



## Telecommunications Newsletter Switzerland

# Federal Communication Commission ("ComCom") Rules that INA - Billing and Collection Services Are Not Caught By the Swiss Interconnection Regime

The ComCom ruled in its decision of January 18, 2005 that INA - Billing and Collection services do not form part of the interconnection regime. Further, despite the interoperability obligation pursuant to which access to INA numbers must be assured, the ComCom found no compelling reasons which would justify the interpretation of INA - billing and collection services as a necessary element of interconnection.

In rendering its decision, the ComCom followed the Federal Supreme Court's narrow interpretation of the term interconnection. According to the decision of the Federal Supreme Court, the interconnection obligation requires a basis in a formal act which permits a telecommunication operator to decide which services fall under the interconnection regime. Since the Federal Supreme Court has already held that the present legal framework does not form a sufficient basis for the application of the interconnection regime for leased lines as well as for the access to the local loop, the ComCom argued *a fortiori* that billing and collection services cannot be regarded as interconnection services in the narrow sense.

Furthermore, given the alternative collection methods which include prepaid and credit card systems or separate invoicing after verification of the address, INA - billing and collection services can, according to the ComCom, not be regarded as necessary ancillary interconnection services. Finally, according to the ComCom, the service contract offered by the incumbent operator appears to be in conformity with the usage in the market.

In our view, the ComCom's narrow interpretation of the interconnection services puts alternative operators at a serious disadvantage over the incumbent operator and owner of the local loop. In particular, if read in connection with the decision of

the Federal Supreme Court, that there is no legal obligation placed upon the incumbent operator to unbundle the local loop. In fact, the decision rendered by the ComCom appears to cement the incumbent operator's monopoly also as provider for value-added services. A value-added service provider will be forced to sign up with the incumbent operator in order to minimize transaction costs. Obviously, the costs of the service provider will be the lowest if the value-added service number is implemented with the incumbent operator.

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