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

In the Matter of	)	
	)	
Bruce Gilmore, Claudia McGuire, The Great Frame Up Systems, Inc., and Pesger, Inc., d/b/a The Great Frame Up,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EB-02-TC-F-006
	)	
Southwestern Bell Mobile Systems, L.L.C., d/b/a Cingular Wireless,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 1, 2005 **Released: September 2, 2005**

By the Commission:

I. INTRODUCTION

1. In this Order, based on the specific facts at issue here, we deny a formal complaint filed by Bruce Gilmore, Claudia McGuire, The Great Frame Up Systems, Inc., and Pesger, Inc., d/b/a The Great Frame Up, (Complainants) against Southwestern Bell Mobile Systems, L.L.C., d/b/a Cingular Wireless (Cingular), pursuant to section 208 of the Communications Act of 1934, as amended (the Act).[1] Complainants allege that Cingular's "Corporate Administrative Fee" (Fee), which Cingular charges to corporate account wireless customers, is unjust and unreasonable in violation of section 201(b) of the Act[2] because: (1) the amount of the Fee is not reasonably related to unique or increased corporate account administrative costs; and (2) the Fee is the product of misleading and deceptive marketing and billing practices. Complainants additionally allege that the Fee is discriminatory in violation of section 202(a) of the Act[3] because the Fee is: (1) charged only to certain corporate account customers and not to other customers; and (2) not charged to non-corporate account customers who receive similar administrative

[1] 47 U.S.C. § 208.

[2] *Id*. § 201(b).

[3] *Id*. § 202(a).

goods and services. Based on our review of the record, we find that Complainants have not established that Cingular violated sections 201(b) or 202(a) of the Act, and we therefore deny the formal complaint.

2. We note that at the time of the events at issue Cingular was not subject to our Truth-in-Billing Rules. Subsequently the Commission extended these rules to CMRS carriers like Cingular.[4] This case is therefore decided under a different regulatory environment than now exists. Accordingly, the outcome of cases like this in the future could be different.

II. BACKGROUND

A. Factual Background

3. In March 1995, Cingular announced in billing inserts sent to corporate wireless customers that it would begin charging them a corporate administrative fee. Cingular began charging the $1.50 Fee in April 1995.[5] In February 1998, Cingular announced that the Fee would increase to $2.95, and in March 1998 Cingular began charging $2.95 to corporate customers.[6]

4. Complainant Bruce Gilmore is an individual residing in Woodstock, Illinois.[7] Mr. Gilmore apparently opened a corporate account in 1993, which continued in force until at least March 2001.[8] In 1995, Cingular began assessing the Fee for the 1993 account, after providing notice to Mr. Gilmore in the March 1995 billing insert, and Mr. Gilmore paid the Fee. He remains a Cingular customer to this day.[9]

5. Complainant Claudia McGuire is a resident of Chicago who contracted with Cingular for cellular telephone service in March or April of 1995.[10] Ms. McGuire agreed initially to a two-year contract, but she continued in that rate plan beyond the initial term of the contract until July 1997, when she lost her phone and terminated her service.[11] Cingular provided Ms. McGuire notice of the Fee in April 1995 in her first monthly bill.[12] Ms. McGuire paid the Fee for each month that she was a customer, except for approximately $40 that was written off when she lost her phone and terminated her service.[13]

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[4] *Truth-in-Billing and Billing Format*, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005) ("*Second Truth-in-Billing Order*").

[5] *See* Amended Joint Statement of Stipulated and Disputed Facts and Legal Issues, filed July 25, 2003, at 2-3 (Joint Statement).

[6] *Id*. at 3.

[7] *Id.*

[8] Parties disagree about who initially took service under this account. *See* Complaint at 6; Answer at 2. Cingular argues that Mr. Gilmore took over a previously established account, and therefore lacks standing to act as a class representative. For purposes of this proceeding, we will interpret the facts in a light most favorable to Complainants and assume Mr. Gilmore was the party whom Cingular serviced under this account.

[9] *See* Joint Statement at 3.

[10] *Id.* at 4.

[11] *Id.*

[12] *See* Answer at Ex. 7.

[13] *See* Joint Statement at 4.

6. Complainant The Great Frame Up Systems, Inc. (Systems) is a Delaware corporation, currently headquartered in Houston, Texas. In December of 1994, Systems contracted with Cingular for corporate cellular service that it used in its seven Chicago stores.[14] Systems' December 1994 corporate account was initiated as a two-year contract, but Systems continued in at least one corporate account rate plan beyond the initial term of the contract, until at least April 2000.[15] Cingular provided Systems notice of the Fee in a March 1995 billing insert. The parties agree that Systems paid the Fee each month from approximately April 1995 until April 27, 2000.[16] Systems remains a customer of Cingular to this day.[17]

7. The record reflects that each Complainant apparently signed a contract with Cingular, prior to initiation of the Fee, that contemplated imposition of additional charges such as the Fee. The relevant contract language provides that:

> Company can modify or amend this Agreement at any time by sending Customer a written notice in the monthly bill or separately. If Customer does not agree to the changes made to this Agreement, Customer must notify Company to cancel Service within thirty (30) days and pay all charges owed to the Company otherwise Customer will be conclusively deemed to have agreed to the changes described in the notice. Such changes may include, without limitation, rates, prime/non-prime periods, deposits, rate plan availability, billing practices, late charges and any and all other terms and conditions of this Agreement.[18]

B. Procedural History

8. On March 19, 2001, Complainants filed their initial complaint in Illinois state court on behalf of a putative class of corporate cellular customers who were charged a Corporate Administrative Fee by Cingular.[19] Complainants' initial complaint sought relief on breach of contract, unjust enrichment, common law fraud, and statutory fraud grounds.[20] It was amended after removal to the Federal District Court for the Northern District of Illinois, and was based upon alleged violations of the Act, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, and common law fraud.[21] Leave was granted to file a second amended complaint that again cited the Act but dropped the references to a breach

[14] *Id*. at 5

[15] *Id*. at 6.

[16] *Id*.

[17] *Id*.

[18] *See* Complaint at Ex. 9. *See also* Letter from Mr. Terrence Buehler, Buehler Reed & Williams, to David Hunt, Federal Communications Commission, (June 29, 2004). While Complainants only provided the Terms and Conditions for the Systems contract, they do not contend that the Terms and Conditions in the other contracts differed materially. Rather, Complainants acknowledge that all the pre-Fee contracts authorized Cingular to modify or amend the terms and conditions "by sending customers a written notice in the monthly bill or separately." Complaint at 9.

[19] Complaint at 3.

[20] *See Gilmore v. Southwestern Bell Mobile Systems, L.L.C.,* Memorandum Opinion and Order, (Case No. 01 C 2900, N.D. Ill) (*District Court Order*).

[21] *Id.*

of contract, fraud, or deception.[22] On July 25, 2002, the Federal District Court dismissed the case without prejudice, referring the Act-related issues to the Commission under the doctrine of primary jurisdiction and retaining jurisdiction to resolve any remaining issues, including damages, once the Commission ruled on liability.[23] This formal complaint was filed on May 28, 2003.[24]

III. DISCUSSION

9. As described above, the current complaint before the Commission alleges both that Cingular's Fee is unjust and unreasonable in violation of section 201(b) of the Act and that the Fee is discriminatory in violation of section 202(a) of the Act.[25] For the reasons discussed below, we disagree with Complainants and conclude that they have not demonstrated that Cingular violated sections 201(b) or 202(a) of the Act.

A. Section 201(b) Allegations

10. Under section 201(b) of the Act, "all charges, practices, classifications and regulations for and in connection with" communications services offered by common carriers must be just and reasonable.[26] Complainants make two arguments in support of their claim that Cingular's assessment of the Fee violates section 201(b) of the Act. First, Complainants contend that the Fee violates section 201(b) because it is not cost-based but rather designed for the sole purpose of raising revenues without appearing to raise rates.[27] Second, Complainants contend that the Fee is misleading and deceptive in violation of section 201(b). Cingular denies these allegations. It is well settled that the burden of pleading and proving a violation of section 201 of the Act is on the complainant.[28]

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[22] *Id*. The District Court Judge noted that "[a]rguably, the second amended complaint could be construed as still claiming that § 201 or federal common law is violated because of a contract breach, fraud, and/or deception." In response to defendant's motion to dismiss, however, "plaintiffs expressly state that their § 201 claim does not rely on fraud, deception, or breach of contract, but instead relies only on the direct contention that the rate was unreasonable in light of the services being provided." *Id*.

[23] *Id.* For purposes of clarity, the Commission notes that it is not permitted to adjudicate complaints under section 208 on a class action basis. *See Halprin, Temple, Goodman and Sugrue v. MCI Telecommunications Corp*., Memorandum Opinion and Order, 13 FCC Rcd 22568, 22581, ¶ 29 (1998) ("class action lawsuits are neither contemplated by, nor consistent with, the private remedies created under sections 206 through 209 of the Act").

[24] Service was originally attempted by hand delivery upon Mellon Bank in Pittsburgh on May 16, 2003, but was initially refused. Service was subsequently effected on May 28, 2003 by mail. In the staff's Notice of Formal Complaint, sent to the parties on May 29, 2003, we accepted the May 28 date as the formal filing date and based the timing of all subsequent pleadings and filings on that date.

[25] *See* Complaint at 18, 19. Complainants concede that the fraud and breach of contract counts included in the Complaint are barred because the Commission does not have jurisdiction to resolve common law causes of action. *See* Complainants' Reply to Defendant's Answer and Affirmative Defenses to Complainants' Complaint, filed June 24, 2003 at 8 (Complainants' Reply).

[26] 47 U.S.C. § 201(b). Persons engaged in the provision of CMRS are treated as common carriers under the Act. *See id.* § 332(c)(1)(A).

[27] *See* Complaint at 10, 25, 26.

[28] *See Sprint Communications Co., L.P. v. MCI Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 14027, 14029, (2000); *American Message Centers v. FCC*, 50 F.3d 35, 40-41 (D.C.Cir. 1995).

1. Application of the Three-Part *White* Test

11. In the *Second Truth-in-Billing Order*, the Commission extended its truth-in-billing rules to wireless carriers. The instant proceeding, however, is governed by precedent that existed prior to the adoption of the *Second Truth-in-Billing Order*. Cingular defends against Complainants' cost-based arguments by asserting that, as a provider of CMRS services in a competitive market, its surcharge is lawful under Commission precedent that governed at the time the complaint was filed. Based upon this prior precedent, and the specific evidence submitted in this matter by the parties, we agree with Cingular's position. Under the applicable precedent, the Commission considers three factors in determining whether a CMRS provider has violated section 201(b) of the Act: (1) the relationship of carrier costs to billing charges or practices; (2) consumers' expectations based on their wireline experience; and (3) the role of competitive markets.[29] Both Complainants and Defendant agree that the factors set forth in *White* are controlling in this proceeding.[30]

12. We now consider the first prong of the *White* test and analyze the practice at issue "in terms of whether [it] reasonably reflect[s] a carrier's cost . . . ."[31] Complainants assert that the sole purpose of the Fee was to increase revenue and that the fee was unrelated to costs borne by Cingular for providing service to business customers.[32] In response, Cingular argues that there was a sufficient relationship between the Fee and its costs to satisfy the *White* test. Specifically, Cingular argues:

> The documents and deposition testimony in the case establish that a variety of services were provided to corporate account customers. The Fee was imposed as an attempt to defray a portion of the costs of providing various services to corporate customers.[33]

13. We conclude that Complainants have failed to demonstrate the Fee is not reasonably related to Cingular's costs under the first prong of the *White* test. As discussed in paragraph 24 below, Cingular offered services to its corporate customers to which individual customers were not entitled. There is testimonial evidence that there were additional costs associated with these special services.[34] Complainants have provided no persuasive, specific evidence that Cingular's Fee was not "reasonably related" to the additional costs for providing these additional services to business customers. Absent such specific evidence, and given that it is undisputed that additional services were in fact provided, we must conclude that the first prong of the *White* test is satisfied.

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[29] *See Petition for Declaratory Ruling on Issues Contained in Count I of White v. GTE*, 16 FCC Rcd 11558 (2001) (*White*).

[30] *See* Answer at 37; Complaint at 23.

[31] *See White*, 16 FCC Rcd at 11561.

[32] *See* Complaint at 10.

[33] Answer at 39. Cingular goes on to describe some of the specialized services corporate customers receive to which individual customers are not entitled, such as traveling to the business location of the corporate client; certain features such as call waiting, call forwarding, voice-mail, three-way calling, and phone replacement were included free-of-charge as part of the rate plan; and being eligible for an in-building wireless system which allowed customers to use cellular phone inside the building. *Id*. at 40. *See also* Complaint at Ex. 20.

[34] *See* Answer, Ex. 4.

14. The second prong of the *White* test concerns consumer expectations based on their wireline experience. The contracts at issue specifically contemplated rate increases and changes in the terms and conditions of service.[35] Importantly, customers also were given the opportunity to cancel service if they wished to do so upon being informed of the new charge.[36] We note that there is no evidence that Cingular charged customers a fee for early termination based on the customers' decision to terminate due to imposition of the Fee. Given these circumstances, we conclude that the second prong of the *White* test is satisfied.

15. The third prong of the *White* test concerns the role of competitive markets. In Chicago, where Defendant was providing corporate cellular service to Complainants, the parties stipulated that at least three other companies were providing similar services when the Fee was first assessed in 1995.[37] The parties also stipulated that in 1996 and 1997, three more companies began offering competitive services in the Chicago area.[38] Given these stipulations, we find that there were three to six carriers throughout the period at issue in the relevant market for the relevant services and that the market was competitive.

16. As stated above, the complainant bears the burden of proof in a complaint proceeding. Based on the above facts and Commission precedent, we find that Complainants have not met their burden of proving that: (1) there was no reasonable relationship between the Fee and Cingular's costs; (2) the Fee was not reasonable in light of consumer expectation; and (3) there was insufficient competition in the Chicago-area market to allow Complainants the opportunity to select another CMRS provider if they were unhappy with Cingular's service. Accordingly, based upon the three-prong test in *White*, we find that Complainants have not established that Cingular's "Corporate Administrative Fee" violates section 201(b) of the Act.

2. Misleading Nature of the Fee

17. Complainants also argue that the Fee is the product of misleading and deceptive marketing and billing practices that: (1) disguised the fact that the Fee was really a rate increase rather than a legitimate charge for unique and additional corporate account administrative services; (2) hid the Fee in such a way as to avoid detection and minimize scrutiny; and (3) hindered competition by making it difficult for customers to compare their rates with those of their competitors. [39]

18. Based on the circumstances at the time, we disagree. First, as noted above, Cingular was exempt from the Truth-in-Billing rules at the time of the events in question.[40] Further, Complainants incorrectly interpret the Commission's prior precedent with regard to section 201(b)'s prohibition against deceptive and misleading practices. While the Truth-in-Billing rules cited by Complainants highlights the Commission's commitment to ensure that all consumers are provided with the basic information they

[35] *See* paragraph 7, *supra*.

[36] *See*, e.g., Complaint, Ex. 12.

[37] *See* Joint Statement at 3.

[38] *Id.*

[39] Complaint at 18.

[40] *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7502 (1999) (*First Truth-in-Billing Order*).

need to make informed choices in a competitive telecommunications marketplace,[41] nothing in the record indicates that Cingular withheld the type of basic information necessary for consumers to make an educated decision about their service provider.[42]

19. Nor did Cingular's actions amount to false and deceptive practices. Cingular did not hide the Fee in small print or describe the Fee in a way that would mislead customers as to the overall amount or general nature of the Fee as a surcharge. Nor did it attempt to disguise the charge as a mandatory regulatory fee, a concern the Commission addressed in the *Second Truth-in-Billing Order*.[43] Rather, Cingular displayed the Fee in the "Other Charges and Credits" section of the bill to notify customers that the Fee is a flat charge per line that does not fluctuate depending on the number of minutes of airtime used in a month. Moreover, Cingular notified the Complainants of the Fee as required by the contracts.[44] There is no evidence that Cingular's description of the Fee as a "corporate administrative fee" was incorrect. The record demonstrates that corporate customers received additional services, and that the costs of administering those services were increasing over time, as acknowledged by Complainants' primary witness.[45]

20. We might reach a different conclusion based upon different factual circumstances. For example, if a carrier imposes a "corporate administrative fee" but there are no additional services that corporate customers receive beyond the services that other customers receive, or if complainants demonstrated that the cost of additional "corporate administrative" services was so small in relation to the new charge that the charge could not be reasonably called a "corporate administrative fee," we would likely find such a fee to be misleading. Similarly, if a fee was described as being federally-mandated when in fact it was not, this too might lead us to a different result. Complainants have not demonstrated that any of these situations are present here, however. We note that in circumstances where complainants do not have access to the information needed to make such a demonstration, they may petition the FCC to compel the licensee to disclose such information.

21. We find that, under the facts of this case, Complainants have failed to prove that Cingular's assessment of the fee was a misleading or deceptive billing practice.[46] Accordingly, we

[41]Complaint at 33.

[42]Although CMRS carriers were exempt from the requirements of the Truth-in-Billing rules, Complainants correctly note that the Commission intended the "broad principles adopted to promote truth-in-billing to apply to all telecommunications carriers, both wireline and wireless." *See* Complaint at n. 31 (citing *First Truth-in-Billing Order,* 14 FCC Rcd at 7501 and n.32). For that reason, the Commission emphasized that its decision in the Truth-in-Billing proceeding in no way lessened a CMRS carrier's obligations under section 201(b). *Id.*

[43]*See Second Truth-in-Billing Order.*

[44]*See* Answer at 42, 43 (citing Exs. 6, 7); *see also* Complaint, Ex. 14; paragraph 6, *supra*. As explained *supra*, Cingular notified Gilmore and Systems of the Fee by billing inserts in March 1995. It is unclear whether Ms. McGuire received a billing insert in March 1995, because she appears to have signed her contract that month. She did, however, receive notice of the imposition of the Fee in her first monthly bill in April 1995. *See* Complaint at Ex. 7. Complainants do not argue, however, that Ms. McGuire did not receive adequate notice because of this timing issue. Absent further evidence suggesting that this was the case, we will assume that she knew of the new charges upon initiating service

[45]*See* Answer at Ex. 4.

[46]Complainants also argue that mislabeling the Fee is actionably deceptive because it is designed to manipulate customers' contractual right to terminate their service agreements. *See* Complaint at 37, 38. The evidence provided by Complainants to support this contention, however, is not persuasive. Complainants contend that the service

(continued.…)

conclude that Complainants have not established that Cingular's marketing and billing practices associated with the Fee violated section 201(b).

22. We do note, however, that in the Commission's recent decision to apply the truth-in-billing rules to CMRS providers, it stated its ongoing interest in allowing consumers to better understand their telephone bills, compare service offerings, and thereby promote a more efficient competitive marketplace.[47] At that time, the Commission also reiterated that "[t]he proper functioning of competitive markets is predicated on consumers having access to accurate, meaningful information in a format that they can understand."[48] As touched on above, this case is decided under a different regulatory environment than the one that now is in place.[49] Unless consumers are adequately informed about the service choices available to them and are able to make reasonable price comparisons between service offerings, they are unlikely to be able to take full advantage of the benefits of competitive forces.

B. Section 202(a) Allegations

23. Complainants also allege that the Fee is discriminatory in violation of section 202 of the Act because: (1) it was imposed only on corporate account customers and not on similarly situated individual account customers; and (2) it was not imposed on corporate account customers who called Cingular about the imposition of the Fee.[50]

1. Fee Imposed Only on Corporate Customers

24. Section 202(a) of the Act makes it unlawful for any common carrier to discriminate unjustly or unreasonably among customers in its provision of "like communications service."[51] In determining whether a CMRS provider has violated section 202(a) of the Act, the Commission applies a three-step inquiry: (1) whether the services at issue are "like"; (2) if they are, whether there are differences in the terms and conditions pursuant to which the services are provided; and (3) if so, whether the differences are reasonable.[52] Complainants have the burden of establishing the first two components

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agreements permit modifications or amendments by Defendant only "by sending customer a written notice in the monthly bill or separately." *Id.* at 37. Absent the written notice, Complainants argue, customers are not permitted to cancel their contracts prior to the expiration of the specified term. *Id*. at 38. Given the fact that Cingular did notify Complainants by bill insert or in the bill itself, we do not understand how Cingular in any way prevented customers from exercising their contractual right to terminate service. *See* paragraph 3, *supra*.

[47] *Second Truth-in-Billing Order* at 6450.

[48] *Id*.

[49] *See* para 2, *supra*.

[50] *See* Complaint at 18, 19.

[51] 47 U.S.C. § 202(a) ("It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service….").

[52] *See Orloff v. Vodafone Airtouch*, 17 FCC Rcd 8987, 8994 (2002) (*Orloff*); aff'd, Orloff v. FCC, 352 F.3d 415 (D.C. Cir. 2003), cert. denied, 124 S.Ct. 2907 (2004).

of the test, after which the burden switches to the Defendant to demonstrate that any discrimination is reasonable.[53]

25. In the instant case, Complainants allege that corporate customers receive the same administrative goods and services that are provided to non-corporate customers yet the Fee is assessed only on corporate customers.[54] In addition, Complainants contend that Cingular's records do not indicate that it incurred more corporate account costs than non-corporate account costs.[55] We do not find Complainants' assertions persuasive. In determining whether services are "like" for purposes of section 202(a) of the Act, the Commission must determine whether the services in question are "functionally equivalent."[56] An important aspect of the test relies upon customer perception to help determine whether the services being compared provide the same or equivalent functions.[57] We find that there were a number of differences between plans offered to corporate customers and those offered to residential customers, including different rate packages with different associated customer services.[58] For instance, Cingular explains that it traveled to the business location of the corporate account customer and brought necessary equipment to make it easier to sign up employees.[59] Corporate customers also received features such as call waiting and call forwarding as part of their rate plans for which non-corporate customers were assessed separate charges.[60] Furthermore, corporate account customers received a specialized corporate account newsletter and were eligible for an in-building wireless system that allowed them to use cellular phones inside the building.[61] These packages were clearly tailored to the specific needs and expectations of corporate customers. Furthermore, each contract was individually negotiated, which, under existing case law, often prevents a finding of "likeness."[62] We therefore find that the services being compared by Complainants are not "like" for purposes of section 202(a) of the Act and deny Complainants' allegations.

2. Waiver of Fee

26. Complainants further argue that Cingular's Fee is discriminatory because Cingular removed the charge from certain corporate customers' accounts after they called and complained about the Fee.[63] Under the Commission's holding in *Orloff*, which was affirmed by the DC Circuit Court of Appeals, this argument fails. In *Orloff*, the Commission found it reasonable for a customer to negotiate a

[53] *Id.*

[54] *See* Complaint at 18, 19, 38. Complainants allege that all customers had access to similar calling services and features, and that all customers were billed in writing and had someone to call in case of questions. *See* Complainants' Reply at 28.

[55] *See* Plaintiffs' Supplemental Memorandum and Additional Proposed Findings, filed Aug. 29, 2004 at 5.

[56] *See Cellexis International, Inc., v. Bell Atlantic Nynex Mobile Systems, Inc., et al*, 16 FCC Rcd 22887, 22892 (2001).

[57] *Id.* (citing *Beehive Telephone, Inc. v. Bell Operating Companies*, 10 FCC Rcd 10562, 10567 (1995)).

[58] *See* Answer at 40 (citing Morrison Deposition, Ex. 2).

[59] *Id*.

[60] *Id.*

[61] *Id.*

[62] *See Competitive Telecommunications Ass'n v. FCC*, 998 F.2d 1058, 1063 (D.C. Cir. 1993).

[63] *See* Complaint at 18, 19.

better deal with a wireless carrier where no market failure prevented a customer from switching carriers if they were dissatisfied.[64] According to Defendant, it occasionally waived the Fee for customers who complained about it, but as Cingular argues, this was an individualized negotiation that it was willing to entertain without any guarantees that the Fee would be waived or that the customer would remain a Cingular customer.[65] We therefore find that by waiving the Fee in certain instances, Cingular did not violate section 202(a) of the Act.

IV. ORDERING CLAUSE

27. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 201(b), 202(a), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), and 208, that the Complaint filed by Bruce Gilmore, *et al*., is DENIED and that this proceeding IS TERMINATED as of the Release Date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[64] *See Orloff,* 17 FCC Rcd at 8996.

[65] *See Answer* at 44, 45.