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Supreme Court Issues Decision in *Global Crossing v. Metrophones*

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From: Mike Hazzard and Ross Buntrock

On April 17, 2007, the Supreme Court found that *Metrophones* has a private right to sue Global Crossing in federal court for refusing to comply with the FCC's payphone compensation regulations. In so doing, the Court concluded that a failure to comply with FCC regulations can constitute an unjust and unreasonable practice under section 201(b) of the Act, actionable directly in federal district court.

Although the Court's opinion focused on private actions related to payphone regulations, *Metrophones* has broad implications for any company seeking to take enforcement action against another carrier for violations of co-carrier obligations arising under FCC rules and orders promulgated under section 201.

The Court described the case as arising "at the intersection of traditional regulation and newer, more competitively oriented approaches." Historically, the Commission would enforce its own rules with regard to companies it regulated, many of which had protected franchises and monopoly status. In modifying the Communications Act more recently, Congress expressed an intent to encourage competitive market entry, and with it, the ability of individual companies to enforce their rights through private causes of action against those that may be violating the Commission's rules and orders.

In past cases, defendants to lawsuits alleging violations of FCC rules had thwarted litigation by claiming that carriers had no right under the Communications Act to enforce through a private lawsuit the FCC's implementing regulations. Rather, defendants often successfully maintained that only the FCC had the right to address claims related to violations of its rules and orders.

Under *Metrophones*, however, where the FCC has authoritatively created an obligation that runs between carriers (e.g., payphone compensation) pursuant to section 201, a carrier may pursue a private lawsuit against another under a claim that a violation of the FCC's regulations constitutes an unreasonable practice.

Metrophones should be welcomed by new market entrants and others, as it provides a Supreme Court-endorsed roadmap for individual carriers to seek relief directly in federal court, which up to now has been difficult to obtain.

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