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Effective:[See Text Amendments]

United States Code Annotated [Currentness](#)
Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication ([Refs & Annos](#))
 [Ⓜ] [Subchapter II](#). Common Carriers ([Refs & Annos](#))
 [Ⓜ] [Part I](#). Common Carrier Regulation
 → **[§ 207. Recovery of damages](#)**

Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

CREDIT(S)


(June 19, 1934, c. 652, Title II, § 207, 48 Stat. 1073.)

LAW REVIEW COMMENTARIES

FCC authority to [regulate the Internet: Creating it and limiting it](#). [James B. Speta, 35 Loy. U. Chi. L.J. 15 \(2003\)](#).

LIBRARY REFERENCES

American Digest System

[Telecommunications](#)  8, 11, 144, 178 to 183, 221, 282, 438.Key Number System Topic No. [372](#).

Corpus Juris Secundum

[CJS Telecommunications § 9](#), Administrative Proceedings.
[CJS Telecommunications § 11](#), Recovery of Damages.

RESEARCH REFERENCES

ALR Library

[2006 ALR, Fed. 2nd Series 14](#), Construction and Application of Communications Act of 1934 and Telecommunications Act of 1996--United States Supreme Court Cases.[174 ALR, Fed. 439](#), Federal Regulation of Telephone "Slamming".

[81 ALR Fed. 700](#), Construction and Application of Communications Act Statute of Limitations ([47 U.S.C.A. § 415\(B\)](#)) Relating to Recovery from Carrier of Damages Not Based on Overcharges.

[171 ALR 765](#), Legal Aspects of Radio Communication and Broadcasting.

[52 ALR 296](#), Federal Control of Public Utilities.

[31 ALR 825](#), Rate of Return to Which Telephone Company is Entitled.

Encyclopedias

[Am. Jur. 2d New Topic Serv., ADA: Analysis & Implic. § 842](#), Jurisdiction; FCC Enforcement Authority.

Forms

[Federal Procedural Forms § 62:266](#), Who May File Complaint; Election of Remedies.

[Federal Procedural Forms § 62:347](#), Allegations in Formal Complaint Against Carrier--Unlawful Refusal to Furnish Telephone Lines [[47 U.S.C.A. § 208](#); [47 C.F.R. §§ 1.720, 1.721](#)].

[Federal Procedural Forms § 62:381](#), Suits for Damages Against Common Carriers--Jurisdiction of Courts.

[Federal Procedural Forms § 62:382](#), Suits for Damages Against Common Carriers--Election of Remedies.

[Am. Jur. Pl. & Pr. Forms Telecommunications § 79](#), Complaint--To Federal Communications Commission--By Radio Station Operator--For Damages Against Telephone Company for Refusal to Furnish Lines.

Treatises and Practice Aids

[Americans With Disab. Pract. & Compliance Manual § 5:31](#), Jurisdiction; FCC Enforcement Authority.

[Federal Procedure, Lawyers Edition § 72:320](#), Who May File Complaint.

[Federal Procedure, Lawyers Edition § 72:322](#), Election of Remedies.

[Federal Procedure, Lawyers Edition § 72:1016](#), Jurisdiction.

[Federal Procedure, Lawyers Edition § 72:1017](#), Election of Remedies.


[Federal Procedure, Lawyers Edition § 72:1018](#), Primary Jurisdiction of FCC.


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
[1.](#) Law governing

Congress having occupied the field by enacting this chapter, questions relating to duties, privileges, and liabilities of telegraph companies in transmission of interstate messages containing defamatory matter, must be governed by federal rules and are not to be determined on basis of state common law or statutes. [O'Brien v. W. U. Tel. Co., C.C.A.1 \(Mass.\) 1940, 113 F.2d 539. Commerce](#)  [59](#)

Telegraphic message which was transmitted from one point within the state to another point within state but which was routed through another state and a foreign country was "interstate commerce" and telegraph company's liability for delay was governed by federal statutes and federal common law to the exclusion of conflicting state law. [Komatz Const. Inc. v. W. U. Tel. Co., Minn.1971, 186 N.W.2d 691, 290 Minn. 129](#), certiorari denied [92 S.Ct. 102, 404 U.S. 856, 30 L.Ed.2d 98. Commerce](#)  [59](#)


[2.](#) State regulation or control


Substantial federal question doctrine did not support removal of consumers' state-law claims against wireless telecommunications provider for unfair business practices, consumer fraud, and declaratory and injunctive relief, given that consumers did not seek to litigate amount of provider's rate, an issue governed by federal law, or assert claim for violation of Federal Communications Act (FCA), but rather alleged that provider violated state unfair trade practices laws and engaged in consumer fraud by using deceptive and misleading language on its bills, claims that could be resolved without reference to federal law. [Russell v. Sprint Corp., D.Kan.2003, 264 F.Supp.2d 955. Removal Of Cases](#)  [25\(1\)](#)



Cellular telephone company failed to establish that Communications Act provided clear indication that Congress intended Act civil enforcement provision to completely preempt telecommunications field as required for removal of customer's state law action against company to federal court under federal question jurisdiction by virtue of complete preemption doctrine, in customer's action alleging failure to disclose company's practice of charging for noncommunication period beginning with initiation of call; company had not shown language in Act or its legislative history affirmatively indicating that Congress intended that Act civil enforcement provision completely preempt state causes of action that fell within its scope, and Act savings clause provided affirmative evidence of Congress' intention that Act civil enforcement provision should not completely preempt state law claims. [Sanderson, Thompson, Ratledge & Zimny v. AWACS, Inc., D.Del.1997, 958 F.Supp. 947. Removal Of Cases](#)  [25\(1\)](#)


[3.](#) Persons entitled to maintain action

Federal Communications Commission (FCC) acted reasonably, and thus lawfully, by determining that long-distance carrier's failure to pay compensation to payphone service provider (PSP) for dial-around coinless calls, contrary to FCC regulations' requirement, was "unjust or unreasonable" telecommunication services practice within meaning of Communications Act; thus, PSP allegedly wrongfully deprived of compensation by carrier's failure to pay had cause


of action against carrier under Act's provisions creating private right of action for unjust or unreasonable practices. [Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc., U.S.2007, 127 S.Ct. 1513, Telecommunications](#)  916(2)

Local exchange carrier, providing access for calls from prepaid calling cards over carrier's facilities, had sufficient injury in fact for Article III standing to challenge part of order of Federal Communications Commission (FCC) that precluded retroactive application of determination that menu-driven prepaid calling cards were telecommunications services subject to access charges, under Telecommunications Act; order declared that golden retriever menu-based card of provider, who was in continuing access charges dispute with local exchange carrier, was telecommunications service subject to access charges, but denied another local exchange carrier's attempt to obtain declaratory ruling that it was entitled to retroactive access charges, which all but totally foreclosed any hope that carrier challenging order would be successful in litigation against provider. [Qwest Services Corp. v. F.C.C., C.A.D.C.2007, 509 F.3d 531, Telecommunications](#)  906


Federal Communications Commission (FCC) did not invoke telecommunications statute declaring to be unlawful any unjust or unreasonable charges, practices, classifications, or regulations when FCC promulgated regulation requiring interexchange carriers (IXCs) to compensate payphone service providers (PSPs) for dial-around calls, and therefore statute did not create private right of action allowing PSPs' assignees to sue IXCs in federal court to recover such compensation. [APCC Services, Inc. v. Sprint Communications Co., C.A.D.C.2005, 418 F.3d 1238, 368 U.S.App.D.C. 79, rehearing denied, petition for certiorari filed 2005 WL 3438135, Action](#)  3; [Telecommunications](#)  890


Communications Act provision, directing Federal Communications Commission (FCC) to prescribe regulations that established a per call compensation plan to ensure that all payphone service providers were fairly compensated for each and every call, conferred a private right of action on payphone service providers to enforce their rights under the FCC regulation establishing per call compensation plan specifying precise level of compensation; the statute was not merely a directive to the FCC, it conferred upon payphone service providers a right to be fairly compensated, and the regulation, in turn, simply provided the details necessary to implement the statutory right. [APCC Services, Inc. v. Cable & Wireless, Inc., D.D.C.2003, 281 F.Supp.2d 52, motion to certify appeal granted 297 F.Supp.2d 101, motion to certify appeal granted 297 F.Supp.2d 90, reversed 418 F.3d 1238, 368 U.S.App.D.C. 79, rehearing denied, petition for certiorari filed 2005 WL 3438135, Action](#)  3


Section of the Federal Telecommunications Act of 1996 which proscribes unauthorized switching or "slamming" of consumer interstate or intrastate long distance service provides a private cause of action. [Valdes v. Qwest Communications Intern., Inc., D.Conn.2001, 147 F.Supp.2d 116, 92 A.L.R.5th 665.](#)

Plaintiff had no standing, as a representative of the public interest, under the Federal Communications Act to bring action alleging that a television network and telephone companies participated in games of chance, for purposes of federal court's removal jurisdiction. [Boyle v. MTV Networks, Inc., N.D.Cal.1991, 766 F.Supp. 809, Removal Of Cases](#)  102


4. Election of remedies

Where customer had chosen to pursue with Federal Communications Commission (FCC) its claim that telephone company's access charges were unreasonable, it could not raise claim for refund of those charges as counterclaim in telephone company's suit. [Cincinnati Bell Telephone Co. v. Allnet Communication Services, Inc., C.A.6 \(Ohio\) 1994, 17 F.3d 921, rehearing denied, Telecommunications](#)  866


Federal Communications Commission (FCC) requirement, that person claiming to be damaged by common carrier must complain to carrier prior to instituting damages proceedings with FCC, did not apply when person pursued alternate compensation procedure provided for under Federal Communications Act (FCA), by bringing suit against carrier in federal court. [APCC Services, Inc. v. WorldCom, Inc., D.D.C.2001, 305 F.Supp.2d 1, Telecommunications](#)  628


Although international telegraph carrier did invoke the Commission's remedial authority with respect to overseas service by domestic telegraph carrier, international carrier was not precluded from maintaining action for damages where it had not been established that international carrier ever presented claim for damages to Commission. [RCA Global Communications, Inc. v. Western Union Tel. Co., S.D.N.Y.1981, 521 F.Supp. 998, Telecommunications](#)  703

5. Time of Commission action

Communications Act choice of forum section precluded telecommunications regional operating company from bringing court claim against competing telephone access service provider, seeking injunctive and monetary relief for provider's alleged violations of Act filed tariff provision, despite fact that Federal Communications Commission (FCC) had not acted on company's FCC complaint in statutorily allotted time; company attempted to place same issues before both FCC and court, and provider did not suffer any preclusive effect from arguing to FCC that company's FCC complaint did not cover conduct addressed in court claim. [Bell Atlantic Corp. v. MFS Communications Co., Inc., D.Del.1995, 901 F.Supp. 835, Telecommunications](#)  900

6. Exhaustion of administrative remedies


Telephone subscriber seeking judicial relief from allegedly unreasonable telephone rates could not excuse failure to exhaust administrative remedies before Commission by claim that Commission would not properly exercise authority provided by this chapter, since court could not assume in advance that an administrative hearing might not be fairly conducted. [Booth v. American Tel. & Tel. Co., C.A.7 \(Ill.\) 1958, 253 F.2d 57, Telecommunications](#)  981


District court would enter summary judgment for telephone local exchange carriers (LEC) in their action against long-distance telephone company to collect unpaid local access charges, rather than waiting for decision on company's pending complaint before Federal Communications Commission (FCC) challenging carriers' alleged practice of providing kickbacks to customers of portion of revenue carriers earned from long-distance telephone companies for terminating access service; prevailing rule was that customers of common carriers must pay filed rates before challenging rates as unreasonable, waiting for Commission to rule on company's complaint would cause inordinate delay, and risk that carriers might have to pay company back money carriers received in present action was far outweighed by potential damage that delay would cause carriers if Commission would uphold carriers' rates. [Frontier Communications of Mt. Pulaski, Inc. v. AT & T Corp., C.D.Ill.1997, 957 F.Supp. 170, Federal Civil Procedure](#)  2509


7. Federal court jurisdiction


Communications Act provisions creating federal-court cause of action to redress injuries caused by violations of Act's ambiguous "just and reasonable" section also encompass actions that complain of violation of same section as lawfully implemented by Federal Communications Commission (FCC) regulation. [Global Crossing](#)


[Telecommunications, Inc. v. Metrophones Telecommunications, Inc., U.S.2007, 127 S.Ct. 1513. Telecommunications](#)  617




Consumer's filing of informal complaint with Federal Communications Commission (FCC), about consumer's telecommunications company, precluded consumer from bringing suit in federal court based on same claim, regardless of alleged suggestion in letters from FCC that consumer could bring both informal complaint and complaint in federal district court. [Stiles v. GTE Southwest Inc., C.A.5 \(Tex.\) 1997, 128 F.3d 904](#), rehearing and suggestion for rehearing en banc denied [137 F.3d 1353. Telecommunications](#)  900

Notwithstanding fact that this chapter vested exclusive jurisdiction over claims for damages for statutory violations of this chapter in the federal courts or Commission, New York state court had subject matter jurisdiction to adjudicate contract claims of wire carrier's parent corporation, which did not consider itself a "common carrier" so as to be subject to regulation under this chapter, against bank, which asserted affirmative defense of illegality to parent's claim for unpaid carriage of messages based on allegations that parent was in violation of this chapter and regulations. [Citibank, N. A. v. Graphic Scanning Corp., C.A.2 \(N.Y.\) 1980, 618 F.2d 222. Courts](#)  489(1)

Claims for damages in excess of \$10,000 against telephone companies, who were communications "common carriers," for negligence and breach of contract in rendition of interstate telephone service arose under federal law, and therefore, were within jurisdiction of federal district court. [Ivy Broadcasting Co. v. American Tel. & Tel. Co., C.A.2 \(N.Y.\) 1968, 391 F.2d 486. Federal Courts](#)  199


Common carrier's alleged failure to fully and fairly compensate payphone service providers, as required by Federal Communications Commission (FCC) regulation setting forth a binding rate schedule, constituted an unjust and unreasonable practice actionable under the Communications Act. [APCC Services, Inc. v. Cable & Wireless, Inc., D.D.C.2003, 281 F.Supp.2d 52](#), motion to certify appeal granted [297 F.Supp.2d 101](#), motion to certify appeal granted [297 F.Supp.2d 90](#), reversed [418 F.3d 1238, 368 U.S.App.D.C. 79](#), rehearing denied, petition for certiorari filed [2005 WL 3438135. Telecommunications](#)  349


District court would not, under primary jurisdiction doctrine, refer to Federal Communications Commission (FCC) telephone local exchange carriers' (LEC) action against long-distance telephone company to collect unpaid local access charges, in light of complaint filed by company before Commission challenging carriers' alleged practice of providing kickbacks to customers of portion of revenue carriers earned from long-distance telephone companies for terminating access service; company could not raise claims of reasonableness of carriers' rates in court because it filed complaint with Commission and, thus, court in present action was not faced with prospect of ruling on matter within Commission's expertise and would not render potentially inconsistent verdict on carriers' rates but, instead, court would simply enforce carriers' filed rates, leaving to Commission question of whether those rates were appropriate under Communications Act. [Frontier Communications of Mt. Pulaski, Inc. v. AT & T Corp., C.D.Ill.1997, 957 F.Supp. 170. Telecommunications](#)  1901(2)


Under Communications Act choice of forum provision, choice to proceed in court or before Federal Communications Commission (FCC) destroys jurisdiction in remaining body, and electing party must then accept and work through problems of reaching judgment; thus, when party has elected to proceed before Commission, solution to agency inaction lies with court of appeals. [Bell Atlantic Corp. v. MFS Communications Co., Inc., D.Del.1995, 901 F.Supp. 835. Telecommunications](#)  628; [Telecommunications](#)  635; [Telecommunications](#)  634

Provision of Communications Act outlining concurrent jurisdiction of Federal Communications Commission (FCC) and district courts does not grant substantive rights nor dictate where suit must be brought. [Southwestern Bell](#)


[Telephone Co. v. Allnet Communications Services, Inc., E.D.Mo.1992, 789 F.Supp. 302. Telecommunications](#)  [615; Telecommunications](#)  [635](#)


Federal Communications Commission (FCC) did not have exclusive jurisdiction over state's claims against provider of long-distance telephone service to pay telephones and provider's agent, contending that defendants switched primary interexchange carrier (PIC) for pay telephones to provider without adequate authorization from telephone owner, alleging violation of Vermont Consumer Fraud Act and Federal Communications Commission (FCC) guidelines and, thus, district court could properly hear state's action; action did not require application of specialized knowledge of telecommunications industry, and claims of unfair and deceptive practices were within conventional competence of courts. [State of Vt. v. Oncor Communications, Inc., D.Vt.1996, 166 F.R.D. 313. Telecommunications](#)  [901\(1\)](#)

State court lacked jurisdiction of claims under the Clayton Act, sections 12-27 of Title 15, and this chapter, since federal statutes specifically provide that federal district courts shall have original jurisdiction of civil actions under the Clayton Act, sections 12-27 of Title 15, and that actions under this chapter shall be brought either in such courts or before the Commission. [Van Dussen-Storto Motor Inn, Inc. v. Rochester Telephone Corp., N.Y.Sup.1972, 338 N.Y.S.2d 31, 72 Misc.2d 34](#), modified on other grounds [348 N.Y.S.2d 404, 42 A.D.2d 400](#), motion denied [311 N.E.2d 508, 355 N.Y.S.2d 374, 34 N.Y.2d 635](#), affirmed [316 N.E.2d 719, 359 N.Y.S.2d 286, 34 N.Y.2d 904. Courts](#)  [489\(8\)](#)

Angry letter from telecommunications provider to Federal Communications Commission (FCC), being in nature of informal complaint which had caused FCC to schedule hearing to determine what relief might be warranted for telephone company's alleged misconduct in destroying provider's business by temporarily transferring its toll-free number to another party, sufficiently invoked FCC's jurisdiction to prevent provider from filing complaint in district court to recover for same injury. [Digitel, Inc. v. MCI Worldcom, Inc., C.A.2 \(N.Y.\) 2001, 239 F.3d 187. Telecommunications](#)  [901\(1\)](#)

8. Removal of action


Mere fact that Communications Act of 1934 governed certain aspects of telephone carrier's billing relationships with its customers did not mean that customer's claims, concerning lawfulness of charges of carrier for telephone calls which originated outside the United States, arose under the Act and, thus, did not provide basis for removal of those claims from state court to federal court, where customer alleged violation of traditional common-law standards and did not allege violation of any specific provision of the Act. [Nordlicht v. New York Telephone Co., C.A.2 \(N.Y.\) 1986, 799 F.2d 859](#), certiorari denied [107 S.Ct. 929, 479 U.S. 1055, 93 L.Ed.2d 981. Removal Of Cases](#)  [19\(1\)](#)

Substantial federal question doctrine supported removal of customers' state-court conversion claims against long-distance telecommunications carriers, inasmuch as claims, which required showing that carriers' charges related to their universal service fund (USF) contributions violated provision of Federal Communications Act (FCA), would be actionable under FCA provision creating private cause of action for such overcharge claims. [In re Universal Service Fund Telephone Billing Practices Litigation, D.Kan.2002, 247 F.Supp.2d 1215. Removal Of Cases](#)  [19\(1\)](#)

Customer's state-court suit alleging that long-distance telephone company breached contract by discontinuing special international rate after using rate to induce customer to choose company as his business carrier was preempted by federal law, and accordingly raised federal question upon which removal could be grounded, where rate change was included in tariff that company filed with Federal Communications Commission (FCC), even though customer did not intend to challenge tariff. [Mellman v. Sprint Communications Co., N.D.Fla.1996, 975](#)

[F.Supp. 1458. Removal Of Cases](#)  [25\(1\)](#); [States](#)  [18.81](#); [Telecommunications](#)  [734](#)

[9. Stay](#)

After primary jurisdiction referral, district court abused its discretion in dismissing rather than staying claims of independent payphone service provider (PSP) alleging that local exchange carrier (LEC) violated the anti-discrimination and anti-subsidization provisions of the Telecommunications Act by failing to file tariffs and supporting cost data for public access line (PAL) rates, as dismissal was potentially prejudicial in that it might result in a statute-of-limitations bar to PSP's claims and because election-of-forum provision might prevent it from seeking agency relief. [TON Services, Inc. v. Qwest Corp., C.A.10 \(Utah\) 2007, 2007 WL 2083744. Telecommunications](#)  [911](#)

47 U.S.C.A. § 207, 47 USCA § 207

Current through P.L. 110-243 (excluding P.L. 110-234) approved 6-3-08

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