

STATEMENT OF COMMISSIONER MICHAEL J. COPPS
PUBLIC HEARING ON EARLY TERMINATION FEES
WASHINGTON, DC
JUNE 12, 2008

Thank you, Chairman Martin, for convening this important hearing on early termination fees, and thank you, Senator Klobuchar, for joining us today and for your outstanding leadership on this issue. Thanks also to our distinguished and varied witnesses who will share with us their important perspectives on ETFs. I am especially glad that we will hear not only from experts from the wireless industry, but also from panelists who can comment on the adoption of ETFs in some of the other industries that the Commission regulates and that we will be hearing from folks representing the most important constituency of all—consumers.

ETFs have long been a topic of concern to me. A penalty of up to \$800 for a typical family of four callers that decides to cancel its cell phone contract is a tremendous burden, especially in this time of \$4 gasoline prices, spiraling food costs and economic sluggishness. We all ought to be concerned when ETFs can reduce the ability of customers to switch providers if they are dissatisfied with their existing service or if another company makes a better offer—thus limiting consumer choice and the benefits that are supposed to flow from competition among carriers. So there are plenty of reasons for regulators to ask hard questions about whether ETFs are truly necessary—plenty of reasons for this hearing today. At the same time, I want to understand what substance there is to carriers' assertions that ETFs are necessary in order to provide subsidized handsets to their customers. I hope that today's testimony will get us to the bottom of this.

First, I want to know with as much precision as possible about the extent to which carriers are subsidizing handsets today and how these practices are related to ETFs. We need to know, for example, the average handset subsidy that consumers receive, as well as how much this subsidy varies between basic and more advanced handsets. We also need to understand why some carriers require contract extensions even for events that do not involve receiving a new handset, such as changing a rate plan. These practices certainly raise in my mind some doubts about whether the only function of ETFs is recovering handset subsidies.

Secondly, I want to understand the role that state regulators and state consumer advocates can and should play when it comes to contract provisions like ETFs. As a recent and extremely disturbing Government Accountability Office report makes clear, current FCC procedures for processing consumer complaints are flawed. Why then should we preempt state and local enforcement authorities with a federal process that has so little credibility?

Thirdly, I hope we will learn more about how FCC actions on ETFs will impact pending state court lawsuits seeking enforcement of state consumer protection laws. Though we at the FCC often hear about the dangers of a “patchwork quilt” of state regulation, I think it is important to remember that virtually all consumer products—from

toasters to computers—are sold subject to generally applicable state consumer protection laws. Before the FCC contemplates any action that would prevent plaintiffs from recovering for ETFs they may have paid in the past—often based on contract terms that many carriers have now rejected—I think we need to better understand how state consumer protection laws affect carriers and consumers. And we should keep in mind here that should plaintiffs prevail in the courts, they will be entitled to significant compensation.

Fourthly, what about such fees applied to consumer broadband? What are the facts, what justifications are put forward, what are the implications for both consumer costs and the freedom of the Internet?

There are lots of other questions, so I hope that today’s hearing represents the beginning—not the end—of the process of answering them. I want to thank all our panelists for appearing today and I look forward to hearing what each of you have to say.