

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition for a Declaratory Ruling that Early Termination Fees Are “Rates Charged for Wireless Service”)	Docket No. 05-194
)	
)	

In the Matter of)	
)	
Clarification That Early Termination Fees Charged to Cellular Telephone Customers Are “Rates Charged” Within the Meaning of 47 U.S.C. § 332(c)(3)(A))	Docket No. 05-193
)	
)	

REPLY COMMENTS OF CARVER RANCHES NATIONAL PARK, INC., LAWRENCE GRABER, GARY HELLMAN, GERASIMOS MOLFETAS, AND PATRICIA BROWN¹

Several carriers have commented in these proceedings on the need to maintain national uniformity of regulation of early termination fees (ETFs) in the wireless industry, and have decried the possibility that the application of state laws to wireless carriers’ ETFs would have the practical effect of eliminating up-front discounts on handsets and popular rate plans. Real-world experience demonstrates that the carriers are wrong on both points. There is no national uniformity on ETFs, and there never has been. And state-by-state variations in ETF practices have had no affect on handset pricing or wireless rate plans.

¹ Carver Ranches National Park, Inc. is a non-profit youth athletic association. Lawrence Graber, Gary Hellman, Gerasimos Molfetas, and Patricia Brown are consumers. Each is pursuing state law claims challenging the imposition of an ETF as an unlawful penalty clause.

I. THERE IS NO NATIONAL UNIFORMITY; ETFs VARY FROM CARRIER-TO-CARRIER AND STATE-TO-STATE

Industry commenters have decried the possibility that the enforcement of state laws concerning unlawful penalty clauses “will destroy the regulatory uniformity ... by requiring carriers to tailor their service offerings according to each state’s ETF rules.”² But at least since the de-tariffing of the early 1990s, there has been no federal regulation of ETFs, and no national uniformity on such matters. On the contrary, wireless carriers’ ETFs have varied from carrier-to-carrier and state-to-state, and in some instances have varied within different parts of the same state.

Two examples illustrate this point. In 2004, Sprint, Cingular and Verizon entered into a settlement with the attorneys general of 32 states – the Assurance of Voluntary Compliance (AVC) – that required those carriers’ ETFs to be modified to allow termination within the first two weeks of service without any ETF penalty. Thus the practices of those carriers may vary as between the 32 states covered by that settlement and the other 18 states that are not. Similarly, Cingular prorates its ETFs in 9 states and parts of 2 other states, but does not prorate its ETFs in 39 states.³

II. REAL-WORLD EXPERIENCE HAS SHOWN THAT VARIATIONS IN ETFs HAVE HAD NO AFFECT ON HANDSET SUBSIDIES OR SERVICE PRICES

Several industry commenters have argued that subjecting ETFs to the requirements of state laws concerning unlawful penalty clauses will have the practical effect of eliminating up-front discounts on handsets and popular rate plans. Those arguments have been made with

² Comments of Cingular Wireless LLC at 7.

³ Cingular’s form subscriber agreement states: “Early termination fee of \$240 prorated over the length of the service agreement applies to subscriptions in the following states: FL, GA, SC, NC, AL, KY, TN, LA, NY and parts of IN and NJ. A non-prorated \$150 early termination fee applies in all other Cingular areas.”

alarmist rhetoric, but no factual support. Sprint, for example, sounds the alarm bells by asserting that “The continued viability of national plans that have benefited customers nationwide is at risk.”⁴ Verizon argues that if ETFs were required to comply with state law, “many of the most popular wireless rate plans would be economically unsustainable and thus unavailable to the consumer.”⁵ Dobson argues this will “eliminate[e] meaningful long-term rate plans.”⁶ Nextel asserts that the “result of this will be much higher ‘up-front’ equipment costs for consumers and higher monthly fees, or the complete separation of handset costs from post-paid carrier rate plans.”⁷ Cingular contends that the application of state laws will “eliminate, or reduce substantially, the reductions in handset prices, service activation fees, and monthly charges currently offered by wireless carriers, all to the ultimate detriment of consumers, particularly those of modest means.”⁸ But years of real-world experience have shown otherwise.

In the real world, variations in ETFs have had absolutely no affect on the pricing of handsets or services, and no affect whatsoever on the “viability of national plans.” Numerous specific examples confirm this:

- Cingular offers *the same national rate plans* in California (with flat ETFs) as it does in Florida and 10 other states (with prorated ETFs).
- Cingular offers *the same handset pricing* in California (with flat ETFs) as it does in Florida and 10 other states (with prorated ETFs).

⁴ Comments of Sprint Corporation, at 24.

⁵ Comments of Verizon Wireless, at 5-6.

⁶ Comments of Dobson Communications Corp., at 4.

⁷ Comments of Nextel Communications Inc., at 14

⁸ Comments of Cingular Wireless LLC, at i-ii.

- Cingular offers *the same activation fees and same contract terms* in California (with flat ETFs) as it does in Florida and 10 other states (with prorated ETFs).
- The modifications to Sprint's, Cingular's and Verizon's ETFs required by the 32-state AVC settlement had no affect on any of those carriers national rate plans, handset pricing, activation fees or contract terms.
- Sprint, Cingular and Verizon offered the same national rate plans, handset pricing, activation fees and contract terms before the AVC as they offered after the AVC.
- Sprint, Cingular and Verizon currently offer the same national rate plans, handset pricing, activation fees and contract terms in the 32 states covered by the AVC as they offer in the 18 states that are not covered by the AVC.

These are just a few of the many real-world examples where significant variations in ETFs have had no affect whatsoever on handset or service pricing, or any other term. And while real-world variations among ETFs are abundant, no commenter has identified even a single instance where any change or variation among ETFs has had any affect whatsoever on handset pricing, service pricing, or the "viability" of any type of rate plan.

Dated: August 25, 2005

Respectfully submitted,

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