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Judge rules against Sprint's early-termination cell phone fees

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SAN FRANCISCO—The fees that cell phone carriers charge customers who break service contracts took a big hit in a California courtroom when a judge said such charges by Sprint Nextel Corp. likely violate state law.

The judge, in a tentative ruling issued late Monday, said Sprint will have to pay $18.3 million to customers who sued over the fees and credit $54.8 million to those who were charged but did not pay the fees.

The same judge is considering other lawsuits against telecommunications companies over their so-called early termination fees, which can range from $150 to $225. This month Verizon Wireless agreed to pay $21 million to settle an identical lawsuit just as trial was starting.

Alameda County Superior Court Judge Bonnie Sabraw rejected Sprint's argument that a state court had no business deciding an issue the company said should be left for federal authorities. And while her ruling isn't legally binding outside the state, it cut to the heart of an ongoing debate in other state courthouses and in Washington, D.C., over the fairness of the fees.

The Federal Communications Commission is enduring intense lobbying over how best to handle the fees. Telecommunications companies have asked the FCC to regulate the fees and shield wireless companies from class action lawsuits in state courts, such as the one Sprint is poised to lose.

At a public hearing last month, FCC Chairman Kevin Martin sketched out a plan in which the cancellation fees would be reduced over the life of the contract. Three companies—T-Mobile, AT&T and Verizon Wireless—already do that and Sprint said it would begin prorating its fees next year.

Martin said he hoped the commission would make a decision in August.

FCC spokesman Robert Kenney declined to comment on the court decision specifically, but did say it wouldn't affect the agency's plans to address the issue.

Chris Murray, senior legal counsel for Consumers Union, said he hoped the California court decision would "drive a stake through the heart" of the industry's hopes for removing state courts and state regulators from having oversight over the fees.

Scott Bursor, a lawyer for the victorious Sprint customers, added that the "ruling sounds the death knell" for the industry's efforts before the FCC.

Sprint will get a chance to change Sabraw's mind at another court hearing. But it's unlikely the judge will alter her detailed, 37-page tentative ruling, which she issued after presiding over a two-week trial in June.

Customers of six telecommunications companies sued their carriers in 2006 in Alameda County Superior Court alleging that the fees violate California's unfair business practices law.

Wireless carriers say early termination fees are necessary so the companies can recover the cost of mobile phones, which they subsidize when customers sign long-term service contracts.

But the judge in her ruling said the contracts were "implemented primarily as a means to discourage customers from leaving" and that the company gave little regard to the cost of broken contracts.

"There was no evidence at trial that Nextel did a damage analysis that considered the lost revenue from contracts, the avoidable costs, or Nextel's expected lost profits from contract terminations," the judge wrote.

"We"re disappointed," said Sprint spokesman Matthew Sullivan, "but this is a tentative decision and we are focusing now on our response to the court."

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Associated Press Writer John Dunbar in Washington contributed to this report.