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Sprint Fails To Hoist Termination-Fee Fight To High Court

By **Greg Ryan**

Law360, New York (November 07, 2011, 4:00 PM ET) -- The U.S. Supreme Court declined Monday to take on a Sprint Nextel Corp. unit's challenge to a California appeals court decision invalidating fees Sprint charged a class of consumers for early termination of contracts.

The high court denied a bid for certiorari from Sprint Spectrum LP. The company sought the review of a decision holding that the fees Sprint charged customers for breaking cellphone contracts were improper liquidated damages under state law.

Sprint argued in its Sept. 13 petition that the ruling was a mistake because the federal Communications Act bars state regulation of cellphone companies' rates.

An attorney for the class, Scott Bursor of Bursor & Fisher PA, said he was not surprised by the decision. Counsel for the class waived the right to respond to the petition in October.

"Sprint's petition had no merit at all, and today's decision by the Supreme Court will mean that Sprint customers who were charged illegal termination fees will be able to get justice in California state court," Bursor said.

An attorney for Sprint declined to comment on the decision.

In its ruling, the appeals court held the Communications Act did not apply because Sprint meant the early termination fees to function as a deterrent to joining a rival provider, not to recoup the future charges on which the company lost out. The appeals court's ruling affirmed that of a trial court.

Sprint argued in its petition, however, that the nature and operation of the fees was what mattered, not a company's motivations for setting the fees.

The company maintained the Supreme Court should hear the dispute because courts had been split on the issue of Communications Act preemption. Sprint said some had held that early-termination fee suits were preempted by the law, some held they were not, and some stayed the cases until the Federal Communications Commission weighed in on the issue, which it has not yet done.

Sprint brought the matter to the Supreme Court after the appeals court declined to rehear the case in March and the California Supreme Court rejected a petition for review in June.

The amount of money at stake in the case has fluctuated.

The trial court awarded the plaintiffs \$73.8 million in refunds for early-termination fees that had already been paid. But a jury also found that by terminating their contracts with Sprint early, class members had violated the terms of the contracts. It awarded Sprint \$225 million, or the difference between what Sprint charged its customers and what it collected in early-termination fees, for its breach of contract counterclaim.

Sprint, however, had agreed to waive recovery on its counterclaim in order to expedite the case, according to Daniel H. Bromberg of Quinn Emanuel Urquhart & Sullivan LLP, an attorney for Sprint. The plaintiffs' \$73.8 million refund was offset by the \$225 million Sprint award.

The trial court then swooped in and determined the jury did not follow instructions on Sprint's actual damages, granting a partial new trial on the issue. That trial is scheduled to start in January, according to attorneys.

The plaintiffs are represented by **Bursor & Fisher PA**, Bramson Plutzik Mahler & Birkhaeuser LLP and Positive Legal Group, among other firms.

Sprint is represented by Laura Phillips of Drinker Biddle & Reath LLP and Daniel H. Bromberg and Dominic Surprenant of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Sprint Spectrum LP v. Ayyad et al., case number 11-340, in the U.S. Supreme Court.

--Editing by Cara Salvatore.

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