TELECOMMUNICATIONS

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Verizon to Pay Customers $21M for Early Termination Fee Policy

Last month a California appeals court ruled that Verizon must pay customers affected by its early termination fee ("ETF") policies $21 million.[1] The case related to Verizon's ETF policy which charged subscribers a flat fee of $175 if they cancelled their contract early. The plaintiffs in the class action suit sued Verizon claiming that their ETF policy violated California consumer protection laws and were unauthorized penalties under Civil Code § 1671.

The Plaintiffs and Verizon reached a settlement in 2008, which required Verizon to set up a $21 million fund for the benefit of affected customers and required Verizon to credit all class members who had proof that they had paid one or more ETFs. There were several class members that objected to the settlement, claiming that the settlement was unfair, monetarily inadequate and inadequate notice of the settlement was given to the class. However, the California appeals court found that the trial court did not abuse its discretion in approving the $21 million settlement that Verizon must pay to the plaintiff class. The ruling means that approximately 175,000 customers will be receiving refund payments.

This decision follows a decision by a California federal court in 2009 that ruled that Sprint Nextel Corp. was required to pay $73 million to its former customers for improperly charging ETFs.

[1] To view the decision click here.

These decisions should be considered in light of the FCC hearings held one year ago. At those hearings, major telecom companies, including Verizon, argued that ETFs are consistent with the public interest because they lower the barrier to entry for consumers, thereby allowing consumers who would not normally be able to participate in the wireless markets to gain entry. On this basis, carriers urged that the FCC should pre-empt state-laws that currently allow consumers to seek civil remedies against telecom companies based on state consumer protection laws. It is ironic that carriers took this position given that carriers have vigorously fought against FCC regulation from day one, but now want the FCC to step in to pre-empt state regulation.

In contrast, consumer advocates argued that the FCC should not pre-empt state laws or courts. Instead, these advocates asked the FCC to consider setting minimum standards for cell phone companies, in order to protect consumers in states that choose not to regulate/enforce laws against carriers.

Many viewed the FCC's decision to take up the issues of ETFs as reflecting an effort to shield large telecom companies from consumer fraud lawsuits based on applicable state laws. Although the Verizon and Sprint decisions seem to suggest that consumers will be compensated for ETF claims, in reality, consumers will probably not be fully compensated for the fees. For instance, under the Verizon settlement, consumers who had to pay a $175 ETF will be entitled to receive $87.50 refund. Moreover, these decisions do not prohibit carriers from charging ETFs in the future.

If you have questions about this issue, or if we may be of assistance to you on any other matter, please feel free to contact us.

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Technology Law Group LLC (TLG) (www.tlgdc.com) is a Washington, DC-based law firm specializing in telecommunications transactional, litigation issues and regulatory issues. TLG's Managing Partner, Neil S. Ende, may be reached by phone at +1 202 895 1707 and by email at nende@tlgdc.com.

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