

WRF Successfully Defends Grant of Summary Judgment in \$300 Million Class Action; Litigation Establishes Important Filed-Rate Doctrine Precedent in Hawaii Supreme Court

November 28, 2005

Washington, DC-On November 25, 2005, in a major victory for Verizon Hawaii, the Supreme Court of the State of Hawaii affirmed a grant of summary judgment disposing of a \$300 million class action lawsuit initiated against the company in April 2003. The purported class relied upon the state's unfair and deceptive trade practice statute to challenge a surcharge for touch tone functionality-known as "Touch Calling"-assessed by Verizon Hawaii under tariffs approved by the Hawaii Public Utilities Commission. Plaintiffs alleged that Verizon Hawaii had engaged in unfair or deceptive trade practices because it failed to tell consumers that, as a result of technological advances in Verizon Hawaii's telephone network, any consumer with a touch tone phone could receive Touch Calling service without payment simply by plugging their touch tone capable phone into the jack.

The Supreme Court agreed with Verizon Hawaii that the company's surcharge was at all times wholly lawful; it had been approved in several decisions by the state public utilities regulators, who concluded that the surcharge was an important part of Hawaii's public policy governing the provision of telephone service. Specifically, the Court concluded that by demanding a refund of the rate paid for touch tone calling, Plaintiffs' theory of damages would violate the filed-rate doctrine by effectively imposing a lower rate for Touch Calling services than that explicitly set and repeatedly affirmed by state regulators in several tariffs. In addition, the Court found that because the Touch Calling charge was required by law, and because the plaintiffs received the services for which they paid, Plaintiffs could

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allege no legally cognizable injury under the relevant statutes.

The Supreme Court wrote:

"[W]e hold that pursuant to the filed-rate doctrine, Plaintiffs' claims fail as a matter of law. Plaintiffs cannot demonstrate that Verizon's allegedly inadequate disclosures constituted an unfair or deceptive trade practice ... because (1) Verizon's tariffs on file with the HPUC disclosed that the Touch Calling fees should be assessed against customers receiving Touch Call services and (2) knowledge of these disclosures contained in the tariff is imputed to customers, and, thus, (3) Plaintiffs can prove neither the injury ... nor the likelihood of damage that is required for recovery."

In addition to finally disposing of a frivolous and abusive lawsuit against Verizon Hawaii, this published decision establishes an important precedent recognizing and clarifying the scope of the filed rate doctrine in the state of Hawaii.