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PROBLEMS OF DETERMINING THE ROLE OF MOBILE COMMUNICATION SERVICES IN THE SERVICE SYSTEM

Abstract: As for determining the place of mobile communication and telecommunication services in general in the system of services, it should be noted that in the classification of services provided by O.G.Shablova as objects of civil rights, telecommunication services and mobile communication services as a type of it are medical, tourist and among others it is defined as belonging to social infrastructure and personal services.

Key words: mobile communication services, telecommunication services, scientific research, regulatory legal documents, telecommunication system

Of course, mobile communication services are of particular interest in distinguishing telecommunication services from other services. The need to consider this issue is related to the methodology of scientific research: in order to identify any phenomenon, it is necessary to identify its signs and protect against relevant concepts.

The relevance of this issue is due to the fact that mobile communication services are similar to other services in many ways. There are cases in which actions that do not have all the features of mobile communication are recognized as mobile communication and telecommunication services in regulatory legal documents and judicial practice. Moreover, so far this problem has not been studied as a subject of deep scientific research.

The issues of separating mobile communication services from related services that have certain common characteristics with telecommunication services are covered only in a fragmentary way in some scientific works. Thus, A.V. Markina distinguishes radio broadcasting activities and cable television service provision activities (as a type of communication)¹. V. P. Vaipan makes a distinction between telecommunication services and transport services².

Therefore, mobile communication service and other services, in particular: information services; services of providing consumers with access to the telecommunications network; telematics services; transport services; it will be necessary to determine the difference between postal services.

First of all, it is necessary to limit mobile communication services from legal categories close to it, in particular, from information services that are directly related to it. The relevance of this ratio is indisputable, because information and mobile communication services are often interpreted as

¹ Маркина А.В. Правовое регулирование деятельности по предоставлению услуг кабельного телевидения: автореф. дис. ... канд. юрид. наук. – Казань, 2007. – 7 с.

² Вайпан В.А. Соотношение услуг по пропуску трафика и услуг связи // Право и экономика. – 2006. – № 5. – С. 20–21.

separate services, and this can lead to certain errors in the analysis of relations on their provision and affect the application of relevant regulatory legal documents. .

This issue is also relevant in foreign practice, for example, National Cable & Telecommunications Association (NCTA) v. Brand X Internet Services (04 - 277) (National Cable and Telecommunications Association v. Brand X Internet)³ On June 27, 2005, the United States Supreme Court recognized wired broadband Internet access as an information service and other issues. The Federal Communications Commission has determined that wired broadband Internet access services are information services that are functionally integrated with a telecommunications component⁴. After all, this happened because the definition of information service in the 1996 US Telecommunications Act did not include characteristics that would allow it to be distinguished from telecommunication service.

In the United States Telecommunications Act of 1996, "information service" means the provision of the ability to create, receive, store, modify, process, retrieve, access, or communicate information by means of telecommunications, including electronic publication, but such ability to manage, control or operate them does not include such uses as managing a telecommunications system or telecommunications service.

If we take a broad approach to the interpretation of the concept of information as communication, telecommunications, including mobile communication services, are part of the communicative interdependence of society. This approach establishes a direct connection between the development of telecommunications and mobile communications in the country and the formation of an information society.

Based on a broad approach to the concept of "information", when considering information services, we encounter not only information circulation using traditional means, but also relations with, for example, telephony. When providing telephone communication, the operator does not provide information services, because at the same time it does not provide information. The operator provides the possibility of personal communication only in real time, that is, creates the necessary conditions for the exchange of information.

However, it is known that some types of communication can combine telecommunication and information features, for example, the owner of a mobile phone or an e-mail box can receive information about the exchange rate, weather, information information. That is, this type of connections can be included in the media. Information services provided to these users through radio broadcasting (on air), for example, satellite speech, are also provided on satellite communication channels.

Based on the above, it is possible to point out the following as features of mobile communication services that are different from information services:

1) in the provision of information services, information is transferred by its owner or creator to the client, and in the provision of mobile communication services - not by the information owner,

³ National Cable & Telecommunications Association (NCTA) v. Brand X Internet Services (04-277) [Electronic resource]: Cornell University Law School. -Access mode: <http://www.law.cornell.edu/supct/html/04-277.ZO.html>.

⁴ FCC Classifies DSL as Information Service [Electronic resource] // Techlawjournal. – Access mode: <http://www.techlawjournal.com/topstories /2005/20050805a.asp>.

but by an "intermediary" (operator, telecommunications provider) to the recipient at the request of the information owner (client). is done;

2) the methods of providing these services differ: if mobile communication services are provided only using a telecommunication network, information services can be provided without using such a network;

3) the customer of the information service pays a fee for the provision of information of a certain type and nature at the same time; communication and information exchange in real time by telephone or Internet; receiving and sending information (the customer of the information service, as a rule, does not provide information, but receives it only from the appropriate source under a special contract for the provision of information services);

4) in the provision of information services, it can have a transformative effect on information, change its content, and in the provision of mobile communication services, the effect on information is carried out in the form of movement in space.

Mobile communication service is technologically close to efforts to provide access to the telecommunications network to consumers, so it will not be without benefits to separate it from the so-called service to provide access to the telecommunications network to consumers.

In our opinion, the "Telecommunications" law does not provide an interpretation of such an important concept as access to the telecommunications network. In contrast, the Federal Republic of Germany's Telecommunications Act of July 25, 1996 explains this definition very well.

Thus, according to clause 9 of paragraph 3 of this law, access to the network is the physical and logical connection of the terminal equipment with the telecommunications network or its parts to access the functions of the telecommunications network or the telecommunications services provided in connection with it. is a connection⁵.

This definition correctly shows that the connection itself has no meaning if it is deprived of a specific purpose - access to the functions of the telecommunications network or telecommunications services.

Therefore, if the operator is required to connect the subscriber's terminal equipment to the telecommunications network, the operator's obligation is that if the subscriber has the right to access the telecommunications network and information flows from its features: signs, signals, written text, images and can be used to transmit, output and/or receive sounds, messages, etc. But for a person who wants to receive telecommunication services, it does not matter how technically the connection is made.

In our opinion, Article 2 of the Law "On Telecommunications" should be supplemented with the following concept: access to the telecommunications network is the connection of the consumer's end equipment to the telecommunications network in order to receive telecommunications services.

The main feature of the service is that its impact is in the form of an intangible non-material result, which is very different from the result of work. The work ends with the creation of a certain

⁵ О телекоммуникациях [Электронный ресурс]: Закон Федер. Респ. Германия от 25.06.1996 г. // Институт проблем информационного права: офиц. сайт. – Режим доступа: <http://www.medialaw.ru/publicatioNs/books/wb-tele/law-germ3.html>.

object and its delivery to the client. Unlike work, a service actually occurs at the same time that the customer provides and consumes the service provided by the performer. This situation excludes the possibility of the client (recipient of the service) having any rights to the result of the service, and thus prevents the direct application of the provisions of the contract to this relationship⁶.

Ensuring access to the mobile communication network should be one of the conditions for the provision of mobile communication services provided under the contract for the provision of mobile communication services. For example, some scholars consider access to a mobile communication network as a basic service provided under a contract for the provision of telecommunication services, including mobile communication services.

Scientific concepts related to the legal regulation of mobile communication services include various legal principles, bases and considerations. Scholars and lawyers are exploring these concepts to address the challenges and complexities arising from the dynamic nature of mobile communications services. Some of the main scientific concepts related to the legal regulation of mobile communication services can be cited as follows:

1) telecommunication legislation includes legal principles and rules regulating the provision of communication services, including mobile communication services. At the same time, the improvement of this law should come from the combination of public and private legal elements in the field of mobile communication and should represent a reasonable ratio of the interests of the individual, society and the state. This, in turn, should be defined as the main principle for ensuring the interests of users in the regulation of mobile communication services.

2) the issue of the role of supervisory bodies in the control of telecommunication markets, fair competition and protection of consumer rights is also important. Because the correct approach of regulatory bodies in the legal regulation of mobile communication services is considered the main factor for the development of the sector. Factors such as determining service prices, ensuring inter-network connections, and achieving high-quality mobile services are of decisive importance in this regard.

3) Spectrum allocation and management, spectrum licensing: legal framework for allocation and licensing of radio frequency spectrum, a limited resource critical to mobile communications services.

4) Outage and congestion management: Laws related to outages and congestion issues and focus on coordination of mobile operators to optimize spectrum usage.

5) Privacy and data protection: User privacy: legal aspects of the collection, storage and use of personal data by mobile service providers.

6) Data Security: Laws that ensure the security of mobile data to protect against unauthorized access and breaches.

7) Net Neutrality: Open Internet Principles: legal concepts to ensure that mobile operators treat all data on the Internet equally, without discrimination or different fees based on content, applications or platforms.

⁶ Гражданское право: в 2 томах / отв. ред. Е.А.Суханов. – М.: БЕК, 1993. – Т. 2. – 200 с.

8) Protection of consumer rights: contractual obligations: legal framework governing consumer contracts, including transparency of service contracts and protection against unfair practices.

9) Service quality standards: regulations that ensure that mobile operators maintain a certain level of service quality to consumers.

10) Competition Law: Antitrust Law: Legal Principles for Preventing Anti-Competitive Practices in the Mobile Communications Industry.

11) Market Entry and Exit: Laws that encourage fair competition and prevent barriers to entry for new cellular providers.

12) Emergency Services and Public Safety: Emergency Call Services: Legal requirements to ensure mobile operators provide reliable emergency call services.

13) Network Resilience: Laws that address the stability and reliability of mobile networks in emergency situations.

14) International regulation: International standards: legal concepts related to the harmonization of mobile communication regulations between countries to ensure global compliance.

15) Roaming regulations: laws governing international mobile roaming services and tariffs.

16) Intellectual Property: Patents and Innovation: A legal framework that encourages innovation in mobile technologies through patent protection.

17) Copyright in Mobile Apps: Considerations regarding copyright law for mobile apps and content.

18) New technologies: 5G and beyond: legal aspects of the introduction and regulation of advanced mobile technologies.

19) IoT and M2M communications: A legal framework to address the unique challenges of Internet of Things and cross-network communications.

Together, these scientific concepts help to form a legal framework for mobile communication services, to ensure a balance between technological progress, consumer rights and fair market competition.

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