

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
SunCom Wireless Operating Company, L.L.C ) WT Docket No. 05-193
Petition for Declaratory Ruling )
Debra Edwards Cross-Petition for Declaratory )
Ruling )

ORDER

Adopted: March 21, 2008

Released: March 21, 2008

By the Chief, Consumer & Governmental Affairs Bureau:

1. On February 22, 2005, SunCom filed a petition for declaratory ruling asking the Commission to declare that the early termination fees (ETFs) SunCom charged to members of the putative class in Edwards v. SunCom1 are "rates charged" for purposes of Section 332(c)(3)(A) of the Communications Act of 1934, as amended.2 The SunCom Petition was filed pursuant to a court order in Edwards v. SunCom.3 The court ordered SunCom to prepare and file a petition for declaratory ruling with the Commission asking whether the ETF in the instant case is a "rate[] charged" under section 332(c)(3)(A).4 The court stayed the case "until a final ruling is rendered" by the Commission.5

2. On March 4, 2005, Debra Edwards, the lead plaintiff in Edwards v. SunCom, filed an Opposition and Cross-Petition requesting specific declaratory rulings related to the state law claims asserted in Edwards v. SunCom.6 On May 18, 2005, the Commission released a public notice seeking comment on the SunCom/Edwards petitions.7

1 Debra Edwards v. SunCom, No. 02-CP-26-3539 (S.C. Ct. of Common Pleas, 15th Jud. Cir., filed May 25, 2004).

2 See Petition for Declaratory Ruling filed by SunCom Wireless Operating Company L.L.C., WT Docket No. 05-193, filed February 22, 2005 (SunCom Petition).

3 Debra Edwards v. SunCom, Supplemental Order Requiring Defendant to File Petition for Declaratory Ruling at the Federal Communications Commission and Staying Case Until Such Ruling Is Issued (Jan. 18, 2005), attached as Exhibit A of SunCom Petition.

4 Id.

5 Id.

6 See Edwards Opposition and Cross-Petition in WT Docket No. 05-193 dated March 4, 2005.

7 See Public Notice, Wireless Telecommunications Bureau Seeks Comment on Petition For Declaratory Ruling Filed by SunCom, and Opposition and Cross-Petition for Declaratory Ruling Filed by Debra Edwards, Seeking Determination of Whether State Law Claims Regarding Early Termination Fees are Subject to Preemption Under 47 U.S.C. Section 332(c)(3)(A), WT Docket No. 05-193, DA 05-1390 (rel. May 18, 2005).

3. On January 28, 2008, counsel for both SunCom and Debra Edwards filed jointly a letter requesting that the petitions in this matter be dismissed without further review.<sup>8</sup> The letter indicates that the parties have entered into a settlement that resolves their dispute regarding ETFs and terminates the underlying litigation that gave rise to the petitions. In light of the parties' settlement agreement, we dismiss the SunCom and Edwards petitions as requested and close the docket number for this proceeding.<sup>9</sup>

4. Accordingly, pursuant to Sections 0.361 and 1.2 of the Commission's rules, 47 C.F.R. §§ 0.361 and 1.2, IT IS ORDERED that the Petition for Declaratory Ruling filed by SunCom Operating Company, L.L.C. filed on February 22, 2005, and the Cross-Petition for Declaratory Ruling filed by Debra Edwards filed on March 4, 2005, ARE DISMISSED WITHOUT PREJUDICE and WT Docket No. 05-193 IS CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel  
Chief, Consumer & Governmental Affairs Bureau

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<sup>8</sup> See Letter from Michael D. Hays and Michele Farquhar, Counsel for SunCom, Nate Fata and Kent Sinclair, Counsel for Debra Edwards, to Marlene H. Dortch, FCC, filed January 28, 2008.

<sup>9</sup> We note that CTIA has filed a petition seeking a declaration that "any application of state law by a court or other tribunal to invalidate, modify, or condition the use or enforcement of ETFs based, in whole or in part, upon an assessment of reasonableness, fairness, or cost-basis of the early termination fee, or to prohibit the use of ETFs as unlawful 'liquidated damages' or penalties, constitutes prohibited rate regulation preempted by section 332(c)(3)(A)." See Petition for Expedited Declaratory Ruling filed by CTIA, WT Docket No. 05-194, filed March 15, 2005. The Commission intends to address that petition in the near future.