

## Sprint early termination fees are illegal, judge rules

**COURT: CALIFORNIA LAW FORBIDS EARLY TERMINATION CHARGES**

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Californians fed up with being charged for ending their cell phone service prematurely won a major victory in a Bay Area court decision that concluded such fees violate state law.

In a preliminary ruling Monday, Alameda County Superior Court Judge Bonnie Sabraw said Sprint Nextel must pay California mobile-phone consumers \$18.2 million as part of a class-action lawsuit challenging early termination fees.

Though the decision could be appealed, it's the first in the country to declare the fees illegal in a state and could affect other similar lawsuits, with broad implications for the nation's fast-growing legions of cell phone users.

The judge - who is overseeing several other suits against telecommunications companies that involve similar fees - also told the company to stop trying to collect \$54.7 million from other customers who haven't yet paid the charges they were assessed. The suit said about 2 million Californians were assessed the fee.

Whether Sabraw's ruling will stand isn't clear. Experts say an appeal is likely, and the Federal Communications Commission is considering imposing a rule - backed by the wireless industry - which might decree that only federal authorities can

regulate early termination fees.

Sprint Nextel also argued in the lawsuit that such fees - which ranged from \$150 to \$200 - were outside the purview of California law. But Sabraw rejected that argument.

"This is a terrific ruling," said Chicago attorney Jay Edelson, who was not part of the case but has filed about 50 other suits nationwide against various cell phone charges.

"The phone companies have a tremendous amount of power," he added. "They lock you into long-term contracts and then they allow all these charges to be put on your bill. We have to make sure that consumers are protected."

"We are disappointed," said Sprint Nextel spokesman Matthew Sullivan. But he added that Sabraw's ruling was tentative and that she has given Sprint Nextel's attorneys the opportunity to file a rebuttal before she considers making it permanent.

Sullivan noted that similar suits have been filed in other states, but that Sabraw's decision was the first he knows of declaring such fees illegal.

Several other industry experts agreed, including John Walls, a spokesman with the CTIA, a Washington-based organization that represents the wireless telecommunications industry.

"I don't know of any state that has gone to this extent," he said, adding that his group believes it makes more sense to have such fees solely policed by the federal government.

### 'National framework'

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and for the industry to serve consumers," he said. "If you allow 50 states to regulate and legislate in 50 different ways, you can create a very confusing and obviously inefficient service."

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

The commission also is trying to resolve whether states have any role in regulating early termination fees, which are among the biggest source of complaints among wireless consumers, said spokesman Robert Kenny.

### Fees or 'rates'

He said the agency may decide to define such fees as "rates," which are subject to federal regulation under federal law. But if that happened, it is unclear how that might affect lawsuits in California and other states, Kenny said.

"That is something that will have to be addressed," he added, noting that the FCC hopes to resolve the issue by the end of the year.

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 desire to remove state courts and state regulators from overseeing the fees.

That view was seconded by Scott Bursor, a lawyer for the victorious Sprint Nextel customers, who said the FCC likely would be persuaded by Sabraw's logic that states should have a role in policing the fees. If the FCC does limit state oversight, "it will get reversed" by the courts, he added.

On June 12, a jury in the Alameda County lawsuit ruled in favor of Sprint Nextel, determining that its customers who canceled their service early had breached their contracts with the company and that early termination fees were warranted.

But in overruling that decision, Sabraw said the jurors appear to have erred in assuming the fees were valid, and she took issue with the way Sprint Nextel determined that its customers owed the fees.

"Sprint did no damage analysis that considered the lost revenue from contracts, the avoidable costs and Sprint's expected lost profits from contract terminations," she said.

Nonetheless, Sabraw preserved a portion of the jury's verdict and used that to scale back the amount of refunds the suit initially had sought.

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