

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

In the Matter of)
)
Petition for Declaratory Ruling Regarding) WTB Docket No. 10-42
Interpretation of Section 332(c)(3)(A) of the)
Communications Act of 1934, as amended,)
As Applied to Fees Charged for Late)
Payments)

To: The Commission

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby submits its reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice regarding a Petition for Declaratory Ruling on penalty fees imposed on consumers by commercial mobile radio service ("CMRS") providers¹

SouthernLINC Wireless, a wholly owned subsidiary of Southern Company, operates a commercial digital 800 MHz Enhanced Specialized Mobile Radio ("ESMR") system using iDEN technology to provide interconnected voice, dispatch, push-to-talk, Internet access, and data transmission services over the same handset. SouthernLINC Wireless provides these services over a 128,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida.

¹ / Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Interpretation of Section 332(c)(3)(A) of the Communications Act of 1934, As Amended, As Applied to Fees Charged for Late Payments, WTB Docket No. 10-42, Public Notice, DA 10-264 (rel. Feb. 19, 2010) ("Public Notice").

Section 332(c)(3)(A) of the Communications Act provides that no state or local government shall have authority to regulate the entry of or rates charged by any commercial mobile service, except that a state or local government shall not be prohibited from regulating the other terms and conditions of commercial mobile services.² SouthernLINC Wireless strongly agrees with Sprint Nextel and other commenters that the Petitioners' class action lawsuits are preempted under Section 332(c)(3) because they would necessarily require courts to determine the reasonableness of the rate or to set a prospective charge for services.³ The courts would have to determine that the particular late fee at issue is unreasonable because it far exceeds the cost caused by the customer who fails to submit timely payment. These types of claims are expressly prohibited under Section 332(c)(3) because Congress has concluded that a uniform national policy governing wireless rates is in the public interest and that balkanized state-by-state rate regulation would contradict Congressional intent.⁴

As other commenters have pointed out, late fee payments constitute "rates" under Section 332 based on various definitions used by the FCC and courts.⁵ Even if the FCC accepts the Petitioners' contention that rates charged under Section 332 must be tied to a specific unit of service, late fee payments are in fact directly connected to the provision of service. Specifically, these fees enable a delinquent customer to continue to receive service while ensuring that the wireless carrier can recover the costs incurred in providing the delinquent customer a variety of telecommunications, billing, collection, and related services. SouthernLINC Wireless incurs

² / 47 U.S.C. § 332(c)(3)(A).

³ / Sprint Nextel Comments at 2-5.

⁴ / Sprint Nextel Comments at 16; Verizon Wireless Comments at 3; T-Mobile Comments at 4; CTIA Comments at 15.

⁵ / Verizon Wireless Comments at 9.

significant costs in developing and implementing late payment monitoring, notification, communications, and collection services and assumes further risks in extending credit to delinquent customers. Thus, the fees imposed by SouthernLINC Wireless on a delinquent customer are directly tied to the services provided during the late-payment period.

Furthermore, late fees constitute rates charged under Section 332 because they are inherently part of SouthernLINC Wireless' rate levels and rate structure. SouthernLINC Wireless agrees with various commenters that the timing of payment is an integral part of the subscriber's rate.⁶ While SouthernLINC Wireless could lawfully structure its rates to divide the costs associated with late payments evenly among all subscribers as part of its service plans and monthly access fees, doing so would unfairly compel the majority of its customers to bear the costs incurred solely by those who are delinquent in their payments.

Moreover, Petitioners and other commenters have asserted that state regulation of late payment fees is not preempted because a reduction in late fee charges would only indirectly and theoretically increase the costs of providing wireless service. However, this assertion is false because individual state regulation would directly interfere with a wireless carrier's ability to structure its rates to recover the costs of providing service to delinquent customers solely from those customers rather than subjecting all of its customers – including those who regularly make their payments on a timely basis – to across-the-board rate increases in order to recover the additional costs incurred by delinquent customers.

Finally, SouthernLINC Wireless submits that the California Public Utilities Commission's ("CPUC") reliance on two of its decisions to support the proposition that late payment fees do not involve the imposition of rates is misplaced. One of the cases cited by the

⁶ / AT&T Comments at 18-20; Verizon Wireless Comments at 14-16; CTIA Comments at 6.

CPUC dealt with early termination fees ("ETF") in which the CPUC emphasized that it did not seek to regulate the reasonableness of ETFs themselves, but focused primarily on whether the conditions under which the ETFs were imposed were reasonable in light of the carrier's failure to disclose significant network capacity problems.⁷ In contrast, the Petitioners here do not raise any claims regarding the disclosure of the terms and conditions for late payment fees. Instead, they seek to have the states directly regulate the reasonableness of the late payment fees at issue. With regard to the second case cited by the CPUC, D.04-10-013, the dissent in that case correctly concluded that a "cap on the amount of late fees that can be charged constitutes direct rate regulation, while the limitation on the time period controls rates by limiting the amount of late fees that could be collected. Once again, this constitutes rate regulation of wireless carriers."⁸ As the dissent also pointed out, the CPUC itself previously concluded that late payment charges are "part and parcel" of the rates charged for telephone services.⁹ Thus, these cases do not provide any support for disparate state-level regulation of late payment fees.

⁷ / California Public Utilities Comments at 2.

⁸ / Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities, D.04-10-013 (Oct. 7, 2004).

⁹ / *Id.*

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein and deny the Petition for Declaratory Ruling.

Respectfully submitted,

SOUTHERNLINC WIRELESS

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