

LAW OFFICES OF SCOTT A. BURSOR

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April 28, 2006

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Cellular early termination fees, WT Dockets 05-193, 05-194
Ex Parte Submission of Harold P. Schroer**

Dear Ms. Dortch:

This letter is submitted on behalf of Harold P. Schroer, a claimant in AAA arbitration No. 11 494 01274 05, which involves a dispute concerning Verizon's early termination fee ("ETF").

Mr. Schroer terminated Verizon's service and switched to another carrier in May 2003, at which time Verizon charged him an early termination fee of \$175 in violation of state contract law. Mr. Schroer disputed the charge. Verizon made inaccurate adverse reports to credit reporting agencies based on this illegal charge, causing degradation of Mr. Schroer's credit rating and, in at least one instance, denial of a credit application.

Mr. Schroer filed an informal complaint with the Commission (IC # 05-W10214658). On March 1, 2005, in response to Mr. Schroer's informal complaint, Verizon "agreed to waive" the ETF charge.¹ On March 9, 2005, the Commission closed the file on Mr. Schroer's informal complaint.²

Mr. Schroer was dissatisfied with the Commission's action, since it did not address or fully remedy Verizon's violation of state contract law. On March 10, 2005 he wrote to the Chief of the Commission's Consumer Information Bureau:

"I vehemently object to the explanation given by Verizon.
... It is because they have violated the law by trying to

¹ See 3/1/05 Letter from Jeffrey Harman of Verizon to Martha Contee, Chief of the Commission's Consumer Information Bureau, attached hereto as Exhibit 1.

² See 3/9/05 Letter from Martha Contee to Harold Schroer, attached hereto as Exhibit 2.

impose an early termination fee on an invalid contract. ... My complaint is how about all the other people who have similarly agreed to using their service. ... I suggest you call Jeffrey Harman of Verizon and ask[] them about New York State law. ... Isn't this something that should be reviewed by your legal department? Or if not yours, what government agency should be involved? I would appreciate an answer.”³

The Commission answered Mr. Schroer's inquiry as follows:

“You are receiving this email in response to your inquiry to the FCC.

Dear Mr. Schroer;

We are still waiting for the follow-up faxed information you sent to be scanned into your existing Informal Complaint IC#05-W102145658.

The FCC does not have jurisdiction over contract law, you may want to contact your State Attorney Generals Office.

Consumer Frauds and Protection
Office of Attorney General
Justice Building. D-10 Annex
Albany, NY 12224
Phone: 518-474-5481
Toll Free in NY: 800-771-7755
<http://www.consumer.state.ny.us>

Best Regards,
Donna
GCC 15”⁴

³ See 3/10/05 Letter from Harold P. Schroer to Martha Contee, attached hereto as Exhibit 3.

⁴ See 3/17/05 email from FCCinfor@fcc.gov to Harold P. Schroer, attached hereto as Exhibit 4 (emphasis added).

Mr. Schroer did as the Commission suggested and contacted the New York Attorney General's office, as well as several other public officials and private attorneys. Eventually he was referred to me and I agreed to represent him to assert his contract claims against Verizon in AAA arbitration No. 11 494 01274 05.

Now Verizon is asking the Commission to reverse the position it took specifically with regard to Mr. Schroer's complaint. The Commission correctly advised Mr. Schroer that "The FCC does not have jurisdiction over contract law," and directed him to pursue his claims elsewhere. He did that. Now CTIA and Verizon are asking the Commission to issue an extraordinarily broad and unprecedented preemption ruling in an effort to restrict Mr. Schroer's ability to assert state-law contract claims in the pending arbitration.

Mr. Schroer joins in full the comments previously submitted by Wireless Consumers Alliance and other commenting parties who have argued that the neutral application of state contract law to wireless carriers is not preempted rate regulation, and that ETFs are not "rates charged" under 47 U.S.C. § 332(c)(3) but rather are "other terms and conditions" which remain subject to state law.

Mr. Schroer therefore respectfully requests that the Commission adhere to the position that it took with regard to his case specifically – that "The FCC does not have jurisdiction over contract law." In accordance with that position, Mr. Schroer urges the Commission to deny CTIA's petition.

Very truly yours,

/s/ *Scott A. Bursor*

Scott A. Bursor

EXHIBIT 1



Verizon Wireless
3601 Converse Drive
Wilmington, NC 28403

March 1, 2005

Attention: Martha Contee
Federal Communications Commission
Consumer Information Bureau
Consumer Information Network Division
445 12th Street, S.W.
Washington, DC 20024

Re: IC # 05-W10214658
Account Number 105823074
Complainant: Harold Schroer

Dear Ms. Contee:

Mr. Schroer stated in his complaint that he has been disputing the standard early termination fee of \$175.00 for over 2 years. Mr. Schroer stated that he became a Verizon Wireless customer in May of 2001, and in November 2001 changed to a different plan, which better suited his needs. In October 2002, he again changed his price plan to one better suited for him. In May of 2003, Mr. Schroer decided to cancel service and was advised of the standard early termination fee for not fulfilling his 2-year agreement for either of the newer plans. He stated that he was unaware that each time he took advantage of a newer plan or promotion his agreement was extended.

As discussed with Mr. Schoer, each time the price plan was changed, a confirmation letter was sent to the billing address, verifying the terms of the new contract. I have enclosed copies of these confirmation letters. As a courtesy, Verizon Wireless has agreed to waive the remaining balance on the account.

If Mr. Schroer has any further questions regarding this matter, he should contact me at (910) 794-6237. If Mr. Schroer has any additional issues, our Customer Service Department is available 24 hours per day, 7 days per week at (800) 922-0204. If the Federal Communications Commission has any questions, please do not hesitate to contact Michele Elliott at Michele.Elliott@VerizonWireless.com.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Harman".

Jeffrey Harman
Executive Correspondent, Customer Satisfaction

c.c. Harold Schroer

EXHIBIT 2



Federal Communications Commission
Washington, D.C. 20554

March 9, 2005

2

Harold Schroer

3 Larboard Drive
Southampton, NY 11968

Re: 05 3/13

IC #05-W10214658
Date Closed: 3/2/2005

This letter is in reference to the informal complaint you filed with the Federal Communications Commission (FCC) regarding telephone or common carrier telecommunications services. As part of the FCC's informal complaint process your information was sent to the company that provides your services.

The FCC has now received a letter from the company about your complaint. The company should have sent you a copy of their letter as well. After reviewing the information in the letter sent from the company, we are closing your complaint file. Your Informal Complaint (IC) file number and the date your case was closed are listed at the top of this letter. If the information in the company's letter is wrong, or if you did not get a copy of the company's letter, please contact the FCC at the addresses or phone number below.

Thank you for contacting the FCC. If we can be of further assistance to you, please contact the Consumer Inquiries and Complaints Division either by e-mail at fccinfo@fcc.gov, by writing to us at 445 12th Street, SW, Room CY-B523, Washington, D.C. 20554, or by calling us at 1-888-CALL-FCC (1-888-225-5322).

Sincerely,

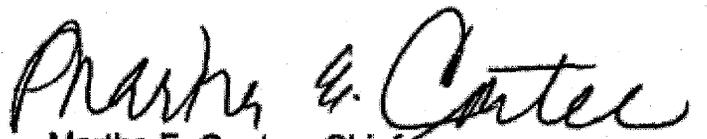

Martha E. Contee, Chief
Consumer Inquiries and Complaints Division
Consumer & Governmental Affairs Bureau

EXHIBIT 3

FAX 3/10/05

FAX FAX
~~10/05/01~~

Att. Martha Contee

I have just received Verizon wireless 's letter of March 1, which was in response to complaint number 05 – W10214658. I vehemently object to the explanation given by Verizon. They are not doing it at of the goodness of their heart. It is because they have violated the law by trying to impose an early termination fee on an invalid contract. I explained this to them from the very beginning. I never received ,signed or was requested to sign any agreement. There was never a meeting of the minds. New York state law requires a signed agreement and that is the reason why they are rescinding the charge. Not for the reason giving in their letter to you. My complaint is how about all the other people who have similarly agreed to using their service. According to what was told them over the phone by Verizon representatives and never signed any agreement. Is the FCC concerned about these people? I suggest you call Jeffrey Harman of Verizon and asked them about New York State law. He was the one that told me about it. Isn't this something that should be reviewed by your legal department? Or if not yours, what government agency should be involved? I would appreciate an answer.

Verizon is consistent in their inconsistencies. It is interesting to note that their agreements are not the same, some have specified dates and others do not. Mr. Harmon speaks of the two-year agreement. When in fact, all three agreements. He sent to you are for one year. What Mr. Harmon fails to tell you is that the Verizon represented advised me that the new plans were better suited for me. When I realized that the last plan was not suited for me because I was paying for minutes, I never used , I requested to be put back on my previous plan and was advised. I could not do this, because it was not available to me. So my choice was to pay for a more expensive plan or cancel the plan. I was advised at that point, if I did so. I would be subject to the early termination fee. This was the first time I was made aware of the fact that each plan had its own starting date. I chose to cancel and refused to pay the early termination fee because of the aforementioned the illegality of their agreement .

EXHIBIT 4

Main Identity

From: "FCCInfo" <FCCInfo@fcc.gov>
To: <hpschroer@optonline.net>
Sent: Thursday, March 17, 2005 2:13 PM
Subject: PROBLEM01198339 - complaintic05-w10214658

You are receiving this email in response to your inquiry to the FCC.

Dear Mr. Schroer;

We are still waiting for the follow-up faxed information you sent to be scanned into your existing Informal Complaint IC#05-W10214658.

The FCC does not have jurisdiction over contract law, you may want to contact your State Attorney Generals Office.

Consumer Frauds and Protection
Office of Attorney General
Justice Building, D-10 Annex
Albany, NY 12224
Phone: 518-474-5481
Toll Free in NY: 800-771-7755
<http://www.consumer.state.ny.us>

Best Regards,
Donna
GCC15

②

Rep Number : TSR15

3/18/2005