Positions of Other Countries on Call-Back Service

The FCC has noted that the Call-Back Public File is for informational purposes, and inclusion in the file does not constitute Commission judgment whether the information is sufficient to constitute evidence of illegality in a Commission proceeding. The Commission has received data directly from the governments of thirty-five countries plus a memorandum from the International Telecommunications Union ("ITU") which purports to summarize the positions of many of its member administrations concerning call-back service.

Although a significant number of countries have now provided information to the Commission, only Saudi Arabia and the Philippines have provided information sufficient to meet the FCC's guidelines for providing enforcement assistance. Three countries object to call-back service on policy grounds but do not provide any legal justification.⁽¹⁾ Six countries state that call-back is contrary to national law but offer no further details.⁽²⁾ Seven countries cite administrative regulations prohibiting call-back services.⁽³⁾ Two countries find call-back

service illegal based on legislation that expressly prohibit call-back service.⁽⁴⁾ Ten countries, the largest category, find call-back service illegal based on general telecommunications legislation.⁽⁵⁾ Of these ten countries, one explains that the matter is also before its courts.⁽⁶⁾ Two countries object to call-back unless their particular domestic regulatory agency grants administrative approval which is required when services are not vested with the national provider.⁽⁷⁾ Four countries state generally that the national carrier must provide long distance calls.⁽⁸⁾ One country declares that it has no specific law declaring call-back illegal, but that the matter has been submitted for judicial review.⁽⁹⁾

According to the ITU, a total of fifty-seven of its member countries have announced that call-back is prohibited in their territories.⁽¹⁰⁾ The ITU notes that ten countries do not currently regulate call-back;⁽¹¹⁾ but that thirteen other countries, are expected to prohibit call-back in future legislation.⁽¹²⁾ Note that the information the Commission received directly from Colombia, indicating that the permissibility of call-back is subject to judicial review, contradicts the information the Colombian government supplied the ITU, indicating that the service is affirmatively prohibited.

3. Present and Potential Future FCC Enforcement Actions

The FCC reports in its Public Notice that both Saudi Arabia and the Philippines have submitted enough information to satisfy the Commission's criteria for the FCC to conduct inquiries concerning carriers reported to be providing call-back service in these two countries. With regard to Saudi Arabia, the carriers contacted by the FCC have stated that they do not provide call-back services in Saudi Arabia. Consequently, the Commission has requested the Saudi Arabian government to provide additional information to substantiate that U.S. carriers do provide this service in that country. The Saudi Arabian government has declined to provide additional information, and, accordingly, the FCC is not expected to take further action at this time.

With regard to the Philippines, the FCC granted complaints from the Philippine Long Distance Telephone Company ("PLDT") against the two carriers for violation of Section 214 of the Communications Act of 1934 and requirements set forth in the Commission's Call-Back Proceeding. Finding that PLDT met the standing and subject matter requirements of Section 208 because "any person" can "complain of alleged wrongdoing by a common carrier, without regard to injury suffered or direct interest in the matter," the FCC determined that carriers who offer international call-back service to the general public and who set the terms and conditions, irrespective whether the service is resold or not, are common carriers. As common carriers, however, they are subject to the limitations of the Call-Back Proceeding which requires Section 214 carriers to provide their services consistently with the laws of foreign countries. The FCC therefore ordered the two carriers to terminate immediately their international call-back service to the Philippines. Additionally, the FCC left open the door for damage liability which these two carriers may be subject to in subsequent proceedings. In denying subsequent related challenges to these FCC determinations, the Commission has affirmed that a private party has a right to file an individual complaint under the Communications Act of 1934 (*i.e.*, a section



208 complaint), regardless of the procedures prescribed for foreign governments that seek the assistance of the FCC to stop call-back services within their countries. In short, based on FCC action in this case, the FCC may grant complaints brought by any individual party when that party claims injury by a carrier violating U.S. law resulting from the carrier's failure to comply with foreign law that prohibits call-back service.

In addition to granting individual complaints against carrier providing call-back in violation of foreign law, the FCC may also assist foreign governments through its own enforcement efforts when such foreign administrations satisfy the criteria established in the Call-Back Proceeding. Because there is no precedent for FCC action against carriers providing call-back service to assist foreign governments, the FCC has not yet made clear how it will enforce the prohibition of call-back in countries complying with the Call-Back Proceeding. It seems likely, however, that where countries have demonstrated that call-back is illegal within their borders, the FCC will remove these countries from the scope of the authority included in existing Section 214 authorizations, and could institute license revocation proceedings against those carriers for which foreign governments provide evidence of illegal service offerings subsequent to such license modifications.

Endnotes 1. Bahrain, Lebanon, and Seychelles.

2. Bolivia, China, Egypt, Oman, Syria, and Thailand.

3. Costa Rica, India, Indonesia, Kuwait, Phillipines, Saudi Arabia, and Venezuela.

4. Cook Islands and Peru.

5. Bahamas, Ecuador, Honduras, Latvia, Malaysia, Netherlands Antilles, Qatar, South Africa, Tanzania, and Thailand.

6. South Africa.

7. Hungary and Portugal.

8. Croatia, Cyprus, United Arab Emirates, and Uruguay.

9. Colombia.

10. Memorandum from the Study Group 3, Telecommunications Standardization Sector, International Telecommunications Union on Position of Countries on Call-Back (Nov. 11-15, 1996). The countries listed as prohibiting call-back are: Algeria, Bahamas, Bahrain, Belarus, Brunei, Burkina Faso, Burundi, Cambodia, China, Colombia, Cyprus, Djibouti, Ecuador, Egypt, Eritrea, Spain, Figi, Gabon, Gambia, Ghana, Greece, Honduras, Hungary, India, Kazakstan, Kenya, South Korea, Kuwait, Kyrgyzstan, Latvia, Malaysia, Mali,



Morocco, Netherlands Antilles, Nicaragua, Niger, Oman, Pakistan, Panama, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Saudi Arabia, Syria, Tanzania, Thailand, Turkey, Uganda, United Arab Emirates, Venezuela, Vietnam, Western Samoa, Yemen, Zambia, and Zimbabwe.

11. Denmark, Finland, Hong Kong, Kiribati, Maldives, Mexico, New Zealand, South Africa, Sweden, Switzerland.

12. Burundi, Cambodia, Cyprus, El Salvador, Eritrea, Gambia, Hungary, Malaysia, Mali, Nicaragua, Slovak Republic, Togo, and Zimbabwe.